



**Tahoe Transportation**  
DISTRICT

## **REQUEST FOR PROPOSALS**

**2024-001**

Project Specifications and Instructions  
for Submitting a Proposal to Furnish

**Project Engineering & Environmental Services**  
for  
**State Route 28 Central Corridor Sand Harbor to  
Thunderbird Cove Trail, Transit and Safety  
Improvements**

**November 18, 2024**

Tahoe Transportation District  
P.O. Box 499  
Zephyr Cove, NV 89448

## TABLE OF CONTENTS

SECTION I - BACKGROUND .....	1
SECTION II - MINIMUM QUALIFICATIONS .....	3
SECTION III - SCOPE OF SERVICES AND SCHEDULE.....	4
SECTION IV – INSTRUCTIONS TO PROPOSER.....	5
SECTION V - RULES OF CONTACT.....	8
SECTION VI - PROPOSER QUESTIONS .....	9
SECTION VII - DBE REQUIREMENTS .....	9
SECTION VIII - NEVADA BUSINESS LICENSE REQUIREMENT .....	10
SECTION IX - SELECTION PROCESS.....	11
SECTION X - AWARD PROCESS.....	11
SECTION XI - TERMS, CONDITIONS AND EXCEPTIONS.....	12
SECTION XII - PROTEST PROCEDURE .....	13
ATTACHMENTS	
Attachment A: Statement of Qualifications .....	17
Attachment B: Proposal Preparation Instructions .....	18
Attachment C: DBE/SBE Commitment to Subcontractors .....	19
Attachment D: Sample Service Agreement.....	22

This Request for Proposals (RFP) is being advertised to select one (1) firm with whom Tahoe Transportation District (TTD) hopes to negotiate an Agreement for the described services. Issuance of this RFP shall in no way constitute a commitment by TTD to execute an Agreement.

TTD reserves the right to issue addenda to this RFP prior to the closing date. It is the Proposer's responsibility to check for any addenda to this procurement at TTD's website (<https://www.tahoetransportation.org/procurements/>) prior to Proposal submission. Submission of a Proposal constitutes acknowledgement of this RFP and all subsequent addenda. TTD 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 TTD to do so.

TTD represents the lead agency on this project and has received approval from the Nevada Department of Transportation (NDOT) through a written agreement between TTD and NDOT, and for TTD to comply with NDOT's Local Public Agency (LPA) project procurement process.

## **SECTION I - BACKGROUND**

TTD is seeking the services of a qualified firm to conduct project engineering and environmental services for the design and permitting of State Route 28 (SR 28) corridor improvements, specifically the Central Corridor Sand Harbor to Thunderbird Cove Trail, Transit, and Safety Improvements (Project) along the east shore of Lake Tahoe in the local jurisdiction of Washoe County, Nevada. A summary of improvements includes: relocation of on-highway parking, 1.75-miles of paved Class 1 trail, trailhead and trail signage, vertical separation of trail at Sand Harbor State Park entrances (tunneling and/or overhead structures), trail vista points, bathrooms and garbage facilities, trail access points along the corridor, potential utility undergrounding, roadway safety additions along SR 28, and value engineering analysis to determine the most cost efficient design. Critical design tasks as detailed later in this RFP document include assessing alternative project delivery methods including design-build and CMAR. The value engineering analysis will be critical to determine the most cost effective design, along with evaluating construction staging areas and critical utility conflicts to optimize project delivery and cost effectiveness.

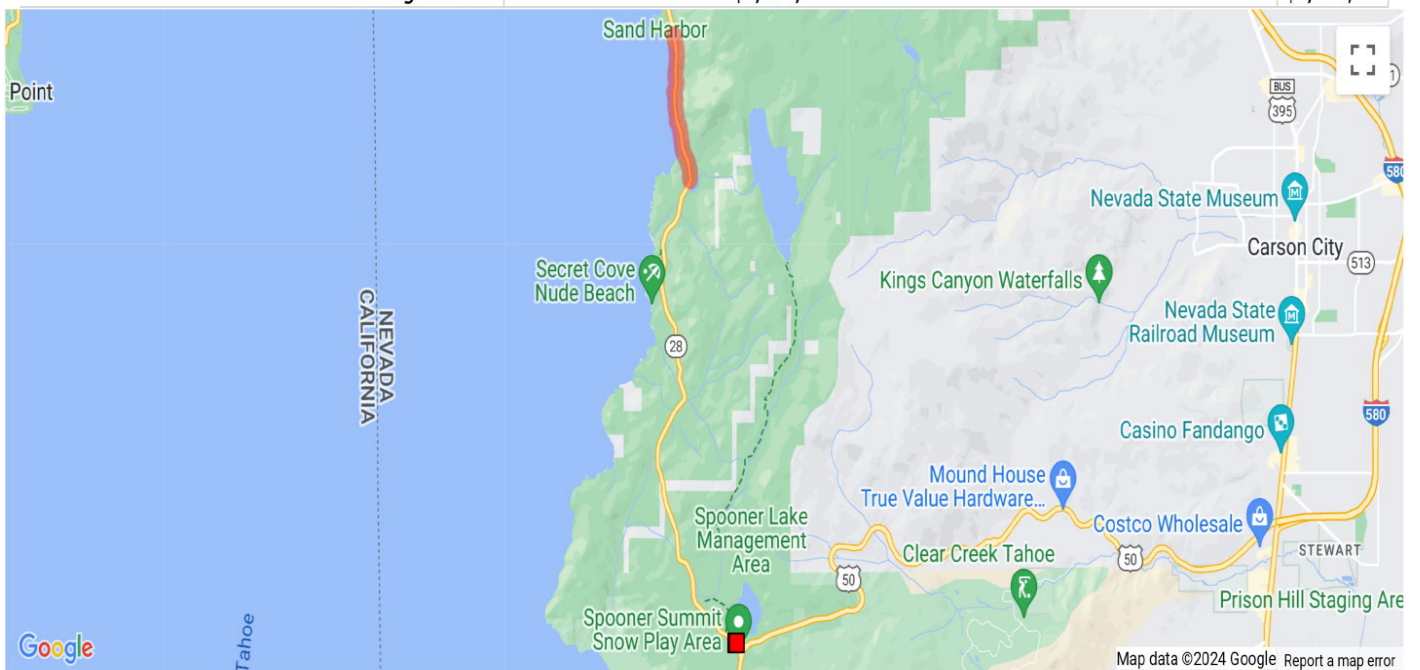
TTD is a bi-state, special purpose transportation district that delivers capital projects in the Lake Tahoe basin. Examples of TTD projects include road realignments, bridges, roundabouts, complete streets, parking, shared use paths, and transit facilities. The Project is located in Washoe County, Nevada and will require coordination with various federal, state and local entities, including the Tahoe Regional Planning Agency (TRPA), NDOT, United States Forest Service (USFS), Nevada State Parks, Washoe County, Carson City, Douglas County, utility agencies, and other jurisdictions directly or indirectly affected by the Project.

All of TTD's projects serve transportation purposes and help to accomplish regional transportation goals. At the same time, some of TTD's projects also create development opportunities that further other public purposes and goals.

Supporting project information can be found on TTD's website at <https://www.tahoetransportation.org/projects/sr28-national-scenic-byway/>. In the 30% design plans, dated March 2019, the trail section considered for this project is located on Sheets P-1 through P-8 and Stations 40+000 to 140+000. Other pertinent documents that can be found there are the Corridor Signage Master Plan dated June 30, 2016, the Structure Type Selection Memorandum dated December 18, 2018, as well the USFS Environmental Analysis for SR28. Also included in the above web link is the 2024 federal RAISE grant document.

**SCOPE OF WORK**  
**SR 28 Central Corridor – Sand Harbor to Thunderbird Cove**  
**Trail, Transit and Safety Improvements**

The project includes Preliminary Engineering for 1.75 miles of multi-use path, transit pullouts, and safety improvements along the SR 28 corridor between Sand Harbor State Park and Thunderbird Cove.



This RFP describes the general Scope of Services, necessary proposal components, selection process, and required format of the proposals, as well as a sample service agreement (Attachment D). It should be noted that the RFP document and attachments follow, as applicable, NDOT's LPA process and requirements for advertising, evaluating, and selecting the consultant to perform the requested services. A portion of the funding used for project design is federally funded and NDOT requires TTD to utilize these funds in conformance with applicable federal and NDOT requirements.

## **SECTION II - MINIMUM QUALIFICATIONS**

Statement of Qualifications (SOQ) will be reviewed first to determine if minimum qualification requirements are met. Qualifications will be evaluated solely based upon information submitted in the SOQ; therefore, the SOQ must include sufficiently detailed information to clearly establish that the Proposer meets the minimum qualifications. Any Proposals submitted that do not meet the minimum qualification requirements, as outlined below, will be disposed of in an appropriate manner, at the sole discretion of TTD, and without further review. All minimum qualifications must be held at time of submittal unless otherwise indicated.

### **Minimum Qualification Requirements:**

To be awarded a contract after responding to this RFP, the prime firm shall be a firm, organization or vendor licensed to conduct business in their respective disciplines in the State of Nevada within five (5) days of being given a notice of intent to award the contract. Specifically, the Proposer and its Project Manager shall comply with the registration requirements of Chapter 625 of the Nevada Revised Statutes (NRS), Professional Engineers and Land Surveyors, at the time of submission of the Proposal. Such individual(s) must be employed by the firm that is submitting the Proposal for consideration by TTD. A firm cannot meet the registration requirements of NRS Chapter 625, for qualification purposes, by "borrowing" such a person from another firm under the guise of a "Joint Venture" submission. Each firm of a Joint Venture must be qualified by TTD by having a Nevada licensed Professional Engineer; each Joint Venture firm must stand alone in this requirement. If the Proposal is being submitted by a Joint Venture, a copy of the documents by which such Joint Venture is formed must be submitted with the Proposal. The individuals so named must be Nevada licensed Professional Engineers; pending licenses do not qualify.

The selected firm must be familiar with various laws and regulations pertaining to projects in the Tahoe Basin, including those of TRPA, NDOT, and Federal Highway Administration (FHWA), as well as environmental review under National Environmental Policy Act (NEPA), the general processes for project delivery, and the administration of State, Federal, and local funding sources. The project is funded by a combination of regional, state, and federal grants and local dollars.

The firm's team shall have road and facility planning, environmental analysis, and engineering design experience in managing large-scale civil projects (streets, drainage, utilities, and other improvements) and vertical projects (transit-oriented development and facilities).

The selected firm must also meet the business license requirements specified in Section VIII.

This RFP does not commit TTD to award a contract. TTD reserves the right to accept or reject any or all proposals. No proposal shall be binding upon TTD until after a contract is executed by duly authorized representatives of TTD and the selected firm. No minimum amount of work is implied or guaranteed under the contract.

## **SECTION III - SCOPE OF SERVICES AND SCHEDULE**

### **Scope of Services**

The successful firm will be a highly skilled and experienced project team comprised of seasoned, well-rounded team members with related experience in the following areas discussed below. The selected firm will be responsible for all aspects of environmental analysis and engineering design associated with the specific components outlined below. Current design is at a preliminary level and the project scope includes both environmental analyses to acquire NEPA document approval and 100 percent design level (plans, specifications and estimate (PS&E)) for advancing the project to construction bidding purposes.

The required project scope shall include both environmental analysis and engineering services. Environmental analysis services shall include review of existing environmental documentation for the Project and to determine what additional analysis and documentation are needed to obtain NEPA and TRPA environmental approvals. Engineering services shall include but may not be necessarily limited to: recommendations for project delivery, utility relocation analysis, tracking budgets, preparing cost estimates and risk management. Services shall also include providing construction costs/cost of work, monitoring schedules, Right of Way (ROW) determination, overseeing quality of all aspects of the project; communication with the project team, and coordinating with all other applicable consultants.

The project engineering will be completed in three phases. Phase 1 will include review and any recommended modification of the current 30 percent project design, value engineering analysis, along with environmental analysis and documentation to obtain applicable project level NEPA, USFS, NDOT, TRPA, and any other agency approvals.

Phase 2 will include the preliminary engineering up to 60 percent design completion, including but not necessarily limited to:

- Plan view of proposed site grading and drainage improvements and identification of all existing and proposed major road components including: curb, gutter, sidewalks, parking areas, ancillary buildings, restroom facilities (if determined to be included), transit/mobility hub facilities or pullouts, safety facilities, trails, trail vista points and pullouts, refuse facilities, overhead lighting, and underground utilities.
- Utility plan sheets identifying proposed improvements, with existing utilities clearly identified in locations where conflicts could exist.
- Roadway, trail, and drainage plan and profile sheets with appropriate horizontal and vertical design information.
- Necessary hydrogeology, geotechnical and land surveys for supporting design.
- ROW boundaries and property owner identification in and around project site.
- Identification of any project improvements located on private property. The project assumes all improvements will be primarily located on Nevada State Land/State Parks, NDOT, and USFS lands.
- Determination of any necessary ROW acquisition based on preliminary project design.
- Determining all necessary rights-of-entry for private property for construction purposes.
- Ensure all designs meet NDOT requirements, expectations, and standards.
- Develop landscape plans, irrigation plans, and vegetative maintenance plans, consistent with relevant policies and ordinances.
- Ensure all designs meet current standards in addressing multi-modal functionality.
- Update project costs, prepare a finance plan, as needed, and provide any information necessary for securing additional funds.

- Assist in coordination, communication and, if necessary, preparation of inter-local agreements with stakeholders.
- Participate in the partnering process with project stakeholders and public outreach.
- Development of construction sequence plan.
- Preparation of signage wayfinding and highway modification plan for trail access and on-highway parking removal.

Phase 3 will encompass all final project design and construction drawings, project quantities, project specifications, and detailed construction cost estimate for bidding project. The selected firm will work alongside TTD to deliver the necessary project engineering products, along with determination of ROW survey and easement products required by local and state agencies where the project improvements will be built.

Following completion and acceptance by TTD of preliminary engineering services as described in this proposal, services for construction engineering for the Project such as construction plan changes, quality assurance management and administration during construction, and preparation of as-built construction drawings may be negotiated with the successful Proposer at the discretion of TTD, but should not be scoped or responded to by proposers as part of this proposal.

**Schedule**

TTD anticipates the following schedule for major project tasks to be followed to complete the Scope of Services in a timely manner such that the project can begin construction as early as 2026. In summary, TTD estimates the design services described above to be completed within eleven (11) months of contract execution.

**Estimated Project Schedule**

<b>Project Task</b>	<b>Start Date</b>	<b>End Date</b>
Notice of Intent to Award	January 2, 2025	January 2, 2025
TTD Board of Directors Approval	January 8, 2025	January 8, 2025
Project Kickoff Meeting	January 10, 2025	January 15, 2025
Phase 1 Work (30% design & environmental analysis)	January 10, 2025	May 31, 2025
Phase 2 Work (60% design)	April 1, 2025	October 31, 2025
Phase 3 Work (final design)	October 1, 2025	December 31, 2025

**SECTION IV – INSTRUCTIONS TO PROPOSER**

Provided below are key milestone dates for the RFP process.

<b>Task</b>	<b>Date</b>
Release date of RFP	Monday, November 18, 2024
Deadline to submit Questions/Written Comments	Monday, December 2, 2024 - 3:00 p.m. PST
Response to Questions Posted	Friday, December 6, 2024
Proposals Due	Friday, December 20, 2024 - 3:00 p.m. PST

**The Proposal must respond to each Evaluation Factor, listed in the exact order below. Provide clearly titled sections, referencing the same number and title as the Evaluation Factor being addressed.**

The selected firm will be based on the Proposal offering the best qualifications to TTD. Cost shall be negotiated with the most qualified firm after conclusion of the evaluation process. Cost proposals or elements of cost shall be submitted as a separate document from the technical/qualifications proposal, since these shall not be considered in the evaluation, ranking, and selection phase. The cost proposal will only be opened following selection of the most qualified Proposer.

**EVALUATION FACTORS** Provided below are the evaluation factors and the maximum score in points that can be awarded for each factor in helping determine the highest qualified RFP respondent.

**1. Project Approach (25 points):** Describe Proposer's approach to identifying and implementing the project requirements as delineated in the scope of services. Discuss partnering philosophy with TTD, NDOT and other key agencies involved with the Project.

**2. Project Team (20 points):** Describe the Proposer's assigned Project Manager's education, capability, and experience. Summarize experience of the key personnel to be assigned and the estimated effectiveness of the team's proposed organization and coordination process. Describe the Proposer's summary of education and past experience with similar projects for each member of the proposer's staff who will be assigned to this project. Summarize the experience working together as a team. Provide and explain the organizational chart of the project team, including subcontractor(s), and responsibilities of team members.

**3. Availability, Capacity, and Schedule (15 points):** Demonstrate the availability of the key project team members for the duration of the project. Identify team members' existing and projected workloads for the prime consultant and sub-consultant(s). Summarize the prime consultant and sub-consultants' depth of staffing and other resources to maintain the project schedule.

Identify the ability to meet timelines established for the Project, including an assessment of the Proposer's ability to handle the Project demands in view of the Proposer's current workload.

**4. Project Knowledge (15 points):** Describe Proposer's knowledge of the locality of the Project and local agencies' requirements for this type of Project.

**5. Past Performance (10 points):** Describe Proposer's past performance in terms of related type projects, quality of work, compliance with project task schedule, and cost control of budget commitments. Include a summary of relevant work completed in the past three (3) years.

Describe the Proposer's experience working with Federal and/or State agencies, including FHWA, USFS, NDOT, TRPA, Nevada State Lands/State Parks, and TTD.

**6. Other Factors (10 points):** Describe the Project's potential technical challenges and how to best address them as well as Proposer's experience in value engineering analysis and alternative project delivery methods such as CMAR and design-build, and how these applications could benefit the Project.

**7. DBE Goal: 4.0% (5 points):** Submittal of completed Attachment C - DBE Commitment to Subcontractors, DBE Certificates, and DBE Commitment Letters per Section VII will satisfy a response to this Evaluation Factor, and will not count towards the maximum allowable pages.



The Proposers must follow these requirements in preparing their Proposals:

1. The Proposal must respond to each Evaluation Factor. Each response must be contained in its own unique, numbered section bearing the same number and title as the particular Evaluation Factor being addressed and presented in the exact same order as the Evaluation Factors appear in this section.
2. The responses to the Evaluation Factors, including tables, must be 1.5-line spacing, must use no smaller than 11-point standard Arial font, and must not exceed **25 8½” x 11”** pages. 11” x 17” pages will be counted as two (2) pages. Please see paragraph 4 below for additional information on what is not included in the page count.
3. The Cover Letter must be single-spaced, and must not exceed one (1) 8½” x 11” page. It must include the Proposer’s contact information including name, mailing address, telephone number, and email address.
4. Include resumes, Nevada State Business Licenses, Statements of Qualifications (see Attachment A - Statement of Qualifications), DBE Form (Attachment C - DBE Commitment to Subcontractors), DBE Certifications, and DBE Commitment Letters as an Appendix to the Proposal. **Resumes can be submitted to verify information contained in the responses to the Evaluation Factors, but will not be used by the review committee to evaluate the Proposals.** Cover page, Section Dividers, Cover Letter, and aforementioned Appendix do not count towards the page count limitation identified in Paragraph 2 above. Any additional appendices with information that pertains to the Evaluation Criteria will be counted toward the page limit.
5. Cost proposals or elements of cost shall be submitted separate from technical/qualifications proposals, since these shall not be considered in the evaluation, ranking, and selection phase.

Failure to meet the above stated requirements and limitations may result in a Proposal being deemed non-responsive in TTD’s sole discretion.

Proposers must deliver one (1) electronic version of its proposal to the Tahoe Transportation District, Attn: Judi Allen, via e-mail to [jallen@tahoetransportation.org](mailto:jallen@tahoetransportation.org). The proposal may also be delivered on a USB flash drive in person or via courier service to 128 Market Street, Suite 3F, Stateline, NV 89449, or regular postal mail to PO Box 499, Zephyr Cove, Nevada 89448. Please mark the e-mail/envelope RFP No. 2024-001 Project Engineering & Environmental Services for State Route 28 Central Corridor Sand Harbor to Thunderbird Cove Trail, Transit and Safety Improvements with the name and address of the Proposer. No responsibility will attach to TTD, or any official or employee thereof, for the failure to open a proposal not properly addressed and identified. Proposers will be wholly responsible for the timely delivery of submitted proposals. Proposals must be received no later than 3:00 p.m. on December 20, 2024.

Proposals received after the specified deadline will not be considered and will be returned unopened to the Proposer.

Any confidential information, trade secrets and/or proprietary information the Proposer wants to include in the proposal must be submitted as a separate document from the technical/qualifications proposal and cost proposal documents. Each page must be clearly marked “Confidential.” The failure to separate and mark this information as per relevant statutes in NRS 333 shall constitute a complete waiver of any and

all claims for damages caused by release of the information by TTD. If TTD reviews the confidential information and determines that the information is not considered confidential per NRS 333, TTD will contact the Proposer. The Proposer must advise TTD whether it either accepts TTD'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. Proposer accepts and acknowledges TTD 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.

TTD assumes no financial responsibility in connection with the Proposers' costs incurred by attending the pre-submittal meeting if required, in the preparation and submission of the Proposal packets, or by attending oral interviews, if such interviews are conducted by TTD in its sole discretion.

Each Proposer shall familiarize itself with the Sample Service Agreement (Attachment D). To maintain consistency between TTD and its SERVICE PROVIDERS, only those portions of the "Sample Service Agreement" which are blank may be open for negotiation.

A pre-negotiation audit may be required by TTD. The objective of a pre-negotiation audit is to establish a provisional indirect cost rate of direct labor to be utilized for negotiations and progress payments to the SERVICE PROVIDER during the course of the project.

The Specific Rates of Compensation method of compensation shall be used for the Proposer's services, as set forth in 48 CFR Chapter 1.

## **SECTION V - RULES OF CONTACT**

The following rules of contact shall apply during this procurement:

After release of the RFP and through to the Notice of Award, the Proposers shall **ONLY** correspond with TTD regarding this RFP through TTD's designated representative. The designated representative's contact information is:

**Judi Allen**  
**Tahoe Transportation District**  
**Mailing Address:**  
**PO Box 499**  
**Zephyr Cove, NV 89448**  
**Physical Address:**  
**128 Market Street, Suite 3F**  
**Stateline, NV 89449**  
**Phone: 775-589-5502**  
**Email: [jallen@tahoetransportation.org](mailto:jallen@tahoetransportation.org)**

The Proposers shall not contact TTD's employees, including TTD heads, members of the review committee and/or any official who will participate in the decision to award the Agreement regarding the Project, except through the process identified above. Any communications determined to be improper may result in disqualification, at the sole discretion of TTD. Any official information regarding the RFP will be disseminated by TTD. Specific information necessary for the preparation of Proposals will be disclosed to all Proposers. TTD will not be responsible for any oral exchange or any other information or exchange

that occurs outside the official process specified herein. Failure to comply with these rules of contact may result in a Proposal being deemed non-responsive in TTD's sole discretion.

## **SECTION VI - PROPOSER QUESTIONS**

Any irregularities or lack of clarity in the RFP must be brought to TTD's attention, via email to [jallen@tahoetransportation.org](mailto:jallen@tahoetransportation.org) as soon as possible, so that corrective addenda may be furnished by TTD in a timely manner to all Proposers.

Any questions raised by Proposers must be submitted via email to [jallen@tahoetransportation.org](mailto:jallen@tahoetransportation.org) no later than **3:00 p.m. PST, on December 2, 2024**. Only questions or requests submitted by the deadline will be considered. No requests for additional information or clarification to any other TTD office, consultant, employee, or the Federal Highway Administration (FHWA) will be considered. Responses to questions regarding the RFP, including requests for clarification and requests to correct errors, will be posted on TTD's website on or before December 6, 2024.

## **SECTION VII - DBE REQUIREMENTS**

NDOT has established a Disadvantaged Business Enterprise (DBE) OR Small Business Enterprise (SBE) participation goal of four percent (4.0%) of the total dollar value of the negotiated Agreement with the successful Proposer. A DBE/SBE must be a small business concern as defined by the U.S. Small Business Act, 15 USC § 632 or by 49 CFR Subtitle A, Part 26.

DBE/SBE firms must be certified by the Nevada Unified Certification Program (NUCP) in accordance with 49 CFR Part 26 in a NAICS code applicable to the kind of work the firm would perform on the project in order to count towards DBE/SBE goal attainment. NDOT is an agency member of the NUCP. A list of certified DBEs/SBEs may be obtained from the Nevada Department of Transportation's website at [www.ndot.dbesystem.com](http://www.ndot.dbesystem.com). DBE/SBE status continually changes; therefore, it is recommended that the Proposer verifies certification at [www.ndot.dbesystem.com](http://www.ndot.dbesystem.com) before submitting a Proposal.

**Proposers shall include the following information in their submitted Proposal:**

- A. Completed Attachment C – DBE/SBE Commitment to Subcontractors form;**
- B. Copy of selected DBE's/SBE's certification issued by the NUCP; and**
- C. A DBE/SBE Commitment Letter (sample letter) from each DBE/SBE firm listed on Attachment C – DBE/SBE Commitment to Subcontractors form, on the DBE/SBE firm's letterhead, clearly indicating:**
  - a. the DBE/SBE firm's name and address;**
  - b. a description of the work to be performed by the DBE/SBE; and**
  - c. the percentage of the negotiated Agreement to be performed by the DBE/SBE.**

A Proposer who is unable to meet the DBE/SBE requirement stated herein may receive DBE/SBE evaluation criteria points by making a documented "Good Faith Effort" that is approved by NDOT. The documentation necessary to establish a "Good Faith Effort" must be submitted with the Proposal. The "Good Faith Effort" must be a substantial, documented effort that may include, but is not limited to, the items listed in 49 CFR Part 26, Subpart C, Sections 26.53(a)(2) and Appendix A.

Proposers failing to demonstrate their ability to attain the stated DBE/SBE goal or to provide adequate Good Faith Efforts approved by NDOT in accordance with 49 CFR Part 26, Subpart C, **shall receive a score of zero (0)** for their Proposal's DBE Evaluation Criteria.

The Proposer shall utilize the specific DBEs/SBEs listed to perform the work and supply the materials for which each is listed on Attachment C – DBE/SBE Commitment to Subcontractors form, unless the contractor obtains TTD's written consent as provided in 49 CFR Part 26.53 (3)(f), (4) & (5); and unless such consent is provided, the contractor shall not be entitled to any payment for work or material, unless it is performed or supplied by the listed DBE/SBE.

The Proposer shall not terminate a DBE/SBE subcontractor listed in Attachment C - DBE Commitment to Subcontractors form (or an approved substitute DBE/SBE firm) without the prior written consent of TTD. This includes, but is not limited to, instances in which a Proposer seeks to perform work originally designated for a DBE/SBE subcontractor with its own forces or those of an affiliate, a non-DBE/SBE firm, or with another DBE/SBE firm.

When a DBE/SBE participates in a Service Agreement, expenditures toward DBE/SBE goals will only count if the DBE/SBE is performing a commercially useful function on the Service Agreement. A DBE/SBE performs a commercially useful function when it is responsible for execution of the work of the Service Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE/SBE shall also be responsible, with respect to materials and supplies used on the Service Agreement, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE/SBE is performing a commercially useful function, the amount of work subcontracted, industry practices, or whether the amount the firm is to be paid under the Service Agreement shall be evaluated to ensure it is commensurate with the work it is actually performing and the DBE/SBE credit claimed for its performance of the work and other relevant factors.

All DBE/SBE requirements and good faith efforts and Commercially Useful Function evaluations shall be in accordance with 49 CFR Part 26.

### **SECTION VIII - 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 [www.nvsos.gov](http://www.nvsos.gov).

Before the Agreement(s) resulting from this RFP can be executed, the successful Proposer(s) must provide the following:

- A. Nevada State Business License Number; and
- B. Business Entity's Legal Name (affirm that it is the same name under which the Proposer is doing business).

Additionally, if the Proposer is a corporation, LLC, LP, LLP, or LLLP, or non-profit corporation based out of state, it 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 the time of Proposal submission, its willingness to adhere to this requirement by providing a statement of adherence within the proposal cover letter, a copy of its Nevada

State Business License, a copy of its application from the Secretary of State Office, or a print out of the entity status, which can be obtained from the Nevada Business Search found on the homepage of the Nevada Secretary of State's website at [www.nvsos.gov](http://www.nvsos.gov).

Award of any Agreement is contingent on a Proposer having and holding an active and valid Nevada State Business License. The successful Proposer must satisfy this requirement within five (5) business days of issuance of the Notice of Intent. If a Proposer is unable or unwilling to adhere to this requirement, TTD will deem the Proposer to be non-responsive, and TTD will proceed to negotiate with the next most qualified firm, and so on, until an Agreement, that is acceptable to TTD, is negotiated.

To apply for a Nevada State Business License or to file appropriate formation documents with the Nevada Secretary of State's office, please visit [www.nvsos.gov](http://www.nvsos.gov). Business licenses can be obtained immediately by applying on-line; however, paper applications may take several weeks to process.

### **SECTION IX - SELECTION PROCESS**

Selection will be based on the Evaluation Factors listed in the Evaluation Factors section (Section IV), which will be used by a Review Committee to evaluate the Proposals. The Review Committee will be comprised of TTD staff and may include other members representing governmental entities, who shall remain anonymous to protect the integrity of the procurement process.

Oral interviews may be conducted, in TTD's sole discretion, for any firm that submits a Proposal. In the event that TTD 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.

Failure of a Proposer to appear at the oral interview, if the committee elects to conduct such interviews, will be considered non-responsive and that Proposer will be eliminated from any further consideration.

From the proposal evaluation and any subsequent discussions which may have been conducted, TTD shall rank, in order of preference, at least three consultants determined most highly qualified to perform the solicited services based on the established and published criteria. In instances where only two qualified consultants respond to the solicitation, TTD may proceed with evaluation and selection as long as TTD determines that the solicitation did not contain conditions or requirements that arbitrarily limited competition, or alternatively, may award a contract based on noncompetitive procurement in accordance with 23 CFR 172.7 and applicable state law.

The committee may use the information submitted in the Proposer's Proposal package, the information referenced in this RFP, and the information presented at the interview, if applicable, to arrive at the final ranking. The Proposals will be ranked and an Agreement may be negotiated following the selection of a most qualified Proposer. If an acceptable Agreement cannot be reached with the highest ranked firm, TTD may proceed to negotiate with the next highest ranked firm, and so on, until an acceptable Agreement is negotiated, or TTD, in its sole discretion, elects to terminate the solicitation.

### **SECTION X - AWARD PROCESS**

TTD intends to issue its Notice of Intent to Award on January 2, 2025. Any award is contingent upon the successful negotiation of final contract terms and upon approval of TTD's Board of Directors. 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, TTD, 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.

Upon the successful negotiation, TTD shall issue a Notice of Award, at which time Proposals are no longer confidential and can be requested from TTD via a Public Records Request.

## **SECTION XI - TERMS, CONDITIONS AND EXCEPTIONS**

This procurement is being conducted in accordance with NRS Chapters 333 and 408, NAC Chapter 333, and SAM Section 300, as applicable.

TTD 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 TTD, it is in the best interest of TTD to do so.

TTD reserves the right to waive informalities and minor irregularities in Proposals received.

TTD reserves the right to reject any or all Proposals received prior to contract award.

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 the requirements of this RFP, may be rejected.

All materials submitted in accordance with the prescribed deadline become the property of TTD and will not be returned. TTD'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 an Agreement.

The awarded Proposer will be the sole point of Agreement responsibility. TTD 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 subcontractors.

The awarded Proposer must maintain, for the duration of its Agreement, insurance coverage as set forth in the Agreement executed in response to this RFP. Work under the Agreement shall not begin until after the awarded Proposer has submitted to TTD acceptable evidence of the required insurance coverage. Failure to maintain any required insurance coverage or alternative method of insurance acceptable to TTD in its sole discretion will be deemed a material 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, each Proposer affirms 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. TTD, in its sole discretion, will determine whether a conflict of interest exists and whether it may reflect negatively on TTD's selection of a Proposer. TTD 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.

TTD will not be liable for Federal, State, or local excise taxes.

TTD reserves the right to negotiate final Agreement terms with any Proposer selected in accordance with NAC 333.170 and/or other applicable law. The Agreement between the parties will consist of the final executed Agreement, the RFP with any modifications thereto, and the awarded Proposer's Proposal with any modifications and clarifications thereto that are incorporated at the request of TTD 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 Agreement, 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 Agreement.

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

No announcement concerning the award of an Agreement as a result of this RFP can be made without the prior written approval of TTD.

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

## **SECTION XII - PROTEST PROCEDURE**

Protests will be administered in accordance with, but not limited to, the terms contained herein, and may be filed only with respect to:

1. Allegations that the terms of the RFP are wholly ambiguous, are contrary to legal requirements applicable to the procurement, or exceed TTD'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. The award of an Agreement.

### **A. DEADLINES FOR PROTESTS**

Protests concerning the issues described in Section XIII (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 TTD distributes the related addenda.

Protests concerning the issues described in Section XIII (2) must be filed within ten (10) calendar days after TTD issues to the Proposer a notice regarding the failure of any pass/fail criteria, or a notice regarding the non-responsiveness of the Proposal.

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

TTD 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 the firm's name, mailing address, email address, and phone number, as well as the name of the individual responsible for the submission of the protest. Protests shall completely and succinctly state the grounds for the protest, its legal authority, and its factual basis; protests 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 sent to:

**Judi Allen**  
**Tahoe Transportation District**  
**Mailing Address:**  
**PO Box 499**  
**Zephyr Cove, NV 89448**  
**Physical Address:**  
**128 Market Street, Suite 3F**  
**Stateline, NV 89449**  
**Phone: (775) 589-5500**  
**Email: [jallen@tahoetransportation.org](mailto:jallen@tahoetransportation.org)**

## **D. BURDEN OF PROOF**

The Protester shall have the burden of proving the basis of its protest. TTD may, in its sole discretion, discuss the protest with the Protester and/or request responses to the Protest from other Proposers. The protest shall be decided on the basis of written submissions.

## **E. DECISION ON PROTEST**

TTD's District Manager 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 it is necessary to address the issues raised in a protest, TTD may, in its sole discretion, make appropriate revisions to the RFP by issuing addenda.

## **F. 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 TTD 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 shall not be stayed during the pendency of any protest. Any Agreement with the selected Proposer shall be made contingent upon the outcome of any pending protest.

## **ATTACHMENTS**

Attachment A - Statement of Qualifications

Attachment B - Proposal Preparation Instructions

Attachment C - DBE/SBE Commitment to Subcontractors

Attachment D – Sample Service Agreement

Exhibit A – Affidavit (Suspension or Debarment)

Exhibit B – Lobby Certification

Exhibit C – Certification of Final Indirect Costs

Exhibit D – Insurance

**Attachment A**  
**Statement of Qualifications**

The Statement of Qualification form must be completed in full, as-is, and submitted as part of the Proposal package per Request for Proposal instructions.

**Request for Proposal number:** \_\_\_\_\_

**Date prepared:** \_\_\_\_\_

**Firm's name:** \_\_\_\_\_

**Minimum Qualification Requirements:**

Please list the proposed Project Manager that is a licensed Professional Civil Engineer in the State of Nevada, including license number, and their ten (10) years of relevant experience working on transportation projects:

Please list the proposed key personnel and each key personnel's seven (7) years of relevant experience working on transportation projects:

Please list the proposed Nevada-registered Land Surveyor, including license number, and their five (5) years of land surveying experience:

**Attachment B**  
**Proposal Preparation Instructions**

**Proposal Submission**

- Clarifying questions submitted in writing no later than 3:00 p.m. PST on December 2, 2024
- Proposal submitted no later than 3:00 p.m. PST on December 20, 2024

**Proposal Format**

- Font size no less than 11 point (this page is Arial font size 11)
- Document line spacing, including tables, is 1.5

**Proposal Content**

- Cover Letter not to exceed one (1) 8½" x 11" page, containing Proposer's name, mailing address, telephone number, and email address (not included in page count)
- Content (exclusive of Appendices) **not to exceed 25 8½" x 11" pages**

The following applies to the page count:

- 11" x 17" pages will be counted as two (2) pages
- Pictures, graphics, and tables are included in the page count
- The Cover Letter is not included in the page count
- Plain section dividers identifying the Evaluation Criteria headings are not included in the page count
- Section dividers containing additional text or graphics **are** included in the page count
- Information submitted within Appendices are not included in the page count
- Sections addressing each of the Evaluation Criteria are in the following order:
  - Project Approach
  - Project Team
  - Availability and Capacity
  - Project Knowledge
  - Past Performance
  - Other Factors
  - Appendices (not included in page count) containing:
    - Resumes
    - Nevada State Business License
    - Statement of Qualifications (SOQ) (Attachment A)
    - Professional Engineer's License
    - DBE Form (Attachment C)
    - DBE Confirmation letters

Any confidential information, trade secrets and/or proprietary information the Proposal wants to include in their proposal must be sealed in a separate document and each page must be clearly marked "Confidential."

**Attachment C**  
**DBE/SBE Commitment to Subcontractors**

RFP Number: \_\_\_\_\_ DBE/SBE Participation Goal: \_\_\_\_\_ %

**This form, a commitment letter on the DBE's/SBE's letterhead, and the DBE's/SBE's certification must be submitted for each firm listed with each Proposal.**

Name of Certified DBE/SBE Firm(s)	Scope of Work Detailed Description	% of Total Agreement

Total DBE/SBE Commitment % \_\_\_\_\_

I certify that these identified services and percentages were quoted by the DBE/SBE firm(s). If awarded this Agreement, our firm \_\_\_\_\_ Phone No. \_\_\_\_\_ intends to enter into subcontract Agreements with the DBE/SBE firm(s) listed for the services specified. The information on this form is true and accurate to the best of my knowledge. I further understand that falsification, fraudulent statement or misrepresentation could result in appropriate sanctions under applicable Local, State or Federal laws.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Print/Type Name of Authorized Representative

\_\_\_\_\_  
Date

-----TTD USE ONLY-----

DEPARTMENT DETERMINATION:

Comments: \_\_\_\_\_

APPROVED       DENIED

\_\_\_\_\_  
\_\_\_\_\_

If denied, please explain in the space provided.

Signature: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Name: \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

**DBE Commitment Letter - Sample Letter**

**COMPANY LETTERHEAD**

Date:

Prime Contractor  
Address  
City State Zip code

Re: DBE Commitment Letter  
RFP # xxx-xx-xxx  
Project Description:

To Whom it May Concern:

(DBE Name and Address) is a certified Disadvantaged Business Enterprise in the State of Nevada.

(DBE Name) is partnering with (Prime Contractor Name) to provide (Type of work).

We understand the DBE goal on this project is (DBE goal %). (DBE Name) commits to perform (percent) of the total dollar value of the negotiated agreement between (Prime Contractor Name and TTD).

Sincerely,

Name  
DBE Name



**Contractor/Subcontractor Information**

In accordance with US DOT Final Rule, 49 CFR Part 26. Please fill out form and upload to “**Contractor Attachments**” section.

Prime Contractor: \_\_\_\_\_ Contract Number: \_\_\_\_\_ DBE or non-DBE: \_\_\_\_\_

Address: \_\_\_\_\_ City/State: \_\_\_\_\_ Zip: \_\_\_\_\_

Race of Majority Owner: \_\_\_\_\_ Gender of Majority Owner: \_\_\_\_\_ Age of Firm: \_\_\_\_\_ Gross Receipt Bracket: \_\_\_\_\_

NAICS (applicable to each scope of work): \_\_\_\_\_

Subcontractor Name	Full Address	DBE or non-DBE	Race of Majority Owner	Gender of Majority Owner	Age of Firm	Gross Receipt Bracket	NAICS <small>(Applicable to each scope of work the subcontractor sought to perform in its bid)</small>

# DRAFT

Agreement Number **XXX-XX-XXX**

## **Attachment D** **SAMPLE SERVICE AGREEMENT**

This Agreement, made and entered into on \_\_\_\_\_, by and between the Tahoe Transportation District (hereinafter "TTD") and **NAME AND ADDRESS** (hereinafter "SERVICE PROVIDER"). Individually they are each a "Party" and collectively they are the "Parties."

WITNESSETH:

WHEREAS, NRS Chapter 332 authorizes local governments to contract for the services of independent contractors; and

WHEREAS, TTD has determined that a provision of services is required for the State Route 28 Central Corridor Sand Harbor to Thunderbird Cove Trail, Transit and Safety Improvements Project, and such project is necessary for the design and permitting of SR 28 corridor improvements, along the east shore of Lake Tahoe in Washoe County, Nevada (hereinafter "PROJECT"); and

WHEREAS, SERVICE PROVIDER's services will be of great benefit to TTD 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 the following scope.

The required project scope shall include both environmental analysis and engineering services. Environmental analysis services shall include review of existing environmental documentation for the Project and to determine what additional analysis and documentation are needed to obtain NEPA and TRPA environmental approvals. Engineering services shall include, but may not be necessarily limited to: recommendations for project delivery, utility relocation analysis, tracking budgets, preparing cost estimates and risk management. Services shall also include providing construction costs/cost of work, monitoring schedules, Right of Way (ROW) determination, overseeing quality of all aspects of the project; communication with the project team, and coordinating with all other applicable consultants.

The project engineering will be completed in three phases. Phase 1 will include review and any recommended modification of the current 30 percent project design, along with environmental analysis and documentation to obtain applicable project level NEPA, USFS, NDOT, TRPA, and any other agency approvals.

Phase 2 will include the preliminary engineering up to 60 percent design completion, including but not necessarily limited to:

- Plan view of proposed site grading and drainage improvements and identification of all existing and proposed major road components including: curb, gutter, sidewalks, parking areas, ancillary buildings, restroom facilities, transit/mobility hub facilities or pullouts, safety facilities, trails, trail vista points and pullouts, overhead lighting, and underground utilities.



# DRAFT

- Utility plan sheets identifying proposed improvements, with existing utilities clearly identified in locations where conflicts could exist.
- Roadway, trail, and drainage plan and profile sheets with appropriate horizontal and vertical design information.
- Necessary hydrogeology, geotechnical and land surveys for supporting design.
- ROW boundaries and property owner identification in and around project site.
- Identification of any project improvements located on private property. The project assumes all improvements will be primarily located on Nevada State Land/State Parks, NDOT, and USFS lands.
- Determination of any necessary ROW acquisition based on preliminary project design.
- Determining all necessary rights-of-entry for private property for construction purposes.
- Ensure all designs meet NDOT requirements, expectations, and standards.
- Develop landscape plans, irrigation plans, and vegetative maintenance plans, consistent with relevant policies and ordinances.
- Ensure all designs meet current standards in addressing multi-modal functionality.
- Update project costs, prepare a finance plan, as needed, and provide any information necessary for securing additional funds.
- Assist in coordination, communication and, if necessary, preparation of inter-local agreements with stakeholders.
- Participate in the partnering process with project stakeholders.
- Development of construction sequence plan.
- Preparation of signage wayfinding and highway modification plan for trail access and on-highway parking removal.

Phase 3 will encompass all final project design and construction drawings, project quantities, project specifications, and detailed construction cost estimate for bidding project. The selected firm will work alongside TTD to deliver the necessary project engineering products, along with determination of ROW survey and easement products required by local and state agencies where the project improvements will be built.

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 Request for Proposal dated November 18, 2024, 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 **DATE**, 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 TTD prior to such term expiration date.

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 TTD'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

# DRAFT

TTD 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, subrogates, servants, insurers, attorneys, independent representatives, personal representatives, agents, and assigns, does hereby waive, release, and forever discharge the State of Nevada, TTD, 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, prior to such expiration date.

4. TTD, 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 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, prior to such expiration date, purporting to alter or amend this Agreement, including but not limited to representations relating to the extension of the Agreement's expiration date.

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

6. The SERVICE PROVIDER shall not proceed with work until the SERVICE PROVIDER receives a written "Notice to Proceed" from TTD. If the SERVICE PROVIDER does commence said work prior to receiving said Notice to Proceed, 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 TTD 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 receipt of the 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 TTD, 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.

7. In the event TTD discovers a SERVICE PROVIDER's error or omission before its discovery by the SERVICE PROVIDER, TTD shall not unreasonably delay in notifying SERVICE PROVIDER of such error or omission. TTD'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 TTD 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 TTD use its own personnel, supplies, or equipment to remedy the deficiency, all such costs

# DRAFT

incurred by TTD 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 TTD exceed the sum which would have been payable under this Agreement, then the SERVICE PROVIDER shall reimburse TTD the amount of said excess.

8. The SERVICE PROVIDER shall assign one (1) individual throughout the life of this Agreement who shall have overall PROJECT responsibility unless illness or termination requires replacement. This individual shall be registered in accordance with NRS Chapter 625, Professional Engineers and Land Surveyors. This individual shall ensure that each sheet of the final submittal, including the title sheet, is stamped (electronic or wet stamp acceptable), signed and dated (original signature and date required) in accordance with NRS Chapter 625 and Nevada Administrative Code (NAC), Chapter 625.

9. 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 TTD 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 TTD's review and written consent.

b. TTD 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 TTD 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 TTD, 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 TTD within thirty (30) calendar days of the date when the key person is changed or has left the PROJECT team.

10. 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.

# DRAFT

11. 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 professional engineers performing the same or similar services at the time said services are performed.

12. This Agreement, and any amendments, may be suspended temporarily, either wholly or in part, by TTD upon oral notice confirmed in writing within ten (10) calendar days, when TTD 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 TTD to be equivalent to the delay. Requests for suspension of time by the SERVICE PROVIDER must have the written approval of TTD. No allowance shall be made for delay or suspension of the services solely due to the fault of the SERVICE PROVIDER.

13. An alteration ordered by TTD 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.

14. The SERVICE PROVIDER shall not assign or subcontract, any of the professional services performed under this Agreement without the prior written approval of TTD. The SERVICE PROVIDER will, subsequent to obtaining written approval from TTD, provide TTD with a copy of the contract or agreement for professional services. The SERVICE PROVIDER, shall require its subcontractors to comply with all provisions of 48 CFR Chapter 1, Part 31, and, if the subcontract agreement exceeds One Hundred Thousand and No/00 Dollars (\$100,000.00), the subcontract agreement shall also comply with Paragraph 16 of this Article. 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 the prior written consent of TTD, shall be void.

15. The SERVICE PROVIDER agrees to complete and sign Attachment A - "AFFIDAVIT REQUIRED UNDER SECTION 112(c) AND 2 CFR PARTS 180 AND 1200 - SUSPENSION OR DEBARMENT," Attachment B - "CERTIFICATION REQUIRED BY SECTION 1352 of TITLE 31, UNITED STATES CODE, RESTRICTIONS OF LOBBYING USING APPROPRIATED FEDERAL FUNDS," and "Instructions for Completion of SF-LLL, Disclosure of Lobbying Activities," attached hereto and incorporated herein.

16. The SERVICE PROVIDER acknowledges that the Nevada Department of Transportation has established a Disadvantaged Business Enterprise (DBE) participation requirement of **four percent (4%)** of the total dollar value of the Agreement costs. A DBE must be a small business concern as defined by the U.S. Small Business Act, 15 USC § 632 or by 49 CFR Subtitle A, Part 26.

17. The SERVICE PROVIDER shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of Federally-assisted contracts. Failure by the SERVICE PROVIDER to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the contracting agency deems appropriate.

# DRAFT

18. Failure by the Service Provider to fulfill the DBE Agreement requirements and to demonstrate good faith efforts, either in the SERVICE PROVIDER's proposal or during the performance period, constitutes a breach of this Agreement. In event of such a breach, TTD may:

- a. Withhold progress payments or a portion thereof;
- b. Deduct, as damages, an amount equal to the unmet portion of the DBE commitment not achieved. This amount will be determined by multiplying the percentage of DBE participation proposed by the total cost set forth in the agreement and then multiplying the actual percentage of DBE participation used during the agreement by the total cost set forth in the agreement. In the event the actual percentage of DBE participation is less than the proposed percentage of DBE participation, the difference in these two figures shall be the amount of damages due to TTD;
- c. Remove the SERVICE PROVIDER from the prequalified list for repeated violations, falsifications, or misrepresentations; and/or
- d. Terminate the Agreement.

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. TTD may terminate this Agreement without cause with 10 days' written notice 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 TTD 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 TTD. TTD 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 TTD's funding from TTD, 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

# DRAFT

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 TTD 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 TTD 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 TTD 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; or

f. If the SERVICE PROVIDER knowingly bills TTD for unallowable costs or non bona fide goods or services, or for goods and services not provided.

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 TTD, 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 TTD 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 the SERVICE PROVIDER, and all items of professional services have been approved and accepted by TTD, and final payment is made.

## ARTICLE IV – COST

### SPECIFIC RATES OF COMPENSATION

1. The "specific rates of compensation" 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 **NUMBER** and **#/100 Dollars (\$#)**, which includes the rate.

3. The rate will be reimbursed at **NUMBER** and **#/100 Dollars (\$#)** per **DESCRIPTION** and shall include direct salary costs, indirect costs, other direct costs, and fixed fee. **IF APPLICABLE, INCLUDE SCHEDULE AS AN ATTACHMENT**

4. TTD will pay the SERVICE PROVIDER in monthly installments based upon progress and final payment reports submitted by the SERVICE PROVIDER and as approved by TTD.

# DRAFT

5. The SERVICE PROVIDER is required to submit a monthly progress report in TTD's format showing the status of the professional services and the degree of completion thereof.

6. The SERVICE PROVIDER agrees to complete and sign Attachment C - Service Provider Cost Certification of Final Indirect Costs, attached hereto and incorporated herein.

7. The SERVICE PROVIDER cost billing, reimbursement, and audit, will be accomplished in accordance with the Federal Cost Principles set forth in 2 CFR Part 200.

8. Travel costs will be reimbursed based on actual costs limited by Federal Travel Regulations (FTR) GSA lodging, meals and incidental expense, and mileage reimbursement rates. The SERVICE PROVIDER shall provide travel receipts.

9. When requested by TTD, the SERVICE PROVIDER shall schedule its own airline and rental car reservations by the most economical means for reimbursement. Original receipts for airfare and rental cars must be submitted with the "Claim for Travel Expense." TTD is not responsible for payment of any premium, deductible or assessments on insurance policies purchased by the SERVICE PROVIDER for a rental vehicle.

## ARTICLE V - SCHEDULE OF PAYMENTS

1. The SERVICE PROVIDER shall submit a signed invoice monthly for all services rendered along with one (1) copy of substantiating documentation. The invoice must be submitted on the SERVICE PROVIDER's stationery using TTD's format. TTD will utilize its normal accounting procedure in the payment of the invoices submitted.

2. TTD 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 TTD 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, TTD will provide the SERVICE PROVIDER with a written explanation as to why payment has been withheld.

3. 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 TTD prior to issuance of the Notice to Proceed, the SERVICE PROVIDER shall not redistribute or expend such funds without the prior written approval of TTD. Failure to notify TTD prior to the use of such funds will constitute grounds for denial of reimbursement for such expenditures.

# DRAFT

4. Payment of invoices shall be as follows:
  - a. TTD will use its best efforts to cause the SERVICE PROVIDER to be paid within thirty (30) days of receipt of SERVICE PROVIDER'S correct and undisputed invoice.
  - b. TTD 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 TTD or is approved by both Parties for payment.
5. SERVICE PROVIDER is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than 30 days after the SERVICE PROVIDER'S receipt of payment for that work from TTD. In addition, the SERVICE PROVIDER may not hold retainage from its subcontractors.
6. The prevailing party in an action to enforce this Agreement is entitled to reasonable attorney's fees and costs.

## ARTICLE VI - MISCELLANEOUS PROVISIONS

1. The SERVICE PROVIDER shall be responsible for and shall comply with all applicable federal, state, and local government obligations and TTD 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. TTD 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 332.300 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 TTD 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 TTD.
3. The SERVICE PROVIDER shall be solely responsible for its own employees, and TTD 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 TTD;



# DRAFT

d. Participation or contributions by either the SERVICE PROVIDER or TTD to the Public Employees Retirement System;

e. Accumulation of vacation leave or sick leave; or

f. Unemployment compensation coverage provided by TTD.

4. The SERVICE PROVIDER shall indemnify and hold TTD harmless from, and defend TTD 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.

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

6. The SERVICE PROVIDER agrees to obtain and maintain in full force and effect during the term of this Agreement the insurance policies set forth in Attachment D "Insurance" and made a part of this Agreement. All insurance policies shall be subject to approval by TTD as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the District Manager. SERVICE PROVIDER agrees to provide District with copies of required policies.

7. TTD 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 TTD.

8. 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 TTD for conformity with TTD's procedures and contract terms. The SERVICE PROVIDER acknowledges that review by TTD does not include detailed review or checking of major components and related details or the accuracy of such deliverables, and TTD'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.

9. The SERVICE PROVIDER shall appear as a consultant and, if necessary, as an expert witness on behalf of TTD 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.

10. 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 stored on mobile media), computations, tabulations, original drawings, and design files (including CAD information stored on mobile media), correspondence input from external sources (including subcontractors), etc., shall be delivered to and become the property of TTD, 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 TTD's discretion and TTD'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 TTD. The SERVICE PROVIDER shall not

# DRAFT

reference an opinion of an employee or agent of TTD 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 TTD.

11. 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 TTD. The SERVICE PROVIDER shall remit all such documents to TTD upon completion, termination, or cancellation of this Agreement or upon written request of TTD. 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 TTD.

12. 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 TTD to the full legal extent to which the SERVICE PROVIDER is bound with respect to each of the terms of this Agreement.

13. 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 the 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, TTD 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.

14. 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 TTD. It is the intent of TTD 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.

15. 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 CFR 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

# DRAFT

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 TTD, the Nevada Department of Transportation (NDOT) 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 TTD, the NDOT, 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, TTD shall impose such Agreement sanctions as it the NDOT 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 TTD, the NDOT 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 TTD, the NDOT 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 TTD to enter into such litigation to protect the interests of TTD and the SERVICE PROVIDER may request the United States to enter into such litigation to protect the interests of the United States.

16. During the performance of this Agreement, the SERVICE PROVIDER, for itself, its assignees and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 C.F.R. Part 21.

b. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

# DRAFT

c. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);

d. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27;

e. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);

f. Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

g. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

h. Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;

i. The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

j. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

k. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

l. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).

17. 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. SERVICE PROVIDER is subject to suspension and debarment

# DRAFT

actions as specified in 2 CFR part 1200 and 2 CFR part 180, potential cause of action under the False Claims Act as specified in 32 U.S.C. 3729-3733, and prosecution for making a false statement as specified in 18 U.S.C. 1020.

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 CFR, 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

18. 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 TTD, NDOT and FHWA, and the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives 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.

19. To the fullest extent permitted by law, the SERVICE PROVIDER shall be liable to TTD, and its employees, officers, and agents of TTD for 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.

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

21. 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.

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

23. 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:

# DRAFT

FOR TTD:

Jim Marino  
PO Box 499  
Zephyr Cove, NV 89448  
128 Market Street, Suite 3F  
Stateline, NV 89449  
Phone: (775) 589-5512  
Fax: (775) 588-0917  
E-mail: jmarino@tahoetransportation.org

FOR SERVICE PROVIDER:

NAME  
FIRM  
MAILING ADDRESS, CITY, STATE, ZIP CODE  
PHYSICAL ADDRESS, CITY, STATE, ZIP CODE  
Phone:  
Fax:  
E-mail:

24. 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.

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

26. 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.

27. 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.

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

29. The SERVICE PROVIDER shall provide a minimum of thirty percent (30%) 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 TTD. The SERVICE PROVIDER shall, prior to obtaining written approval from TTD, provide TTD with a copy of the subcontract or sub-agreement for said work. Any assignment of rights or delegation of duties under this Agreement, without the prior written consent of TTD, shall be void.

30. 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

# DRAFT

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.

31. 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.

32. 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.

33. 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.

34. 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 and the Attorney General.

35. At the end of the term of this Agreement described in Article II – Performance, Paragraph 1, the SERVICE PROVIDER will be evaluated and that evaluation may be used for evaluation of future procurements.

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

**SERVICE PROVIDER:**

**TTD**

\_\_\_\_\_

\_\_\_\_\_

Jim Marino, Acting District Manager

\_\_\_\_\_  
Name and Title (Print)

Approved as to Legality and Form:

\_\_\_\_\_  
General Counsel

**EXHIBIT A**  
**AFFIDAVIT REQUIRED UNDER 23 USC SECTION 112(c)**  
**AND 2 CFR PARTS 180 AND 1200 - SUSPENSION OR DEBARMENT**

STATE OF \_\_\_\_\_

SS

COUNTY OF \_\_\_\_\_

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 judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;
- (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 {Agency Name} 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 \_\_\_\_\_

(SEAL)

\_\_\_\_\_  
*Notary Public, Judge or other*



**EXHIBIT B**

**CERTIFICATION REQUIRED BY SECTION 1352 OF TITLE 31, UNITED STATES CODE  
RESTRICTIONS OF LOBBYING USING APPROPRIATED FEDERAL FUNDS**

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriate funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_  
Name (please type or print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title



## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLLA Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLLA Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

**EXHIBIT C**  
**Service Providers Cost**  
**Certification of Final Indirect Costs**

This is to certify that I have reviewed this Proposal to establish final indirect cost rates and to the best of my knowledge and belief:

1. All costs included in this Proposal **(Identify Proposal and Date)** to establish final indirect cost rates for **(Agreement Term)** are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) of title 48, Code of Federal Regulations (CFR), part 31; and
2. This proposal does not include any costs which are expressly unallowable under applicable cost principles of the FAR of 48 CFR part 31.

Firm Name: \_\_\_\_\_

Signature of Certifying Official\*: \_\_\_\_\_

Name of Certifying Official\*: \_\_\_\_\_

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

Date of Execution: \_\_\_\_\_

\*Certifying Official shall be an individual executive or financial officer of the Service Provider's organization at a level no lower than a Vice President or Chief Financial Officer, or equivalent, who has the authority to represent the financial information utilized to establish the indirect cost rate proposal submitted for acceptance.

## EXHIBIT D INSURANCE

A. Insurance Coverages. Contractor shall provide and maintain insurance, acceptable to TTD, in full force and effect throughout the term of this Agreement, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services by SERVICE PROVIDER, its agents, representatives or employees. SERVICE PROVIDER shall procure and maintain the following scope and limits of insurance:

**Only the following “marked” requirements are applicable:**

**X** **Commercial General Liability (CGL):** Insurance written on an occurrence basis to protect SERVICE PROVIDER and TTD against liability or claims of liability which may arise out of this Agreement in the amount of one million dollars (\$1,000,000) per occurrence and subject to an annual aggregate of two million dollars (\$2,000,000). Coverage shall be at least as broad as Insurance Services Office form Commercial General Liability coverage (Occurrence Form CG 0001). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. additional insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

**X** **Vehicle Liability Insurance:** Vehicle liability insurance in an amount not less than \$1,000,000 for injuries, including accidental death, to any one person, and subject to the same minimum for each person, in an amount not less than one million dollars (\$1,000,000) for each accident, and property damage insurance in an amount of not less than one million dollars (\$1,000,000). A combined single limit policy with aggregate limits in an amount of not less than \$2,000,000 shall be considered equivalent to the said required minimum limits. Coverage shall be at least as broad as Insurance Services Office form number CA 0001 covering Automobile Liability, including code 1 "any auto" and endorsement CA 0025, or equivalent forms subject to the approval of TTD.

**X** **Workers' Compensation Insurance:** Workers' Compensation insurance as required by the State of California and/or Nevada and a minimum of one million dollars (\$1,000,000) of employers' liability coverage. SERVICE PROVIDER shall provide an endorsement that the insurer waives the right of subrogation against TTD and its respective elected officials, officers, employees, agents and representatives. In the event a claim under the provisions of the California Workers' Compensation Act is filed against TTD by a bona fide employee of SERVICE PROVIDER participating under this Agreement, SERVICE PROVIDER is to defend and indemnify TTD from such claim.

**X** **Professional Liability Insurance:** Professional liability insurance appropriate to the SERVICE PROVIDER's profession in an amount not less than one million dollars \$1,000,000 per occurrence. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to Services performed under this Agreement. The insurance must be maintained for at least three (3) consecutive years following the completion of SERVICE PROVIDER's services or the termination of this Agreement. During this additional three (3) year period, SERVICE PROVIDER shall annually and upon request of TTD submit written evidence of this continuous coverage.

B. Other Provisions. Insurance policies required by this Agreement shall contain the following provisions:

1. All Coverages.

a. Each insurance policy required by this Agreement shall be endorsed and state the coverage shall not be suspended, voided, cancelled by the insurer or either Party to this Agreement, reduced in coverage or in limits except after 30 days' prior written notice by certified mail, return receipt requested, has been given to TTD.

b. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

2. Commercial General Liability and Automobile Liability Coverages.

a. TTD, and its respective elected and appointed officers, officials, and employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities SERVICE PROVIDER performs; products and completed operations of SERVICE PROVIDER; premises owned, occupied or used by SERVICE PROVIDER; or automobiles owned, leased, hired or borrowed by SERVICE PROVIDER. The coverage shall contain no special limitations on the scope of protection afforded to TTD, and their respective elected and appointed officers, officials, or employees.

b. SERVICE PROVIDER's insurance coverage shall be primary insurance with respect to TTD, and its respective elected and appointed, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by TTD, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, SERVICE PROVIDER's insurance.

c. SERVICE PROVIDER's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

d. Any failure to comply with the reporting or other provisions of the insurance policies, including breaches of warranties, shall not affect coverage provided to TTD, and its respective elected and appointed officers, officials, employees or volunteers.

e. The insurer waives all rights of subrogation against TTD, its elected or appointed officers, officials, employees or agents.

3. Workers' Compensation Coverage. Unless the District Manager otherwise agrees in writing, the insurer shall agree to waive all rights of subrogation against TTD, and its respective elected and appointed officers, officials, employees and agents for losses arising from work performed by SERVICE PROVIDER.

C. Other Requirements. SERVICE PROVIDER agrees to deposit with TTD, at or before the effective date of this Agreement, certificates of insurance necessary to satisfy TTD that the insurance provisions of this contract have been complied with. TTD may require that SERVICE PROVIDER furnish TTD with copies of original endorsements effecting coverage required by this Exhibit "C". The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. TTD reserves the right to inspect complete, certified copies of all required insurance policies, at any time.

1. SERVICE PROVIDER shall furnish certificates and endorsements from each subcontractor identical to those SERVICE PROVIDER provides.

2. Any deductibles or self-insured retentions must be declared to and approved by TTD. At the option of TTD, either the insurer shall reduce or eliminate such

deductibles or self-insured retentions as respects TTD or its respective elected or appointed officers, officials, employees and volunteers, or the SERVICE PROVIDER shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.

3. The procuring of such required policy or policies of insurance shall not be construed to limit SERVICE PROVIDER's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement.