

STATE OF NEVADA
DEPARTMENT OF TRANSPORTATION
REQUEST FOR PROPOSAL

No. 023-12-052

Project Specifications and Instructions
for Submitting a Proposal to Furnish

**Statewide Disparity Study for the
Disadvantaged Business Enterprise (DBE) Program
(FY2012/2013)**

Throughout the State of Nevada



Susan Martinovich, P.E., Director
Department of Transportation

SECTION I - INSTRUCTIONS TO PROPOSER

The enclosed "Request for Proposal" (RFP) is being **[advertised and]** sent to prequalified firms for use in submitting information that will be used to select a firm with whom we hope to negotiate an agreement for the described services.

The proposer shall submit nine (9) CDs, with each CD containing one (1) typewritten, legible proposal contained within one (1) PDF file. **Each CD shall also include a separate PDF file of the proposer's Statement of Qualifications Form (for non-engineering).** Faxed proposals will not be accepted. Written proposals must be received **NO LATER THAN 4:00 P.M., on February 22, 2012**, and addressed **exactly** as follows:

Agreement Services
Nevada Department of Transportation
Attn: RFP #023-12-052
1263 South Stewart Street, Room 101
Carson City, NV 89712

Proposals received after the specified deadline or submitted to the wrong location **will not** be considered and will be disposed of in an appropriate manner suitable to the Nevada Department of Transportation (DEPARTMENT).

Proposers not currently prequalified (or desiring to prequalify) in the DBE Program Disparity Study discipline will first be reviewed to determine if they meet the minimum qualifications set forth for the discipline. Any proposals submitted that do not meet the minimum prequalification requirements, as outlined below, will be disposed of in an appropriate manner, at the sole discretion of DEPARTMENT, without further review.

DBE Program Disparity Study:

The DBE Program Disparity discipline requires, at the minimum, a multi-disciplinary team of professionals with professional/graduate level degrees in the fields of statistics, economics and law. Regression analysis expertise and tools are essential.

Any proposal received prior to the date and time specified above for receipt of proposals may be withdrawn or modified by written request of the Proposer. To be considered, however, a written request to withdraw the proposal or the modified proposal must be received before the time and date specified above for receipt of Proposals. Oral interviews may be conducted for each firm that submits a written proposal. The DEPARTMENT has the sole discretion as to whether it will or will not conduct oral interviews. In the event that the DEPARTMENT elects to conduct oral interviews, each proposer in the competitive range will be advised of the format for such interview and will be provided with a schedule for such interview. Competitive range means a list of the most highly rated proposals based on the initial ranking of the proposals. It is based on the initial rating of each proposal measured against all evaluation criteria set forth in this RFP.

Confidential Information, Trade Secrets and/or Proprietary Information must be sealed in a separate package and each page must be clearly marked "Confidential." The failure to separate and mark this information as per NRS 333.020 and 333.333 shall constitute a complete waiver of any and all claims for damages caused by release of the information by the DEPARTMENT. If the DEPARTMENT reviews the Confidential Information and determines that the information is not considered confidential pursuant to Chapter 333 of NRS, the

DEPARTMENT will contact the Proposer. The Proposer must advise the DEPARTMENT whether it either accepts the DEPARTMENT's determination that the information is not confidential or withdraw the information. The Proposer will not be allowed to alter the submittal after the date and time set for receipt of Proposals shown above. Notwithstanding the provisions in NRS Chapter 333, the DEPARTMENT retains its immunity pursuant to the provisions of NRS 239.012 for any "good faith" release of information and the immunities from liability provided to it pursuant to NRS Chapter 41.

Issuance of this RFP shall in no way constitute a commitment by the DEPARTMENT to execute an agreement. The DEPARTMENT reserves the right to reject any or all proposals received in response to this RFP, or to cancel this RFP if it is deemed in the best interest of the DEPARTMENT to do so.

The DEPARTMENT reserves the right to issue supplemental releases addenda to this RFP prior to the closing date. In the event it becomes necessary to supplement any part of this RFP, DEPARTMENT will provide copies of such addenda to all who have attended the pre-submittal meeting (if applicable) and communicated to DEPARTMENT Agreement Services that they received the RFP.

The DEPARTMENT assumes no financial responsibility in connection with the costs incurred by Proposers in attending the pre-proposal meeting, the preparation and submission of the Proposers' proposal packets or the costs to attend the oral interviews, if such interviews are conducted by the DEPARTMENT in its sole discretion.

With this RFP, the Proposer is furnished a copy of the draft agreement. **To maintain consistency between the DEPARTMENT and its service providers, only those portions of the "Draft Agreement" that are open for negotiation shall be blank.** A pre-negotiation audit may be required by the DEPARTMENT's Internal Audit Division. All DEPARTMENT audits will be conducted in accordance with the AASHTO Uniform Audit and Accounting Guide 2010 which can be found at www.transportation.org. The "lump sum" method of compensation shall be used for the Proposer's services, as set forth in 48 CFR Chapter 1.

The following rules of contact shall apply during this Procurement for the Project:

- A. After release of the RFP, the Proposers shall **ONLY** correspond with the DEPARTMENT regarding this RFP through the DEPARTMENT's designated representative as per NAC 333.155;

Agreement Services,
Nevada Department of Transportation
1263 South Stewart Street, Room 101
Carson City, Nevada 89712
775-888-7070
agreeservices@dot.state.nv.us

- B. The Proposers shall not contact DEPARTMENT employees, including department heads, members of the evaluation committee(s) and/or any official who will participate in the decision to award the Agreement, regarding the Project, except through the process identified above;
- C. Any communications determined to be improper may result in disqualification, at the sole discretion of the Department;

- D. Any official information regarding the RFP will be disseminated from the DEPARTMENT. Specific information necessary for the preparation of Proposals will be disclosed to all Proposers;
- E. The DEPARTMENT will not be responsible for any oral exchange or any other information or exchange that occurs outside the official process specified herein.

A. PROPOSER QUESTIONS

The Department will respond to questions regarding the RFP, including requests for clarification and requests to correct errors, submitted in writing by Proposers. Only written requests as described above will be considered. No oral requests will be considered. No requests for additional information or clarification to any other DEPARTMENT office, consultant, employee or the FHWA will be considered.

Any questions raised by Proposer’s must be submitted in writing to Agreement Services, 1263 South Stewart Street, Room 101, Carson City, Nevada 89712, faxed to (775) 888-7101 or emailed to agreeservices@dot.state.nv.us and received by 4:00 p.m., on February 14, 2012. Written responses will be distributed by the DEPARTMENT on or before February 17, 2012.

SECTION II – SCHEDULE

<u>Task</u>	<u>Date</u>
Request for Proposal (RFP) Issued	January 24, 2012
Dates Advertised	January 24, 2012 through January 31, 2012
Proposer Questions Submittal Due Date	February 14, 2012
DEPARTMENT’s Response to Proposer Questions	February 17, 2012
RFP Due Date	February 22, 2012
Anticipated Notification of Intent to Award	February 29, 2012
Recommendation to Board of Transportation	March 14, 2012
Anticipated Notice of Award	April 9, 2012

SECTION III - DBE REQUIREMENTS

There are no Disadvantage Business Enterprises (DBE) requirements for the project.

SECTION IIII – NEVADA BUSINESS LICENSE REQUIREMENT

The selected firm, prior to doing business in the State of Nevada, must be appropriately licensed by the Office of the Secretary of State pursuant to NRS 76.100. Information regarding the Nevada State Business License can be located at <http://sos.state.nv.us>. Firms must provide the following:

- Nevada State Business License Number
- Legal Entity’s Name
- Is the “Legal Entity Name” the same name under which Proposer is doing business? [] Yes [] No
If “No,” provide an explanation.

Additionally, if the firm is a corporation, LLC, LP, LLP, or LLLP, or non-profit corporation based out of state, they must be registered as a foreign business entity equivalent in Nevada, in active status, and in good standing with the Nevada Secretary of State.

Each Proposer shall clearly state, at time of its submittal, its willingness to adhere to this requirement by providing a copy of its Nevada State Business License, a copy of its application to the Secretary of State Office or a copy of the entity's status that can be obtained from the Nevada Business Search found on the homepage of the Secretary of State's website www.sos.state.nv.us.

Award of any RFP is contingent on a Proposer having and holding an active, valid Nevada State Business License. A Proposer must satisfy this requirement before submission of a Proposal. If a Proposer is unable or unwilling to adhere to this requirement, the DEPARTMENT will deem the Proposer as non-responsive and the DEPARTMENT shall proceed to negotiate with the next most qualified firm and so on until an acceptable agreement is negotiated.

SECTION V - SELECTION PROCESS

Selection will be based on the factors shown on the attached Evaluation Criteria Form which will be used by a committee(s) to evaluate the written proposal. If the DEPARTMENT receives five (5) or fewer proposals, the Review Committee will review the proposals and may, at its sole discretion, elect to establish a "short-list" to be interviewed. If six (6) or more proposals are received or the Project cost is estimated to be over \$2 million, the DEPARTMENT will utilize a separate Evaluation Committee who will establish a "short list" of candidates. The Evaluation Committee's "short-list" will be forwarded to the Review Committee who will review the proposals and may, at its sole discretion, elect to conduct interviews. Scoring at each level of the evaluation process will only be used to advance firms to the next level of the selection process and will not be combined for a total score.

If the Review Committee elects, in its sole discretion, to conduct oral interviews, each Proposer in the competitive range shall be notified of the interview schedule via electronic mail and will be required to confirm their willingness to attend the oral interview. The same attached Evaluation Criteria Form will be used for all reviews and oral interviews. Failure of a Proposer to appear at the oral interview, if the Review Committee elects to conduct such interviews, will be considered non-responsive, and that firm will be eliminated from any further consideration. The Committees tasked with ranking the Proposals will be comprised of DEPARTMENT staff and other members representing local entities who shall remain anonymous to protect the integrity of the procurement process.

All evaluators will use the information in the firm's prequalification package in addition to the information submitted in the written proposal and presented at the oral interview to arrive at the final ranking. The firms will be ranked and an agreement shall be negotiated following the selection of the most qualified Proposer. If an acceptable agreement cannot be reached with the highest ranked Proposer, the DEPARTMENT shall proceed to negotiate with the next highest ranked Proposer and so on until an acceptable agreement is negotiated or the DEPARTMENT, in its sole discretion, elects to terminate the solicitation.

SECTION VI - BACKGROUND

NDOT desires to engage a CONSULTANT to conduct a statewide study of the DBE Program to establish whether a disparity exists within the State of Nevada between the availability of capable minority and female and/or disadvantaged firms and any established NDOT contracts awarded to those firms. The study will include multiple analyses, including regression analyses, designed to determine the absences or presences of discrimination in

Transportation Federal Aid contracting in Nevada and provide guidance for implementing changes to NDOT's DBE Program and/or methods of contracting with these firms to address the findings of the study.

SECTION VII - SCOPE OF SERVICES

The DEPARTMENT is seeking an experienced CONSULTANT that has prepared a minimum of three disparity studies in relation to the Disadvantaged Business Enterprise (DBE) possible inference in inequity in obtaining contracts. The CONSULTANT must have the ability to provide data collection and analysis on the availability and utilization of DBE's from the period of October 1, 2005 through December 30, 2011, upon which to base a legally defensible DBE Program. The DBE Program is administered in accordance with the requirements of 49 CFR Part 26 and applicable court decisions on the interpretation and administration of such a program in the public highway transportation contracting industry. The NDOT DBE Program applies only to United States Department of Transportation federal funded contracts.

The CONSULTANT shall address the issues raised by the 9th Circuit Court of Appeals in *Western States Paving Co. Inc. v Washington State Department of Transportation*, 407 F.3d 983 (9th Circuit 2005) and by other courts and cases considering the federal DBE program. Specifically:

- a. Is there evidence of discrimination against minority-and women-owned firms in the Nevada highway construction industry (and related design fields) sufficient to warrant consideration of race and gender-based remedies? (Evidence must be separately examined for each minority group included in the DBE program as well as for women.)
 - Is there evidence of disparities between utilization and availability of DBEs in local highway construction absent the DBE program?
 - Are there other factors other than discrimination that may account for disparities in the utilization of DBEs?
 - Is there other quantitative evidence consistent with discrimination in the marketplace?
 - Is there qualitative evidence that discrimination affects the industry?
- b. If there is evidence of discrimination sufficient to consider race-and/or gender-based remedies, what is narrowly-tailored response consistent with the federal DBE program and court rulings?
 - What is a narrowly-tailored annual DBE goal?
 - What race-and gender-neutral remedies can be implemented?
 - If race-and gender-based remedies are warranted, can they be implemented in a narrow, flexible way that meets federal DBE program and court requirements?

The CONSULTANT shall conduct ten (10) major tasks to complete the disparity study.

1. **Legal Review.** The CONSULTANT shall conduct an on-going review of case law and applicable state and federal laws and regulations (such as 49 C.F.R. Part 26) to assist in refining study methodology. The CONSULTANT shall advise the DEPARTMENT on DBE program compliance in a written report.
2. **Review of the DEPARTMENT Contracting Practices.** The CONSULTANT shall meet with the DEPARTMENT in Carson City to obtain a general understanding of DEPARTMENT highway construction and engineering contracting. The CONSULTANT shall review DEPARTMENT contracting policies and procedures

in detail. The CONSULTANT shall conduct a comprehensive review of how the DEPARTMENT develops requests for bids and how those contracts are let, including all aspects of the bidding process from announcement and invitation for bids through awarding contracts. Particular factors to consider include, but not be limited to:

- Pre-qualification process;
- Licensing bonding, insurance and other requirements to do business with the DEPARTMENT; and
- Exceptions to the low bid process.

The CONSULTANT shall conduct this analysis through interviews with the DEPARTMENT staff, review of DEPARTMENT documents and assessments of actual bids. This assessment shall be conducted separately for each of the DEPARTMENT's three (3) districts.

In addition, the CONSULTANT shall review the prime contractors' process for communicating subcontracting opportunities and selecting subcontractors, including DBEs and non-DBEs. This assessment will primarily be conducted through interviews with prime contractors and subcontractors in Nevada. The CONSULTANT shall review the DEPARTMENT's monitoring and approval of subcontractors on DEPARTMENT contracts, including review of subcontractors on change orders. Quantitative and regression analyses related to the contracting and subcontracting process are included in Tasks 4 and 5.

The CONSULTANT shall also review compliance with the DBE program, including the DBE certification process.

3. The CONSULTANT shall review the most recent NDOT Availability and Disparity study, published June 15, 2007. This review will include an examination of the effectiveness of NDOT's implementation of the study's recommendations.
4. Quantitative Research Concerning DBE Participation in DEPARTMENT Work. The disparity analysis for the DEPARTMENT highway construction contracts will have several steps, beginning with determining the relevant geographic market area and lines of business involved in DEPARTMENT highway construction work.

Analysis of the Types and Locations of DEPARTMENT Construction Work. The CONSULTANT shall build a database of the DEPARTMENT prime, subcontract and supplier work for highway construction and related design by discipline from October 2005 through December 2011. The CONSULTANT shall separately analyze types of work for each of the three (3) DEPARTMENT districts based on North American Industry Classification System (NAICS) CODES.

- From the analysis of type of work by location, the CONSULTANT shall determine the relevant geographic market area for different types of highway construction prime and subcontract/supplier work based on several factors and situations. The CONSULTANTS database of the DEPARTMENT projects will be used in subsequent tasks such as examining DBE utilization by district and type of work. Projects will be divided into those with DBE goals and those without goals (which, historically, may correspond to whether or not the contracts received federal funding).

Analysis of DBE Utilization. The CONSULTANT shall analyze DEPARTMENT records to determine the utilization of African American-, Asian-, Hispanic-, Native American- and women-owned firms as prime contractors and as subcontractors/suppliers in DEPARTMENT construction contracts from October 2005 through December 2011. For purposes of this analysis the various groups shall be disaggregated. The CONSULTANT shall assess utilization that is achieved with and without project goals, by district, using among other things, regression analysis.

- The CONSULTANT shall collect and analyze data on firms performing highway engineering contracts. The CONSULTANT shall also consult with the DEPARTMENT to identify stewardship contracts that involve federal funds but are let by governments.

Analysis of DBE Availability. “Availability” sets a benchmark for the expected utilization of Minority Business Enterprises (MBEs) (by group) and Women Business Enterprises (WBEs) absent impacts of any discrimination and without the effects of race and gender based programs. Based upon the U.S. Supreme Court decision in City of Richmond v. J.A. Croson Co., availability should reflect the relative number of DBEs among firms that are qualified, willing and able to conduct specific types of work.

- There are two (2) groups of firms potentially available for DEPARTMENT highway construction work: (1) the firms that have taken steps to compete for DEPARTMENT work (e.g., pre-qualify for construction prime contracts or have actually bid on work) and (2) firms that are qualified, willing and able to perform certain types of DEPARTMENT work but that, for whatever reason, do not appear on the lists of firms bidding on or performing DEPARTMENT work in the FY 2005-2011 time period. For both groups of firms (past bidders and non-bidders), the CONSULTANT shall conduct telephone interviews with firm owners and managers to determine qualifications and interest for specific types of work, in particular locations (the three (3) DEPARTMENT districts), and for size ranges of contracts/subcontracts. The telephone interviews with firm owners and managers will also collect other firm information, including when the firm was founded, employment size, largest contract ever bid on, revenues range and ownership status.
- The research described above will determine DBE availability for a matrix of firm groupings that will show, for each district, the number of DBEs (by MBE/WBE type) and total firms available for specific types of work, by prime contracting versus subcontracting/supply. DBE availability by type of work will be weighted according to the dollars of a district’s work going to firms for that discipline. Overall availability estimates will be separately developed for each district and by each group within the DBEs.

Analysis of Disparities in DEPARTMENT Utilization of DBEs. For each minority group and for WBEs, the CONSULTANT shall assess whether utilization of DBEs on DEPARTMENT highway construction work falls substantially below the availability of DBEs for that work. The CONSULTANT shall examine prime versus subcontract/supplier work, plus overall utilization, for each DEPARTMENT district for each group. The CONSULTANT shall perform this analysis for

projects with DBE goals and projects without goals. The CONSULTANT shall also assess whether any disparities are substantive and statistically significant.

5. Further Research into Neutral Explanations for Any Disparities. The CONSULTANT shall explore alternative causes for any disparities identified in Task 4. For example, do DBEs not bid on DEPARTMENT prime contracts at the rate one would expect based on DBE availability? If so, why? The CONSULTANT shall explore these types of questions through a variety of statistical and other analyses.

Case Studies of DEPARTMENT Procurements. The CONSULTANT shall review a random sample of past contract files over the study period to build a detailed database of DBE participation in each step of the DEPARTMENT's highway construction contracting process. From this data, the CONSULTANT shall research issues such as the number of bids that are submitted by DBEs versus non-DBEs, and the relative sizes of these contracts.

The CONSULTANT shall quantitatively examine DBE versus non-DBE opportunities to bid as subcontractors in highway construction contracts based on DEPARTMENT data.

6. Quantitative Research concerning evidence of discrimination in the local marketplace. The CONSULTANT shall conduct research on the non-DEPARTMENT components of the highway construction market in Nevada and the relative success of African American-, Asian-, Hispanic-, Native American- and women-owned firms compared with majority-owned firms. The database compiled from the telephone surveys, supplemented with other data where necessary, will be examined by the CONSULTANT for use in comparing DBE versus non-DBE firm characteristics and relative success in the local marketplace after controlling for other factors.

The CONSULTANT shall statistically explore rates of business formation and survival in the highway construction industry.

7. Qualitative Research Concerning Evidence of Discrimination. The CONSULTANT shall examine whether there is a qualitative evidence of discrimination affecting the local highway construction industry and/or DEPARTMENT highway construction contracts through a combination of telephone surveys and in-depth interviews with a cross-section of business owners and others, and assessment of any past complaints of discrimination.

The CONSULTANT shall meet with 30 to 40 business owners in 2-hour, in-depth interviews. These interviews will be supplemented by meetings with trade associations, business chambers, banks, bonding companies, small business assistance providers and other business groups.

The CONSULTANT shall also analyze any available judicial or administrative data as to allegations of discrimination made against firms in this industry and the dispositions of such allegations.

8. Assessment of the Need for Remedial Measures. Based on the quantitative and qualitative information in this study, the CONSULTANT shall assess whether

there is evidence of race or gender discrimination that would support any type of remedy. If so, the CONSULTANT shall first examine race- and gender-neutral measures.

If DEPARTMENT remedies are needed and neutral measures alone will not be sufficient, then the CONSULTANT shall examine narrowly tailored race- and gender-based remedies consistent with federal DBE program guidelines. The CONSULTANT shall identify annual DBE goals and outline how the DEPARTMENT should set flexible project-specific goals, if needed. The CONSULTANT shall identify the specific groups of firms (race/ethnicity/gender), if any that should be eligible for any race- and gender-based programs.

9. Recommendations, Report and Presentations. The CONSULTANT shall recommend specific DEPARTMENT actions, for specific groups of firms and types of contracts, based on the study findings. The CONSULTANT shall list the actions for the DEPARTMENT to respond to federal DBE program rules and court decisions based on the information examined by the CONSULTANT, including race- and gender-neutral measures. The CONSULTANT shall present results to the DEPARTMENT. The CONSULTANT shall submit a draft report for the DEPARTMENT to review. The CONSULTANT shall then examine the DEPARTMENT's comments and prepare a final report. The CONSULTANT shall assist the DEPARTMENT in conducting public hearings once the study is completed. Such assistance includes but is not limited to up to 4 hours of expert testimony/presentation in each of the three (3) Districts plus a written lay summary for distribution to the general public.
10. Stakeholder Working Group. The consultant shall form a Stakeholder Working Group that includes a coordinator from the Consultant's firm. The coordinator will ensure there is a team member present from the firm for all critical events, e.g., the project kick off (defining key milestones, conduct stakeholder meetings, presentation of initial findings, recommendations stage, and prior to first public hearings).

SECTION VIII - PROJECT SCHEDULE

It is anticipated the disparity study will be completed and delivered to the DEPARTMENT within one (1) calendar year from the Notice to Proceed date.

SECTION IX - PROPOSAL CONTENT

No pricing information is to be provided with the Proposal. The selection is based on the Proposal offering the best value to the DEPARTMENT. Pricing shall be negotiated with the most qualified firm after conclusion of the evaluation process.

The proposals shall include:

A. EVALUATION CRITERIA ITEMS

1. **Project Approach:**
 - a. Describe your team's understanding of project requirements contained in the Scope of Services.

- b. Identify specific methods to be used to complete each project requirement.
- c. Identify potential complications or difficulties that might be encountered in the implementation of required services along with suggested resolutions for each.

2. Project Team:

- a. Provide a summary of the education and past experience with similar projects for each member of the Proposer's staff who will be assigned to this project, including resumes for the project manager and the key principals.
- b. Include a current organizational chart of the project team, including subcontractor(s) with responsibilities of team members identified therein.
- c. Identify the location(s) where actual work will be completed.
- d. Provide a percentage of work to be completed at each location.
- e. Identify the location of the office which will provide primary project control for this project.

3. Availability and Capacity:

- a. Provide a listing of your firm's equipment which will support this effort.
- b. Provide a matrix or chart which lists all current projects of the Project Team, the number of hours remaining for completion of each such project and the estimated completion date for each project.
- c. In view of this information on your firm's current projects, describe your team's ability to meet the time lines established for this project.
- d. Identify the availability of Proposer's staff to attend meetings and interact with DEPARTMENT staff on short notice.

4. Past Performance:

- a. Describe your firm's experience (within the past three (3) years) with similar projects.
- b. Provide a detailed description of each project listed.
- c. Provide information as to whether or not your firm met the time and budget requirements for each project listed.
- d. Provide a reference name and phone number for each project listed.
- e. Provide a completed "Statement of Qualification Form" for Non-Engineering Proposers.
- f. Provide a copy of the Proposer's Nevada State Business License or copy of the Proposer's application to the Secretary of State.

5. Proximity of Project Team:

- a. Describe your firm's location in the geographical area of the project.
- b. Describe your knowledge of the locality of the project.

B. PROPOSAL LIMITATIONS

The written proposals shall be limited by the following:

- 1. The total proposal package shall not exceed twenty (20) double-spaced, single-sided, 8½" x 11" pages, which does not include the cover letter.

2. Statement of Qualifications, DBE Certifications, Nevada State Business License, cover letter, and section dividers without text or graphics do not count towards the page limitations.
3. Pages contained within the proposal which are 11" x 17" will be counted as two (2) pages.
4. For ease of evaluation, the proposal must be presented in a format that both corresponds to and references those sections outlined within this RFP and must be presented in the same order as listed in this RFP. Responses to each section and subsection must be labeled to indicate which item of this RFP is being addressed. Exceptions to these stated limitations will be considered during the evaluation process and may, in the DEPARTMENT's sole discretion, result in a Proposal being considered non-responsive.

C. DISCLOSURE OF CURRENT AND FORMER STATE EMPLOYEES

Proposals from Firms employing current employees or former employees of the State of Nevada will be considered pursuant to the requirements and limitations set forth in the DEPARTMENT Administrative Manual, NRS Chapter §281, and NRS Chapter §284.

The Nevada Legislature passed Assembly Bill No. 240 (AB 240) requiring any vendor entering into an agreement with the State of Nevada to identify certain employees who will be providing services for the State of Nevada. The DEPARTMENT will follow the process established by the Nevada Department of Administration and outlined in the State Administrative Manual (SAM), sections 322, 323, and 344. If the apparent top-ranked firm proposes any current state employees or former state employees who left state service within the preceding two (2) years, the DEPARTMENT must request approval from the State Board of Examiners (BOE) prior to entering into an agreement with such firm. Upon approval from the BOE the DEPARTMENT will proceed with the negotiation and agreement processes per DEPARTMENT procedures. In the event of a denial by the BOE, the proposer will be allowed one (1) opportunity to replace the disapproved employee with another employee who possesses substantially equivalent capabilities. The DEPARTMENT has the authority to approve or deny the equivalent employee. If the DEPARTMENT approves the equivalent employee, the DEPARTMENT will proceed with the negotiation and agreement processes per DEPARTMENT procedures. If the DEPARTMENT denies the equivalent employee, the DEPARTMENT will proceed to negotiate with the next most qualified firm and so on until an acceptable agreement is negotiated.

If the proposed team includes current state employees or former state employees who left state service within the preceding two (2) years, the proposer shall submit, as part of their proposal, the appropriate form (Authorization Current Employee, Authorization Former Employee) to assist the DEPARTMENT in requesting approval from the BOE. The forms are located at http://purchasing.state.nv.us/contracting/current_and_former.htm. The submitted form may or may not be used by the DEPARTMENT as a template in requesting approval of the proposed team member.

SECTION X – AWARD PROCESS

A. NOTIFICATIONS

The DEPARTMENT shall issue its Notification of Intent to Award in accordance with NAC §333.170. Any award is contingent upon the successful negotiation of final contract terms and upon approval of the Transportation Board, when required. Negotiations shall be

confidential and not subject to disclosure to competing firms. The terms agreed to by the parties shall be confidential until an agreement is executed. If contract negotiations cannot be concluded successfully, the Department, at its sole discretion and upon written notice to all firms, may negotiate a contract with the next highest ranking firm or withdraw the RFP and cancel this procurement.

The DEPARTMENT shall issue a Notification of Award in accordance with NAC §333.170 at which time, proposals are no longer confidential and can be requested via a Public Records Request which can be found at: [http://www.nevadadot.com/Public Involvement/Public Involvement.aspx#prrequests](http://www.nevadadot.com/Public%20Involvement/Public%20Involvement.aspx#prrequests)

SECTION XI - TERMS, CONDITIONS AND EXCEPTIONS

This procurement is being conducted in accordance with NRS Chapters 333 and 408 and NAC Chapter 333.

The DEPARTMENT reserves the right to alter, amend, or modify any provisions of this RFP, or to withdraw this RFP, at any time prior to the award of a contract pursuant hereto, if, in the sole discretion of the DEPARTMENT, it is in the best interest of the state to do so.

The DEPARTMENT reserves the right to waive informalities and minor irregularities in proposals received.

The DEPARTMENT reserves the right to reject any or all proposals received prior to contract award (NRS §333.350).

Any irregularities or lack of clarity in the RFP must be brought to Agreement Service's attention as soon as possible so that corrective addenda may be furnished to all Proposers.

Alterations, modifications or variations to a proposal may not be considered unless authorized by the RFP or by an addendum or an amendment to the RFP.

Proposals which appear unrealistic in the terms of technical commitments, lack of technical competence, or are indicative of failure to comprehend the complexity and risk of this contract, may be rejected.

All materials submitted in accordance with the prescribed deadline become the property of the DEPARTMENT and will not be returned. The DEPARTMENT's selection or rejection of a Proposal does not affect this right. The master copy of each proposal shall be retained for official files and will become public record after execution of a contract. Only specific parts of the proposal may be labeled a "trade secret," provided that the Proposer agrees to defend and indemnify the DEPARTMENT for honoring such a designation (NRS §333.333); unsuccessful proposals containing "trade secrets" will be returned pursuant to NRS 293.010. The failure to so label any information shall constitute a complete waiver of any and all claims for damages caused by any release of such information by the DEPARTMENT. The DEPARTMENT shall not be liable for disclosure or release of information when authorized or required by law to do so pursuant to NRS 239.012.

A proposal submitted in response to this RFP must identify any subconsultants, and outline the contractual relationship between the awarded Proposer and each such subconsultant. An official of each proposed subconsultant must sign, and include as part of the proposal submitted in response to this RFP, a statement to the effect that the subconsultant has

read this RFP and agrees to abide by the awarded Proposer's obligations. A subconsultant's compliance with these requirements does not create a contractual relationship between the subconsultant and the DEPARTMENT.

The awarded Proposer will be the sole point of contract responsibility. The DEPARTMENT will look solely to the awarded Proposer for the performance of all contractual obligations which may result from an award based on this RFP, and the awarded Proposer shall not be relieved for the non-performance of any or all of its subconsultants.

The awarded Proposer must maintain, for the duration of its contract, insurance coverage's as set forth in the agreement executed in response to this RFP. Work on the contract shall not begin until after the awarded Proposer has submitted to the DEPARTMENT acceptable evidence of the required insurance coverages. Failure to maintain any required insurance coverage or alternative method of insurance acceptable to the DEPARTMENT in its sole discretion will be deemed a breach of contract.

Each Proposer must disclose any existing or potential conflict of interest relative to the performance of the contractual services resulting from this RFP. Any such relationship that might be perceived or represented as a conflict must be disclosed. By submitting a proposal in response to this RFP, Proposers affirm that they have not given, nor intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant or any employee or representative of same, in connection with this procurement. Any attempt to intentionally or unintentionally conceal or obfuscate a conflict of interest will automatically result in the disqualification of a Proposer's proposal. An award will not be made where a conflict of interest exists. The DEPARTMENT, in its sole discretion, will determine whether a conflict of interest exists and whether it may reflect negatively on the DEPARTMENT's selection of a Proposer. The DEPARTMENT reserves the right in its sole discretion to impose additional requirements upon the Proposer to mitigate such conflict of interest or to disqualify any Proposer on the grounds of an actual or an apparent conflict of interest.

The DEPARTMENT will not be liable for Federal, State, or Local excise taxes.

The DEPARTMENT reserves the right to negotiate final contract terms with any Proposer selected in accordance with NAC §333.170. The contract between the parties will consist of the final executed contract, the RFP together with any modifications thereto, and the awarded Proposer's proposal, together with any modifications and clarifications thereto that are incorporated at the request of the DEPARTMENT during the evaluation and negotiation process. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: the final executed contract, addenda to the RFP, the RFP, any modifications and clarifications to the awarded Proposer's proposal, and the awarded Proposer's proposal. Specific exceptions to this general rule may be noted in the final executed contract.

Proposer understands and acknowledges that the representations above are material and important, and will be relied on by the DEPARTMENT in its evaluation of a proposal. Any misrepresentation by a Proposer shall be treated as fraudulent concealment from the DEPARTMENT of the true facts relating to the proposal.

No announcement concerning the award of a contract as a result of this RFP can be made without the prior written approval of the DEPARTMENT.

The Nevada Attorney General will not render any type of legal opinion regarding this transaction.

SECTION XII – PROTEST PROCEDURE

Protests may be filed only with respect to:

1. Allegations that the terms of the RFP are wholly ambiguous, contrary to legal requirements applicable to the procurement, or exceed the DEPARTMENT's authority, and/or
2. A determination as to whether a Proposal is responsive to the requirements of the RFP or failed any Pass/Fail criteria, as applicable, and/or
3. Award of an Agreement.

A. DEADLINES FOR PROTESTS

Protests concerning the issues described in Section XII(1) and contained in the RFP must be filed no later than ten (10) calendar days prior to the Proposal due date, and those contained in any amendment to the RFP must be filed no later than three (3) business days after DEPARTMENT distributes the related addenda.

Protests concerning the issues described in Section XII(2) must be filed within ten (10) calendar days after the DEPARTMENT issues its notice to a Proposer that its Proposal was deemed nonresponsive or failed any pass/fail criteria.

Protests concerning the issue described in Section XII(3) must be filed within ten (10) calendar days after the DEPARTMENT issues the Notice of Award.

DEPARTMENT will not accept any protests received after the above-stated deadlines for receipt of such protests.

B. PROTEST CONTENTS

Protests shall include Information about the protesting firm, including firm name, mailing address, phone number, and name of the individual responsible for submission of the protest. Protests shall completely and succinctly state the grounds for protest, its legal authority, its factual basis, and shall include all factual and legal documentation in sufficient detail to establish the merits of the protest. Statements shall be sworn and submitted under penalty of perjury.

C. FILING OF PROTEST

Protests shall be in writing and filed by hand delivery on or before the applicable deadline to:

Nevada Department of Transportation
ATTN: Administrative Services/Dispute Resolution Office
1263 South Stewart Street, Room 101
Carson City, NV 89712

The Proposer filing the protest shall concurrently submit a copy of the protest to other Proposers whose addresses may be obtained from the Department.

D. COMMENTS FROM OTHER PROPOSERS

Other Proposers may file statements in support of or in opposition to the protest within seven (7) calendar days of the filing of the protest. The DEPARTMENT shall promptly forward copies of all such statements to the protester. Any statements shall be sworn and submitted under penalty of perjury.

E. BURDEN OF PROOF

The protester shall have the burden of proving the basis of its protest. The DEPARTMENT may, in its sole discretion, discuss the protest with the protester and other Proposers. No hearing will be held on the protest. The protest shall be decided on the basis of written submissions.

F. DECISION ON PROTEST

The DEPARTMENT's Director or designee shall issue a written decision regarding the protest within thirty (30) calendar days after the filing of the detailed statement of protest. If necessary to address the issues raised in a protest, the DEPARTMENT may, in its sole discretion, make appropriate revisions to the RFP by issuing Addenda.

G. PROTESTER'S PAYMENT OF COSTS

If a protest is denied, the Proposer filing the protest shall be liable for the DEPARTMENT's costs reasonably incurred to defend against or resolve the protest, including attorney's fees, consultant fees and costs, and any reasonably unavoidable damages sustained by the Department as a consequence of the protest.

H. RIGHTS AND OBLIGATIONS OF PROPOSERS

Each Proposer, by submitting its Proposal, expressly recognizes the limitation on its rights to protest provided in this Section XII and expressly waives all other rights and remedies and agrees that the decision on the protest is final and conclusive. If a Proposer disregards, disputes, or does not follow the exclusive protest remedies provided in this section, it shall indemnify and hold harmless the DEPARTMENT and its officers, employees, agents, and consultants from and against all liabilities, fees and costs, including legal and consultant fees and costs, and damages incurred or suffered as a result of such Proposer's actions. **Each Proposer, by submitting a Proposal, shall be deemed to have irrevocably and unconditionally agreed to this indemnity obligation.**

No Stay Pending Final Determination: Agreement negotiations with the selected Proposer/Bidder shall not be stayed during the pendency of any protest. Any agreement with the selected Proposer/Bidder shall be made contingent upon the outcome of any pending protest.

Attachments:

- Submission Checklist
- Evaluation Criteria Form
- Statement of Qualification Form (for non-engineering)
- Sample Agreement

SUBMISSION CHECKLIST

This checklist is provided for Proposer’s convenience only and identifies documents that must be submitted with each package in order to be considered responsive. Any proposals received without these requisite documents in the number and form set forth in the Submittal Instructions, may in the sole discretion of DEPARTMENT, be deemed non-responsive and not considered for contract award.

Part I:

- 1. Required number of Technical proposals _____
- 2. Correct number of pages submitted _____
- 3. Required DBE documents, if any _____
- 4. Copy of State of Nevada State Business License _____
- 5. Statement of Qualifications _____

EVALUATION CRITERIA FORM

PROJECT DESCRIPTION: RFP #023-12-052 Statewide Disparity Study

PROPOSER: _____

SUB-CONTRACTOR(S): _____

<i>EVALUATION ITEMS</i>	<i>MAX SCORE</i>	<i>SCORE</i>
<p>1. Project Approach: Proposer's approach to identifying and implementing the project requirements and meeting the NDOT's needs. Proposer should consider including information on their Quality Assurance/Quality Control program.</p> <p>Positives:</p> <p>Concerns:</p>		
<p>2. Project Team: Project Manager to be assigned, education, capability and experience of the key personnel to be assigned and the estimated effectiveness of the team's proposed organization and coordination process.</p> <p>Positives:</p> <p>Concerns:</p>		
<p>3. Availability and Capacity: Demonstrate the availability of the key project team members for the duration of the project. Consider team members existing and projected workloads for the prime consultant and sub-consultants. Demonstrate the capacity of the firm to meet the needs of the project. Consider the prime consultant and sub-consultants depth of staffing and other resources.</p> <p>Positives:</p> <p>Concerns:</p>		
<p>4. Past Performance: Past performance of project team in terms of cost control of the Proposer's budget commitments, quality of work and compliance with project schedule. Include all relevant work completed in the past three (3) years.</p> <p>Positives:</p> <p>Concerns:</p>		
<p>5. Proximity of Project Team(s): Knowledge of the locality of the project and local agency requirements. Accessibility to the project area.</p> <p>Positives:</p> <p>Concerns:</p>		
TOTAL	100	

Approved:

Committee Member

Date

**State of Nevada
Department of Transportation**

**STATEMENT OF QUALIFICATION FORM FOR
NON-ENGINEERING CONSULTANTS**

The Statement of Qualification Form must be completed in full (*please include one additional copy*). Additional information, resumes, brochures and a letter of interest should be returned to:

Agreement Services
Nevada Department of Transportation
1263 South Stewart Street, Rm. 101
Carson City, NV 89712

1. Date prepared: _____
2. Firm's name: _____
3. Firm's address: _____
Phone: _____ FAX: _____
4. Is your local office the main office? _____ or branch office? _____ or sole office? _____
5. Year your firm was established: _____
6. Year your local office was established: _____
7. Location of: _____
 - a. Main office: _____
 - b. Local office: _____
8. Year former firm(s) were established:
 - a. _____
 - b. _____
 - c. _____
 - d. _____
9. Name, title, telephone number, address and e-mail address of one principal in firm who may be contacted:
 - a. _____
10. List locations of other offices (no more than five):

	<u>Address</u>	<u>Telephone</u>	<u>No. of Personnel</u>
a.	_____	_____	_____
b.	_____	_____	_____
c.	_____	_____	_____
d.	_____	_____	_____
e.	_____	_____	_____

11. Total employees presently employed:
- a. At your local (Northern Nevada) office: _____
 At your local (Southern Nevada) office: _____
- b. In your firm: _____
12. By category, give the number of projects your firm is working on / has worked:
- | | <u>Current/Active</u> | <u>Last 5 Years</u> |
|------------------------|-----------------------|---------------------|
| a. Public/Governmental | _____ | _____ |
| b. Commercial | _____ | _____ |
| c. Residential | _____ | _____ |
| d. Other | _____ | _____ |
13. NEVADA DEPARTMENT OF TRANSPORTATION ENCOURAGES THE PARTICIPATION AND UTILIZATION OF MINORITY AND WOMEN-OWNED BUSINESSES.
- a. Is your firm certified as a minority-owned, women-owned or disabled veteran-owned business?
 Yes _____ No _____ Specify _____
- b. If yes, by what governmental agency? _____
14. SPECIALTY (Discipline): _____ (i.e.: Planning, DBE Supportive Services etc.)

The Nevada Department of Transportation periodically engages consultants to perform work of a specialized nature including (but not limited to) such areas as DBE Supportive Services, Claims Review, etc.

- I. Briefly describe your specialty (discipline), and the scope of the services that your firm provides. Use additional forms for any additional types of specialty work.

- II. Select three recent projects that have applicability to this service category, and list a reference that the NDOT may contact for each.

PROJECT NAME	REFERENCE	TELEPHONE
		()
		()
		()

<p>FOR NDOT USE ONLY: APPROVED: Yes _____ No _____ Date: _____ Signature _____ REASON FOR DENIAL _____</p>

SERVICE AGREEMENT

This Agreement, made and entered into the _____ day of _____, 20__ by and between the STATE OF NEVADA, acting by and through its DEPARTMENT OF TRANSPORTATION (hereinafter "DEPARTMENT") and **[insert Name and Address]** (hereinafter "SERVICE PROVIDER"). Individually they are each a "Party" and collectively they are the "Parties."

WITNESSETH:

WHEREAS, the Director of the DEPARTMENT may, pursuant to Nevada Revised Statutes (hereinafter "NRS") Chapter 333 & Chapter 408, contract for technical services that may be required; and

WHEREAS, NRS Chapter 333 authorizes heads of state departments to contract for the services of independent contractors; and

WHEREAS, _____, **[insert project identification]** is necessary _____ for **[insert why, i.e. safety, congestion, local entity request, etc.]** (hereinafter "PROJECT"); and

WHEREAS, SERVICE PROVIDER's services will be of benefit to the DEPARTMENT and to the people of the State of Nevada.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter contained, it is agreed by and between the Parties as follows:

ARTICLE I - SCOPE OF SERVICES

1. The SERVICE PROVIDER agrees to **[insert summary; be specific or reference and insert Attachment A - Scope of Services]** attached hereto and incorporated herein.
2. The SERVICE PROVIDER agrees to furnish all labor, materials, services, equipment, tools and other expenses necessary to perform the professional services required under the terms of this Agreement, except as specifically provided otherwise herein.
3. The SERVICE PROVIDER agrees to comply with all requirements contained in the underlying Request for Proposal, which is incorporated into this Agreement by reference.

ARTICLE II – PERFORMANCE

1. The term of this Agreement shall be from the date first written above through and including _____, _____, unless a change extending the term is further agreed to by written amendment signed by all parties to this Agreement and approved by appropriate official action of the governing body of the DEPARTMENT prior to such term expiration date in accordance with Article VII, Paragraph 36.

2. In the event that the SERVICE PROVIDER performs or causes to be performed any work after: (a) the Agreement's expiration date as set forth within this Agreement, as it may be amended from time to time through written amendment signed by the parties hereto and approved by appropriate official action of the DEPARTMENT's governing body, prior to such expiration date; or (b) termination of this Agreement prior to the expiration date set forth within this Agreement; then the DEPARTMENT shall make no payment for work performed following the expiration or termination dates, and the SERVICE PROVIDER shall forfeit any and all right to payment for such work.

3. The SERVICE PROVIDER, on behalf of itself, its spouses, heirs, executors, administrators, successors, subrogees, servants, insurers, attorneys, independent representatives, personal representatives, agents, and assigns, does hereby waive, release, and forever discharge the State of Nevada, the DEPARTMENT, and each and every of their departments, divisions, agencies, officers, directors, agents, contractors, and employees, from any and all claims, demands, liens, liability, actions, causes of action, and suits for damages, at law and in equity, in any way connected with or arising from the SERVICE PROVIDER's provision of services and work performed following termination of this Agreement, and/or following the expiration date of this Agreement, as it may be amended from time to time through written amendment signed by the parties hereto and approved by appropriate official action of the DEPARTMENT's governing body, prior to such expiration date.

4. Neither the State of Nevada, the DEPARTMENT, nor any of their departments, divisions, agencies, officers, directors, agents, contractors, and employees, shall have authority to extend this Agreement beyond the expiration date set forth within this Agreement, unless such extension is set forth within a written amendment signed by the parties hereto and approved by appropriate official action of the DEPARTMENT's governing body prior to such expiration date. The SERVICE PROVIDER shall not rely upon any oral or written representations expressed extrinsic to a written amendment signed by the parties hereto and approved by appropriate official action of the DEPARTMENT's governing body prior to such expiration date, purporting to alter or amend this Agreement, including but not limited representations relating to the extension of the Agreement's expiration date.

5. Paragraphs 1 through 4 of this Article II-Performance, shall survive the termination and expiration of this Agreement.

6. The SERVICE PROVIDER shall not proceed with said work until a copy of this Agreement is fully executed, signed by all individuals on the signatory lines below (hereinafter the "Final Execution Date"), and the Agreement is received by the SERVICE PROVIDER, which shall then constitute the written "Notice to Proceed" from the DEPARTMENT. The SERVICE PROVIDER shall notify the DEPARTMENT in writing of the exact date of commencement. If the SERVICE PROVIDER does commence said work prior to receiving said Notice to Proceed or prior to the Final Execution Date, the SERVICE PROVIDER shall forfeit any and all right to reimbursement for that portion of the work performed prior to said dates. Furthermore, the SERVICE PROVIDER shall not rely on the terms of this Agreement in any way, including but not limited to any written or oral representations and warranties made by the DEPARTMENT or any of its agents, employees, or affiliates, or on any dates of performance, deadlines, indemnities, or any other term contained in this Agreement or otherwise prior to the Final Execution Date and/or Notice to Proceed. In the event the SERVICE PROVIDER violates the provisions of this Section, the SERVICE PROVIDER waives any and all claims and damages against the DEPARTMENT, its employees, agents, and/or affiliates, including but not limited to monetary damages and/or any other available remedy at law or in equity arising under the terms of this Agreement.

9. The SERVICE PROVIDER agrees to complete the PROJECT within _____ **[calendar/working]** days of the commencement day of the PROJECT and agrees to pay to the DEPARTMENT, the sum of _____ and ___/100 Dollars (\$_____.__) for each and every calendar day past said date when the delay is caused by negligence, lack of adequate resources or any other cause within the SERVICE PROVIDER's direct control. These damages are not intended as a penalty. Damages are difficult to ascertain and the Parties agree that this amount is a reasonable estimate of presumed actual damages. **[IF APPLICABLE]**

10. In the event the DEPARTMENT discovers a SERVICE PROVIDER's error or omission before its discovery by the SERVICE PROVIDER, the DEPARTMENT shall not unreasonably delay in notifying SERVICE PROVIDER of such error or omission. DEPARTMENT's notice to SERVICE PROVIDER shall specify the maximum time period SERVICE PROVIDER will be allowed for correction. The SERVICE PROVIDER shall make all necessary corrections resulting from its errors and omissions, and shall without delay make any corrections necessitated by the negligence, lack of adequate resources or any other cause within the SERVICE PROVIDER's control, and shall make such corrections without additional compensation. SERVICE PROVIDER shall track all related costs for the correction. Acceptance of the professional services by the DEPARTMENT will not relieve the SERVICE PROVIDER of the responsibility for any subsequent correction of any such errors and omissions, and the clarification of any ambiguities. The SERVICE PROVIDER will be responsible for additional costs in subsequent related construction resulting from its errors or omissions. Should the DEPARTMENT use its own personnel, supplies or equipment to remedy the deficiency, all such costs incurred by the DEPARTMENT shall be deducted from the sum due or which may become due to the SERVICE PROVIDER. In the event all such costs and charges incurred by the DEPARTMENT exceed the sum which would have been payable under this Agreement, then the SERVICE PROVIDER shall reimburse the DEPARTMENT the amount of said excess.

11. The SERVICE PROVIDER shall assign one individual throughout the life of this Agreement who shall have overall PROJECT responsibility unless illness or termination requires replacement.

12. A key person is defined as any individual identified by the SERVICE PROVIDER in its proposal as being part of the team to be assigned to the PROJECT. The SERVICE PROVIDER acknowledges and agrees, that the award of this Agreement was based, in part, on its ability to manage the PROJECT, and the qualifications, experience, and capacity of the SERVICE PROVIDER's aforementioned key persons and team. The SERVICE PROVIDER represents, warrants and covenants that such key persons are and will continue to be available to undertake and perform all services identified herein and fulfill the roles identified in its proposal. The SERVICE PROVIDER shall notify the DEPARTMENT in writing within ten (10) calendar days when a key person leaves the PROJECT team.

a. If a key person leaves the PROJECT team, the SERVICE PROVIDER shall promptly propose a replacement within thirty (30) calendar days to and for the DEPARTMENT's review and written consent.

b. The DEPARTMENT shall have the unilateral right to terminate this Agreement:

(1) If a key person leaves the PROJECT team for a reason other than death, retirement, incapacitation or leaving SERVICE PROVIDER's employment (including the employment with SERVICE PROVIDER's affiliates, subsidiaries and parent companies/organizations);

(2) If a key person listed by the SERVICE PROVIDER in its proposal to perform or supervise various aspects of design is changed or leaves the PROJECT team; or

(3) If the DEPARTMENT does not accept the SERVICE PROVIDER's proposed key person replacement.

c. If this Agreement is terminated pursuant to the above, the SERVICE PROVIDER shall be paid for actual costs incurred for all services rendered and accepted by the DEPARTMENT and an amount of fee proportional to the work completed as of the date of termination. Additionally, the SERVICE PROVIDER shall not be entitled to any settlement costs, if any. Such termination will not occur if the SERVICE PROVIDER provides a replacement that is acceptable to the DEPARTMENT within thirty (30) calendar days of the date when the key person is changed or has left the PROJECT team.

13. The SERVICE PROVIDER shall at all times maintain control over and have complete responsibility for all services performed pursuant to this Agreement by the SERVICE PROVIDER and any of its subcontractors.

14. The SERVICE PROVIDER warrants that all deliverables and professional services produced under this Agreement shall be completed in a workmanlike manner consistent with standards in the trade, profession or industry. The standard of care applicable to SERVICE PROVIDER's services will be of the degree of skill and diligence normally employed by service providers performing the same or similar services at the time said services are performed.

15. This Agreement, and any amendments, may be suspended temporarily, either wholly or in part, by the DEPARTMENT upon oral notice confirmed in writing within ten (10) calendar days, when the DEPARTMENT determines that conditions beyond the control of the SERVICE PROVIDER are unfavorable to its satisfactory continuation of work. Should such conditions be encountered, the time for completion may be extended in an amount determined by the DEPARTMENT to be equivalent to the delay. Requests for suspension of time by the SERVICE PROVIDER must have the written approval of the DEPARTMENT. No allowance shall be made for delay or suspension of the services solely due to the fault of the SERVICE PROVIDER.

16. An alteration ordered by the DEPARTMENT which substantially changes the services provided for by the expressed intent of this Agreement will be considered extra professional services, and shall be specified in a written amendment signed by all Parties, which will set forth the nature and scope thereof. The method of payment for extra professional services shall be specified at the time the amendment is written.

17. The SERVICE PROVIDER shall not assign or subcontract, any of the professional services performed under this Agreement without the prior written approval of the DEPARTMENT. The SERVICE PROVIDER will, subsequent to obtaining written approval from the DEPARTMENT, provide the DEPARTMENT with a copy of the contract or agreement for professional services. The SERVICE PROVIDER shall require any subcontractor to comply with all provisions of 48 CFR Chapter 1, Part 31, in its agreement with the subcontractor, if the

SERVICE PROVIDER subcontracts any professional services contemplated by this Agreement. The SERVICE PROVIDER will be responsible for any costs or deficiencies resulting from noncompliance if the subcontractors fail to comply with 48 CFR Chapter 1, Part 31. Any attempted assignment of rights or delegation of duties under this agreement, without prior written consent of the DEPARTMENT shall be void.

18. The SERVICE PROVIDER agrees to complete and sign Attachment C - "AFFIDAVIT REQUIRED UNDER SECTION 112(c) of Title 23 United States Code, Act of August 27, 1958 and Part 29 of Title 49, Code of Federal Regulations, November 17, 1987," attached hereto and incorporated herein.

19. This Agreement is contingent upon the verification that the SERVICE PROVIDER has a valid and active Nevada Business License and is in good standing in all areas of the Secretary of State's business requirements. If the SERVICE PROVIDER is an out of state provider, the SERVICE PROVIDER must be registered as a foreign business entity equivalent in Nevada, in active status and in good standing.

ARTICLE III - TERMINATION

1. The DEPARTMENT may terminate this Agreement without cause ten (10) calendar days after service of a termination letter to the SERVICE PROVIDER. In the event this Agreement is terminated in this manner, the SERVICE PROVIDER shall be paid for the cost of the professional services which have been completed and accepted by the DEPARTMENT up to the date of termination.

2. The continuation of this Agreement beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the Nevada State Legislature and/or federal sources. The DEPARTMENT may terminate this Agreement, and the SERVICE PROVIDER waives any and all claims for damages, effective immediately upon receipt of written notice, or any date specified therein, if for any reason the DEPARTMENT's funding from state and/or federal sources is not appropriated or is withdrawn, limited or impaired.

3. A default or breach may be declared with or without termination. This Agreement may be terminated by either Party upon written notice of default or breach to the other Party as follows:

a. If the SERVICE PROVIDER fails to provide or satisfactorily perform any of the professional services called for by this Agreement within the time requirements specified in this Agreement or within any granted extension of those time requirements; or

b. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law or regulation to be held by the SERVICE PROVIDER to provide the goods or services required by this Agreement is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed or not renewed; or

c. If the SERVICE PROVIDER becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of a bankruptcy court; or

d. If DEPARTMENT materially breaches any material duty under this Agreement and any such breach impairs the SERVICE PROVIDER's ability to perform; or

e. If it is found by the DEPARTMENT that any quid pro quo or gratuities in the form of money, services, entertainment, gifts or otherwise were offered or given by the SERVICE PROVIDER, or any agent or representative of the SERVICE PROVIDER, to any officer or employee of the State of Nevada with a view toward securing an agreement or securing favorable treatment with respect to awarding, extending, amending or making any determination with respect to the performing of such agreement.

4. Termination upon a declared default or breach may be exercised after service of written notice and the subsequent failure of the defaulting Party, within fifteen (15) calendar days of service of that notice, to provide evidence, satisfactory to the aggrieved Party, showing the declared default or breach has been corrected. Such correspondence shall be deemed to have been served on the date of postmark.

5. In the event of the SERVICE PROVIDER's breach of this Agreement, all costs and charges incurred by the DEPARTMENT, together with the cost of completing the work under this Agreement, shall be deducted from any money due or which may become due to said SERVICE PROVIDER. If expenses exceed the sum which would have been payable under this Agreement, then the SERVICE PROVIDER shall be liable and shall pay to the DEPARTMENT the amount of said excess.

6. This Agreement shall be terminated when the professional services contemplated and covered by this Agreement have been completely performed by SERVICE PROVIDER, and all items of professional services have been approved and accepted by the DEPARTMENT.

ARTICLE IV - COST

1. "The lump sum" method of compensation shall be used for the SERVICE PROVIDER's services.

2. The total cost of the services by the SERVICE PROVIDER shall not exceed the sum of _____ and ___/100 Dollars (\$_____.___). **[IF APPLICABLE: Payment will be based on actual quantities delivered/services provided.]**

3. The cost of the work to be performed under this Agreement will be paid for by the DEPARTMENT **[upon completion, monthly, bi-weekly, quarterly, semi-annual, or yearly]** and upon acceptance of the work. **[IF APPLICABLE** The DEPARTMENT will certify the work and enumerate all costs of the work by utilizing the bid proposal **(Quote – if applicable)**. Payment will be based upon the prices shown in the Bid Proposal **(Quote – if applicable)**, attached hereto and incorporated in **Attachment F.] [Note: Re-letter Attachments if applicable.]**

4. No additional costs shall be allowed to the SERVICE PROVIDER for assistance by, or services of others, except by express permission in writing by the DEPARTMENT.

5. The DEPARTMENT shall pay the SERVICE PROVIDER in installments, based upon monthly progress reports showing the status of the professional services and the degree of completion. The DEPARTMENT, at its discretion, may by written notification waive this limitation

ARTICLE V - SCHEDULE OF PAYMENTS

1. The SERVICE PROVIDER shall submit a signed invoice *[insert: monthly, bi-weekly, quarterly, semi-annually, yearly, upon completion]* for all services rendered along with one copy of substantiating documentation. The invoice must be submitted on the SERVICE PROVIDER's stationery using the DEPARTMENT's format or submitted on the DEPARTMENT's standard invoice form. The DEPARTMENT will utilize its normal accounting procedure in the payment of the invoices submitted. **[IF APPLICABLE:** The Fixed Fee shall be paid monthly and shall be calculated as a percentage of the direct salary plus overhead costs of that month's invoice until the full agreed fee is paid.]

2. Payment will be made for one hundred percent (100%) of the amount of each invoice, until a maximum of ninety percent (90%) of the total Agreement costs have been billed by the SERVICE PROVIDER. Thereafter, payment for the remaining ten percent (10%) of the total Agreement costs shall be withheld by the DEPARTMENT, until such time as the professional services delivered by the SERVICE PROVIDER have been completely accepted by the DEPARTMENT. The final audit shall be performed after the release of the retained amount, and may cause an adjustment of payments to the DEPARTMENT or to the SERVICE PROVIDER. No interest shall be paid to the SERVICE PROVIDER on this retained amount or any adjustment of payments.

3. The DEPARTMENT reserves the right to inspect and approve the professional services performed before payment is made to the SERVICE PROVIDER. Payment will be withheld for deliverables and professional services the DEPARTMENT determines to be unsatisfactory in that they have not been provided in a workmanlike manner consistent with standards in the trade, profession or industry. Payment shall remain unpaid until the professional services are completed in accordance with the standards and work requirements defined in this Agreement. In such an event, the DEPARTMENT will provide the SERVICE PROVIDER with a written explanation as to why payment has been withheld.

4. The total cost of services for this Agreement, is the negotiated amount identified in Article IV, Paragraph 2. This amount was based upon the SERVICE PROVIDER's costs and fixed fee as well as the costs and fixed fees, if any, of all of its subcontractors. If a subcontractor does not expend all funds allocated to it for services identified in its agreement with the SERVICE PROVIDER, a copy of which shall be provided to the DEPARTMENT prior to issuance of the Notice to Proceed, the SERVICE PROVIDER shall not redistribute or expend such funds without the prior written approval of the DEPARTMENT. Failure to notify the DEPARTMENT prior to the use of such funds will constitute grounds for denial of reimbursement for such expenditures.

5. Payment of invoices, interest penalties, and discounts shall be paid as follows:

a. The SERVICE PROVIDER shall be paid within sixty (60) calendar days of a postmarked invoice which is complete, correct, and undisputed by the DEPARTMENT.

b. The DEPARTMENT shall have twenty (20) calendar days after postmark of an invoice to dispute any or all of the charges on that invoice. The undisputed amount shall be paid to the SERVICE PROVIDER within sixty (60) calendar days of the date of postmark. The disputed amount shall be negotiated and resolved in good faith by both Parties and paid within forty (40) calendar days after the date the corrected invoice is received by the DEPARTMENT or is approved by both Parties for payment.

c. If the DEPARTMENT fails to pay the SERVICE PROVIDER the undisputed amount within sixty (60) calendar days after the postmark date of the invoice, the interest penalty assessed to the DEPARTMENT shall be one percent (1%) of the undisputed amount per month, not to exceed a total of One Thousand and No/100 Dollars (\$1,000.00).

d. Payment of penalties shall not apply to the final payment or bill pertaining to this Agreement as determined by the post audit.

6. The prevailing party in an action to enforce this Agreement is entitled to reasonable attorney's fees and costs.

ARTICLE VII - MISCELLANEOUS PROVISIONS

1. The SERVICE PROVIDER shall be responsible for and shall comply with all applicable federal, state, and local government obligations and DEPARTMENT policies and procedures. The SERVICE PROVIDER will be responsible for and shall pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are SERVICE PROVIDER's responsibility in accordance with NRS Chapter 361. The SERVICE PROVIDER warrants that it has a valid business license. The SERVICE PROVIDER agrees to be responsible for and shall pay any such government obligations not paid by its subcontractors during performance of this Agreement. The DEPARTMENT may set-off any consideration due against any delinquent government obligation.

2. It is expressly understood that the SERVICE PROVIDER is an independent contractor, and is subject to all statutes and laws, including NRS 333.700 relating to independent contractors. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the DEPARTMENT whatsoever with respect to the indebtedness, liabilities, and obligations of the SERVICE PROVIDER or any other party. Neither the SERVICE PROVIDER nor its employees, agents or representatives shall be considered employees, agents or representatives of the DEPARTMENT.

3. The SERVICE PROVIDER shall be solely responsible for its own employees, and the DEPARTMENT shall have no obligation with respect to:

- a. Withholding of income taxes, FICA or any other taxes or fees;
- b. Industrial insurance coverage;
- c. Participation in any group insurance plans available to employees of the DEPARTMENT;
- d. Participation or contributions by either the SERVICE PROVIDER or the DEPARTMENT to the Public Employees Retirement System;
- e. Accumulation of vacation leave or sick leave; or
- f. Unemployment compensation coverage provided by the DEPARTMENT.

The SERVICE PROVIDER shall indemnify and hold the DEPARTMENT harmless from, and defend the DEPARTMENT against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes, fees, insurance, contributions, leave or coverage.

4. Unless expressly provided in this Agreement, the SERVICE PROVIDER shall not engage or use the devices and/or services of the DEPARTMENT's personnel without the prior written consent of the DEPARTMENT.

5. The SERVICE PROVIDER shall, before commencing professional services under the provisions of this Agreement, furnish to the DEPARTMENT proof of worker's compensation insurance as required by the NRS.

6. The SERVICE PROVIDER shall furnish a Certificate of Errors and Omissions Insurance with a minimum limit of One Million and No/100 Dollars (\$1,000,000.00). **[IF APPLICABLE: increase to up to \$3,000,000.00 dependent upon the size of the PROJECT.]**

7. The SERVICE PROVIDER shall furnish a Certificate, Declarations Page and an Endorsement designating the DEPARTMENT as an additional insured evidencing Commercial General Liability Insurance with a minimum limit of One Million and No/100 Dollars (\$1,000,000.00) per occurrence. These policies shall be maintained for the entire period of this Agreement. The policies shall include a thirty (30) calendar day advance written notice of any cancellation of said policies. The SERVICE PROVIDER shall furnish the DEPARTMENT with certificates of such insurance prior to commencement of professional services.

8. All insurance required by this Agreement shall be placed with insurers with a rating from the current issue of Best's Key Rating Guide of no less than A-: VII.

9. The DEPARTMENT has the option of requesting, at any time, a meeting with the SERVICE PROVIDER or its authorized representative to discuss and review PROJECT status and the SERVICE PROVIDER shall furnish thereafter a copy of the minutes of such meetings to the DEPARTMENT.

10. The SERVICE PROVIDER has total responsibility for the accuracy and correctness of data prepared under the terms of this Agreement, and shall check all such material accordingly for completeness, missing items, correct multipliers and consistency. The deliverables shall be reviewed by the DEPARTMENT for conformity with the DEPARTMENT's procedures and contract terms. The SERVICE PROVIDER acknowledges that review by the DEPARTMENT does not include detailed review or checking of major components and related details or the accuracy of such deliverables, and the DEPARTMENT's review shall not relieve the SERVICE PROVIDER of its total responsibility for the accuracy and correctness of data prepared under the terms of this Agreement.

11. The SERVICE PROVIDER shall appear as an expert witness on behalf of the DEPARTMENT in any subsequent court action which involves any of the services required by this Agreement. Compensation for services rendered in this regard will be paid at a rate to be negotiated at the time such services are necessary.

12. Upon completion, termination or cancellation of the services embraced under this Agreement, all professional services inclusive of research, investigation and analysis data, reports (including files on disks), computations, tabulations, original drawings and design files (including CAD information on disks), correspondence input from external sources (including subcontractors), etc., shall be delivered to and become the property of the DEPARTMENT, without limitation. Reuse of said materials, information or data, during performance or following termination of this Agreement, on any other project or for any other purpose except as provided for herein, shall be at the DEPARTMENT's discretion and the DEPARTMENT's sole decision. The SERVICE PROVIDER shall not utilize any materials, information or data obtained as a result of performing the services called for in this Agreement in any commercial or academic publication or presentation without the express written permission of the DEPARTMENT. The SERVICE PROVIDER shall not reference an opinion of an employee or agent of the

DEPARTMENT obtained as a result of performing the services called for in this Agreement, in any publication or presentation, without the written permission of the employee or agent to whom the opinion is attributed, in addition to the written permission of the DEPARTMENT.

13. All reports and notes for special provisions shall be delivered to the DEPARTMENT on 3.5" floppy disks, compact disc or flash drive, using the most current version of **[Microsoft Word/ WordPerfect]**. Delivery of a hard copy of reports and notes for special provisions shall also be required. **[IF APPLICABLE]**

14. The SERVICE PROVIDER agrees that any reports, materials, studies, photographs, negatives, drawings or other documents prepared by the SERVICE PROVIDER in the performance of its obligations under this Agreement shall be the exclusive property of the DEPARTMENT. The SERVICE PROVIDER shall remit all such documents to the DEPARTMENT upon completion, termination or cancellation of this Agreement or at any time upon written request of the DEPARTMENT made in accordance with Article VII, Paragraph 25, herein below. The SERVICE PROVIDER shall not use, willingly allow or cause to have such documents used for any purpose other than performance of the SERVICE PROVIDER's obligation under this Agreement, without the prior written consent of the DEPARTMENT.

15. The SERVICE PROVIDER and successors, executors, administrators, and assigns of the SERVICE PROVIDER's interest in the professional services or the compensation herein provided shall be bound to the DEPARTMENT to the full legal extent to which the SERVICE PROVIDER is bound with respect to each of the terms of this Agreement.

16. The SERVICE PROVIDER warrants that it has not employed or retained any company or persons (other than a bona fide employee working solely for the SERVICE PROVIDER) to solicit or secure this Agreement and that SERVICE PROVIDER has not paid or agreed to pay any company or persons (other than a bona fide employee working solely for the SERVICE PROVIDER) any fee, commission, percentage, brokerage fee, or any other gifts contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the DEPARTMENT shall have the right to annul this Agreement without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

17. Any dispute arising under this Agreement as to performance, compensation, and the interpretation of satisfactory fulfillment of the terms of this Agreement shall be decided by the DEPARTMENT. It is the intent of the DEPARTMENT to resolve disputes at the lowest level possible. Nothing herein contained shall impair either of the Parties' right to file suit in the state district courts of the State of Nevada.

18. During the performance of this Agreement, the SERVICE PROVIDER, for itself, its assignees and successors in interest agrees as follows:

a. Compliance with Regulations: The SERVICE PROVIDER shall comply with all of the regulations relative to nondiscrimination in federally-assisted programs of 49 C.F.R. Part 21 as they may be amended from time to time (hereinafter "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

b. Nondiscrimination: The SERVICE PROVIDER, with regard to the professional services performed by it during the Agreement, shall not discriminate on the grounds of race, color, age, religion, sex, creed, handicap, or national origin in the selection and

retention of subcontractors, including procurement of materials and leases of equipment. The SERVICE PROVIDER shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the Agreement covers a program set forth in Appendix B of the Regulations.

c. Solicitations for Subcontracts, Including Procurement of Materials, and Equipment: In all solicitations either by competitive bidding or negotiation made by the SERVICE PROVIDER for professional services to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the SERVICE PROVIDER of the SERVICE PROVIDER's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, age, religion, sex, creed, handicap or national origin.

d. Information and Reports: The SERVICE PROVIDER shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its facilities as may be determined by the DEPARTMENT or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a SERVICE PROVIDER is in the exclusive possession of another who fails or refuses to furnish this information, the SERVICE PROVIDER shall so certify to the DEPARTMENT, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.

e. Sanctions for Noncompliance: In the event of the SERVICE PROVIDER's noncompliance with the nondiscrimination provisions of this Agreement, the DEPARTMENT shall impose such Agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the SERVICE PROVIDER under the Agreement until the SERVICE PROVIDER complies, and/or

2. Cancellation, termination or suspension of the Agreement, in whole or in part.

f. Agreements with subcontractors will include provisions making all subcontractor records available for audit by the DEPARTMENT or the FHWA.

g. Incorporation of Provisions: The SERVICE PROVIDER will include the provisions of Paragraphs (a) through (f) above in every subcontract including procurement of materials and leases of equipment, unless exempt by Regulations, order, or instructions issued pursuant thereto. The SERVICE PROVIDER will take such action with respect to any subcontract or procurement as the DEPARTMENT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance. In the event SERVICE PROVIDER becomes involved in, or is threatened with litigation by a subcontractor or supplier as a result of such direction, the SERVICE PROVIDER may request the DEPARTMENT to enter into such litigation to protect the interests of the DEPARTMENT and the SERVICE PROVIDER may request the United States to enter into such litigation to protect the interests of the United States.

19. In the event federal funds are used for payment of all or part of this Agreement, the SERVICE PROVIDER, for itself, its assignees and successors in interest agrees as follows:

a. Debarment and/or Suspension: The SERVICE PROVIDER certifies that neither it nor its subcontractors, nor their principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

b. ADA: The SERVICE PROVIDER and subcontractor shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1980, as amended, and regulations adopted thereunder contained in 49 C.F.R., Part 27, and any relevant program-specific regulations.

c. Civil Rights: The SERVICE PROVIDER and subcontractor shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or person offered employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition, including AIDS and AIDS-related conditions.

20. Each party agrees to keep and maintain under generally accepted accounting principles full, true and complete records and documents pertaining to this Agreement and present, at any reasonable time, such information for inspection, examination, review, audit and copying at any office where such records and documentation are maintained. It is expressly understood that the duly authorized representatives of the DEPARTMENT and the FHWA shall have the right to inspect/audit the professional services and charges of the SERVICE PROVIDER whenever such representatives may deem such inspection to be desirable or necessary. Such records and documentation shall be maintained for three (3) years after final payment is made.

21. To the fullest extent permitted by law, the SERVICE PROVIDER shall defend, indemnify and hold harmless the State of Nevada, and the employees, officers and agents of the State of Nevada from any liabilities, damages, losses, claims, actions or proceedings, including, without limitation, reasonable attorney's fees, that are caused by the negligence, errors, omissions, reckless or intentional misconduct of the SERVICE PROVIDER or the employees or agents of the SERVICE PROVIDER in the performance of this Agreement.

22. The SERVICE PROVIDER shall use its own vehicles and the DEPARTMENT is not responsible for the payment of any premiums, deductible or assessments on any insurance policies purchased by the SERVICE PROVIDER.

23. The SERVICE PROVIDER warrants that all deliverables and work produced under this Agreement shall be completed in a workmanlike manner consistent with standards in the trade, profession or industry.

24. The SERVICE PROVIDER is required to register as a vendor with the Nevada State Controller's office. The Registration Substitute IRS Form W-9 can be accessed at http://controller.nv.gov/VendorServices/Vendor_Services.html. The SERVICE PROVIDER will follow the Registration Instructions, complete the Registration Substitute IRS Form W-9 and submit it to the State Controller's Office.

25. The SERVICE PROVIDER agrees that, prior to any sale, transfer, business name change, change in principals or any other occurrence that alters or this Agreement in any way, the SERVICE PROVIDER shall notify the DEPARTMENT of such intent at least seven (7) calendar days prior to making said change.

26. All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other Party at the address set forth below:

FOR DEPARTMENT: Susan Martinovich, P.E., Director
Attn:
Nevada Department of Transportation
Division:
1263 South Stewart Street
Carson City, NV 89712
Phone (775) **[insert phone number]**
Fax: **[insert fax number]**
E-mail: **[insert e-mail address]**

FOR SERVICE PROVIDER: **[insert: Name
Agency/Company
Mailing Address, City, State Zip Code
Physical Address, City, State Zip Code
Phone: () - -
Fax:
E-mail: @]**

27. This Agreement and the rights and obligations of the Parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. The Parties consent to the exclusive jurisdiction of the Nevada state district courts for enforcement of this Agreement.

28. As used herein the term "SERVICE PROVIDER" shall include the plural as well as the singular, and the feminine as well as the masculine.

29. Neither Party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder for any reason beyond its control, including, without limitation, strikes, inmate disturbances, acts of God, civil or military authority, act of public enemy, or accidents, fires, explosions, earthquakes, floods, winds, failure of public transportation, or any other similar serious cause beyond the reasonable control of either Party. In such an event the intervening cause must not be through the fault of the Party asserting such an excuse, and the excused Party is obligated promptly to perform in accordance with the terms of the Agreement after the intervening cause ceases.

30. In connection with the performance of work under this Agreement, the SERVICE PROVIDER agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation or age, including, without limitation, with regard to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including without limitation apprenticeship. The SERVICE PROVIDER further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

31. The SERVICE PROVIDER shall keep confidential all information, in whatever form, produced, prepared, observed or received by the SERVICE PROVIDER to the extent that such information is confidential by law or otherwise required by this Agreement.

32. Pursuant to NRS 239.010, information or documents may be open to public inspection and copying. The DEPARTMENT will have the duty to disclose unless a particular record is confidential by law or a common law balancing of interests.

33. The SERVICE PROVIDER shall provide a minimum of fifty-one percent (51%) of the combined value of all items of work covered by this Agreement. The SERVICE PROVIDER shall not assign or subcontract any of the work performed under this Agreement without the prior written approval of the DEPARTMENT. The SERVICE PROVIDER shall, prior to obtaining written approval from the DEPARTMENT, provide the DEPARTMENT with a copy of the subcontract or subagreement for said work. Any assignment of rights or delegation of duties under this Agreement, without the prior written consent of the DEPARTMENT, shall be void.

34. The illegality or invalidity of any provision or portion of this Agreement shall not affect the validity of the remainder of the Agreement and this Agreement shall be construed as if such provision did not exist. The unenforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.

35. Except as otherwise provided for by law or this Agreement, the rights and remedies of the Parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, the recovery of actual damages and the prevailing party's reasonable attorney's fees and costs.

36. It is specifically agreed between the Parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof a third party beneficiary status hereunder, or to authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or property damage, or pursuant to the terms or provisions of this Agreement.

37. The Parties hereto represent and warrant that the person executing this Agreement on behalf of each Party has full power and authority to enter into this Agreement and that the Parties are authorized by law to perform the services set forth herein.

38. This Agreement constitutes the entire agreement of the Parties and such is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistent with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification or amendment to this Agreement shall be binding upon the Parties unless the same is in writing and signed by the respective Parties hereto.

IN WITNESS WHEREOF, the authorized representatives of the SERVICE PROVIDER and the DEPARTMENT have caused their names to be signed hereon on the date first above written.

SERVICE PROVIDER: *[insert Name]*

State of Nevada, acting by and through its
DEPARTMENT OF TRANSPORTATION

Director

Name & Title (Print)

Approved as to Legality and Form:

Deputy Attorney General

SAMPLE

Attachment C
AFFIDAVIT REQUIRED UNDER SECTION 112(c)
of Title 23 United States Code, Act of August 27, 1958
and
Part 29 of Title 49, Code of Federal Regulations,
November 17, 1987.

STATE OF _____ }
COUNTY OF _____ } **SS**

I, _____ (Name of party signing this affidavit and the Proposal Form) _____ (title) **being duly sworn do depose and say: That** _____ (name of person, firm, association, or corporation) **has not, either directly or indirectly, entered into agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this contract; and further that, except as noted below to the best of knowledge, the above named and its principals:**

- (a) **Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;**
- (b) **Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;**
- (c) **Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and**
- (d) **Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.**

(Insert Exceptions, attach additional sheets)

The above exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility and whether or not the Department will enter into contract with the party. For any exception noted, indicate on an attached sheet to whom it applies, initiating agency, and dates of action. Providing false information may result in criminal prosecution or administrative sanctions. The failure to furnish this affidavit and required exceptions if any shall disqualify the party.

Signature

Title

Sworn to before me this _____ day of _____, 20 _____

Signature

(SEAL)

Notary Public, Judge or other Official

**Per Diem Rates Allowed State Employees
(For Information Only)**

- 1) Effective July 1, 2007 all State employees will be required to use the GSA per diem rates for in-state and out-of-state travel. The website address is www.gsa.gov and click on Per Diem Rates for the most current rates and information. Rates do vary by season; therefore rates should be verified prior to all travel.
- 2) Meals will be reimbursed in accordance with the meals and incidental expense (M&IE) allowance for the primary destination.
- 3) Employees must deduct the M&IE allowance for all meals that are included in registration or conference fees. The breakdown for the M&IE can be found on the GSA website under Meals and Incidental Expense Breakdown.
- 4) Receipts will be required for all lodging. The maximum allowance for lodging is the amount the employees are eligible to be reimbursed; therefore, all taxes and fees are included in the maximum lodging allowance.
- 5) If the GSA website does not recognize the county in which the employee is traveling, the rate defaults to the standard CONUS location reimbursement rate. These rates may vary, please verify all rates prior to employee travel.
- 6) A copy of the current GSA allowance for lodging and M&IE must be included with the employee travel claim.