

STATE OF NEVADA
DEPARTMENT OF TRANSPORTATION

REQUEST FOR PROPOSAL

140-15-011

Project Specifications and Instructions
for Submitting a Proposal to Furnish

Routine and Special Underwater Bridge Inspections

Statewide

Due: April 2, 2015



Rudy Malfabon, P.E., Director
Department of Transportation

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SECTION I - INSTRUCTIONS TO PROPOSER

The enclosed Request for Proposal (RFP) is being advertised for use in submitting information that will be used to select a firm with whom the Nevada Department of Transportation (DEPARTMENT) hopes to negotiate an agreement for the described services.

The proposals shall be limited by the following:

1. The proposal must respond to the Evaluation Criteria Items, which must be identified and presented in the same order as they appear in Section X - Proposal Content. The responses to the items may be separated by distinctly labeled section dividers.

2. The responses to the Evaluation Criteria Items must be double-spaced, and must not exceed twenty (20) 8½" x 11" pages. 11" x 17" pages will be counted as two (2) pages.

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. Section Dividers that do not contain text or graphics, Cover Letters, Resumes, Nevada State Business Licenses, and Statements of Qualifications do not count towards the page count limitation identified in Paragraph 2 above.

5. Resumes, Nevada State Business Licenses, and Statements of Qualifications (see Attachment B - Statement of Qualification) must be included in an appendix to the proposal.

Exceptions to these stated limitations will be considered during the evaluation process and may, in the DEPARTMENT's sole discretion, result in a proposal being considered non-responsive.

The proposer shall submit one (1) CD containing one (1) typewritten, legible proposal as instructed above as well as in Section X (B), contained within one (1) Portable Document Format (PDF) file. In addition, the DEPARTMENT is testing new functionality with the DEPARTMENT's electronic portal/website, located at www.nevadadot.com/Doing_Business/Vendors/Vendor_Portal_Login.aspx. Proposers are encouraged to also submit the proposal electronically through the portal to assist with our testing, however, this is NOT required.

If the proposer chooses to submit proposals electronically through the above link, Vendor registration is required. If you are not a registered vendor with the DEPARTMENT, please register online using the [vendor registration](#) form and follow the instructions. After submitting the online application, you will receive an email with your registration number. Once you receive the registration number, you will be able to submit your proposal electronically.

Proposals must be received **NO LATER THAN 3:00 P.M. PST, on Thursday April 2, 2015**, and hardcopies must be addressed **exactly** as follows:

Agreement Services
Nevada Department of Transportation
Attn: RFP 140-15-011
1263 South Stewart Street, Room 101A
Carson City, NV 89712

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

Proposals and Statements of Qualifications will first be reviewed to determine if minimum qualification requirements are met. 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 the DEPARTMENT, and without further review.

Qualification Requirements:

- The SERVICE PROVIDER shall have the ability to provide Underwater Inspection Services with all diving operations to be in compliance with OSHA 29 CFR 1910 Subpart T-Commercial Diving Operations (including OSHA Directive CPL-02-00-151), and Association of Diving Contractors International “CONSENSUS STANDARDS for Commercial Diving Operations”;
- The SERVICE PROVIDER shall have the ability to provide a bridge inspection team consisting of three personnel to complete each underwater bridge inspection;
- The SERVICE PROVIDER shall have the ability to furnish all equipment and commercial dive equipment to be used throughout the Project;
- The SERVICE PROVIDER shall have a Professional Engineer, registered in the State of Nevada, as part of their team to sign the final copy of all inspection reports;

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

Confidential Information, Trade Secrets, and/or Proprietary Information must be uploaded into the Confidential/Proprietary folder provided on the Vendor Proposal webpage if submitted electronically, or sealed in a separate package with each page clearly marked “Confidential” if submitted as a hardcopy. The failure to separate and mark this information as per NRS 333.020 and 333.333 shall constitute a complete waiver of any and all claims for damages caused by release of the information by the DEPARTMENT. If the DEPARTMENT reviews the confidential information and determines that the information is not considered confidential pursuant to NRS Chapter 333, the DEPARTMENT will contact the proposer. The proposer must advise the DEPARTMENT as to whether it either accepts the DEPARTMENT’s determination that the information is not confidential, or withdraws the information. The proposer will not be allowed to alter the proposal after the date and time set for receipt of proposals shown above. Notwithstanding the provisions in NRS Chapter 333, the DEPARTMENT retains its immunity pursuant to the provisions of NRS 239.012 for any “good faith” release of information, and the immunities from liability provided to it pursuant to NRS Chapter 41.

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

The DEPARTMENT reserves the right to issue addenda to this RFP prior to the closing date. If a firm chooses to download this procurement from the <http://www.nevadadot.com> website, it is the firm’s responsibility to check for any addendums to this procurement from the <http://www.nevadadot.com> website.

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

The prime 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 the DEPARTMENT. All companies performing work for the DEPARTMENT are required to be qualified by the DEPARTMENT in the appropriate disciplines prior to execution of an agreement for the work described herein. 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. If the RFP is for an engineering discipline, each firm of a Joint Venture must be qualified by the DEPARTMENT by having a Nevada licensed Professional Engineer on staff; 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. Only those entities that have authority to sign on behalf of the Joint Venture or the members of the Joint Venture, as applicable, may sign the proposal. The individuals so named must be Nevada licensed Professional Engineers at the time of submission; pending licenses do not qualify.

With this RFP, the proposer is furnished a copy of an Agreement sample (see Attachment E - Agreement Sample). To maintain consistency between the DEPARTMENT and its SERVICE PROVIDERS, only those portions of the Agreement sample which are open for negotiation shall be blank.

A pre-negotiation audit may be required by the DEPARTMENT's Internal Audit Division. All DEPARTMENT audits will be conducted in accordance with the AASHTO Uniform Audit and Accounting Guide 2012, which can be found at www.transportation.org. The Specific Rates of Compensation method of compensation shall be used for the proposer's services, as set forth in 48 CFR Chapter 1.

The following rules of contact shall apply during this procurement for the project:

A. After release of the RFP and through the Notice of Intent to the Notice of Award of the agreement, the proposers shall **ONLY** correspond with the DEPARTMENT regarding this RFP through the DEPARTMENT's designated representative as per NAC 333.155. The designated representative's contact information is:

Agreement Services
Nevada Department of Transportation
1263 South Stewart Street, Room 101A
Carson City, Nevada 89712
Phone: 775-888-7070, Option 1
Fax: 775-888-7101
agreeservices@dot.state.nv.us

B. The proposers shall not contact the DEPARTMENT's employees, including department 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;

C. Any communications determined to be improper may result in disqualification, at the sole discretion of the DEPARTMENT;

D. Any official information regarding the RFP will be disseminated by the DEPARTMENT. Specific information necessary for the preparation of proposals will be disclosed to all proposers;

E. The DEPARTMENT will not be responsible for any oral exchange or any other information or exchange that occurs outside the official process specified herein.

SECTION II - PROPOSER QUESTIONS

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

Any questions raised by proposers must be submitted in writing to Agreement Services, 1263 South Stewart Street, Room 101A, Carson City, Nevada, 89712, faxed to (775) 888-7101, submitted electronically on the Open Procurements section of www.nevadadot.com, or emailed to agreeservices@dot.state.nv.us and **received by 3:00 P.M. PST, on March 23, 2015**. Written responses will be distributed by the DEPARTMENT on or before **March 26, 2015**.

SECTION III - RFP SCHEDULE

Task	Date
Advertised	03/12/15 and 03/19/15
Proposers' Questions Due	03/23/15
DEPARTMENT's Response to Proposers' Questions Distributed	03/26/15
Proposal Due	04/02/15

SECTION IV - DBE REQUIREMENTS

There are no Disadvantaged Business Enterprise (DBE) requirements for the project.

SECTION V - 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.

Firms 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 firm 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, its willingness to adhere to this requirement by providing 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.

Award of any RFP 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, the DEPARTMENT will deem the proposer to be non-responsive, and the DEPARTMENT shall proceed to negotiate with the next most qualified firm, and so on, until an agreement, that is acceptable to the DEPARTMENT, 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. Business licenses can be obtained immediately by applying on-line; however, paper applications may take several weeks to process.

SECTION VI - SELECTION PROCESS

Selection will be based on the factors listed in the Evaluation Criteria Items section (see Section X (A)), which will be used by a Review Committee to evaluate the proposals. If the committee elects, in its sole discretion, to conduct oral interviews, each proposer in the competitive range shall be notified of the interview schedule, and will be required to confirm their willingness to attend the oral 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. The committee tasked with ranking the proposals will be comprised of DEPARTMENT staff and other members representing local entities, who shall remain anonymous to protect the integrity of the procurement process.

The committee may use the information submitted in the proposer's proposal package, the information referencing 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 shall be negotiated following the selection of a firm. If an acceptable agreement cannot be reached with the highest ranked firm, the DEPARTMENT shall proceed to negotiate with the next highest ranked firm, and so on, until an acceptable agreement is negotiated, or the DEPARTMENT, in its sole discretion, elects to terminate the solicitation.

SECTION VII - BACKGROUND

Nevada is required to conduct underwater bridge inspections and report the findings of such inspections to the Federal Highway Administration. In addition, special inspections are often needed in situations when damage occurs to structures for a variety of reasons including, but not limited to, flooding, seismic events, impact damage, excessive scour, and weather conditions.

Routine Underwater Bridge Inspections are typically done on an annual (12 month) or four year (48 month) cycle. Special Underwater Bridge Inspections are completed on an as needed basis.

Underwater Bridge Inspections require a level of expertise that Nevada does not currently hold within the DEPARTMENT. The SERVICE PROVIDER shall be responsible for conducting all underwater inspections with the criteria established in Attachment A.

SECTION VIII - SCOPE OF SERVICES

See Attachment A.

SECTION IX - PROJECT SCHEDULE

The term of the agreement is approximately forty-eight (48) months. Inspections shall occur throughout the year, so there will be periods when no inspections will be performed. Furthermore, traffic control, when needed for inspections, must be coordinated with the DEPARTMENT's District I (Las Vegas), District II (Reno), and District III (Elko) headquarter offices. District restrictions may require working weekends or other "off-peak" hours to minimize traffic impacts due to inspection operations.

SECTION X - PROPOSAL CONTENT

A section of the proposal shall be devoted to each Evaluation Criteria Item. The proposal must be signed by the individual(s) legally authorized to bind the firm as per NRS 333.337.

A. EVALUATION CRITERIA ITEMS

- 1. Project Approach:** Proposer's understanding of project requirements contained in the scope of services. Identification of specific methods to be used to complete the project requirements, both for routine underwater inspections as well as emergency underwater inspections. Identification of potential complications or difficulties that may be encountered in the implementation of required services along with suggested solutions.
- 2. Project Team:** Proposer's summary of education (engineering and commercial diver education) and past experience with similar projects for each team member of the proposer's staff who will be assigned to this project. List all relevant licenses and certifications for each member for the proposed team. Provide an organizational chart for the proposed project team.
- 3. Availability and Capacity:** Proposer's technical equipment which will support this effort. Proposer's demonstration of the availability of the key project team members for the duration of the project.
- 4. Past Performance:** Proposer's detailed description of past performance in terms of work completed within the last three (3) years with similar projects and identified references. Reference names and phone numbers should be included with each project.
- 5. Proximity of Project Team:** Proposer's knowledge of the locality of the project. Identification of proximity of the project team's location to the DEPARTMENT's Headquarters.

No cost information is to be provided with the proposal. The selection will be based on the proposal offering the best qualifications to the DEPARTMENT. Cost shall be negotiated with the most qualified firm after conclusion of the evaluation process

B. PROPOSAL LIMITATIONS

The proposals shall be limited by the following:

1. The proposal must respond to the Evaluation Criteria Items, which must be identified and presented in the same order as they appear in Section X - Proposal Content. The responses to the items may be separated by distinctly labeled section dividers.
2. The responses to the Evaluation Criteria Items must be double-spaced, and must not exceed twenty (20) 8½" x 11" pages. 11" x 17" pages will be counted as two (2) pages.
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. Section Dividers that do not contain text or graphics, Cover Letters, Resumes, Nevada State Business Licenses, and Statements of Qualifications do not count towards the page count limitation identified in Paragraph 2 above.
5. Resumes, Nevada State Business Licenses, and Statements of Qualifications (see Attachment B - Statement of Qualification) must be included in an appendix to the proposal.

Exceptions to these stated limitations will be considered during the evaluation process and may, in the DEPARTMENT's sole discretion, result in a proposal being considered non-responsive.

C. DISCLOSURE OF CURRENT AND FORMER STATE EMPLOYEES

Proposals from firms employing current employees or former employees of the State of Nevada will be considered pursuant to the requirements and limitations set forth in the NRS Chapter 333.705, and the State Administrative Manual, Sections 322 and 323.

If the apparent top-ranked firm proposes any current state employees or former state employees who left state service within the preceding two (2) years, the DEPARTMENT must request approval from the State Board of Examiners (BOE) prior to entering into an agreement with such firm. The proposer shall submit, as part of their proposal, the "Authorization Current Employee, Authorization Former Employee Form" to assist the DEPARTMENT in requesting approval from the BOE.

The forms are located at http://purchasing.state.nv.us/contracting/current_and_former.htm. In the event of a denial by the BOE, the proposer will be allowed one (1) opportunity to replace the disapproved employee with another employee who possesses substantially equivalent capabilities. The DEPARTMENT has the authority to approve or deny the equivalent employee.

SECTION XI - AWARD PROCESS

The DEPARTMENT shall issue its Notice of Intent in accordance with NAC §333.170. Any award is contingent upon the successful negotiation of final contract terms and upon approval of the Transportation Board, when required. Negotiations shall be confidential and not subject to disclosure to competing firms. The terms agreed to by the parties shall be confidential until an agreement is executed. If contract negotiations cannot be concluded successfully, the DEPARTMENT, at its sole discretion and upon written notice to all firms, may negotiate a contract with the next highest ranking firm or withdraw the RFP and cancel this procurement.

The DEPARTMENT shall issue a Notice of Award in accordance with NAC §333.170, at which time proposals are no longer confidential and can be requested by the public from the DEPARTMENT via a Public Records Request, which can be located at: www.nevadadot.com/Contact_Us/Public_Records_Requests.aspx.

SECTION XII - TERMS, CONDITIONS AND EXCEPTIONS

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

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

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

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

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

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

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

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

A proposal submitted in response to this RFP must identify any sub-consultants, and outline the contractual relationship between the awarded proposer and each such sub-consultant. An official of each proposed sub-consultant must sign, and include as part of the proposal submitted in response to this RFP, a statement to the effect that the sub-consultant has read this RFP, and agrees to abide by the awarded proposer's obligations. A sub-consultant's compliance with these requirements does not create a contractual relationship between the sub-consultant and the DEPARTMENT.

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

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

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

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

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

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

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

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

SECTION XIII - PROTEST PROCEDURE

Protests 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 the DEPARTMENT's authority, and/or
2. A determination as to whether a proposal is responsive to the requirements of the RFP, or failed any Pass/Fail criteria, as applicable, and/or
3. 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 the DEPARTMENT distributes the related addenda.

Protests concerning the issues described in Section XIII (2) must be filed within ten (10) calendar days after the DEPARTMENT 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 the DEPARTMENT issues the Notice of Award.

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

B. PROTEST CONTENTS

Protests shall include information about the protesting firm, including the firm's name, mailing 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 filed by hand delivery on or before the applicable deadline to:

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

The proposer filing the protest shall concurrently submit a copy of the protest to the other proposers; the other proposers' addresses may be obtained from the DEPARTMENT.

D. COMMENTS FROM OTHER PROPOSERS

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

E. BURDEN OF PROOF

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

F. DECISION ON PROTEST

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

G. PROTESTER'S PAYMENT OF COSTS

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

H. RIGHTS AND OBLIGATIONS OF PROPOSERS

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

No Stay Pending Final Determination: Agreement negotiations with the selected proposer 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 - Scope of Services
- Attachment B - Statement of Qualification
- Attachment C - Checklist
- Attachment D- Title VI Compliance Questionnaire
- Attachment E - Agreement Sample

**Attachment A
Scope of Services**

2015-2018 UNDERWATER BRIDGE INSPECTION

The scope of services for this agreement shall consist of Underwater Inspections of bridges located throughout the State of Nevada, during the calendar years of 2015-2018. Detailed discussion of this work follows.

This agreement shall include Routine Underwater Diving Inspections of pre-identified bridges located in DEPARTMENT Districts I, II, and III, as well as any additional bridges determined to require Routine Underwater diving inspection during the agreement period.

This agreement shall include Special Underwater Inspections that are defined as any underwater inspections that are requested by the DEPARTMENT at any time during the agreement period. In general, Special Underwater Inspections will be requested when damage or deterioration has occurred to a bridge due to unplanned events, both natural (i.e. flooding, earthquakes, etc.) and manmade (i.e. accidents or impact damage), however, the DEPARTMENT may request a Special Underwater Inspection for any reason in which a change of condition is suspected.

The SERVICE PROVIDER shall provide an underwater bridge inspection team consisting of a minimum of three personnel, to complete each underwater bridge inspection. The SERVICE PROVIDER shall be responsible for the accuracy of the information collected at each bridge site, as well as all report preparation. The SERVICE PROVIDER shall also provide all necessary inspection and commercial dive equipment to be used throughout the agreement. All diving operations shall be conducted in compliance with OSHA 29 CFR 1910 Subpart T-Commercial Diving Operations (including OSHA Directive CPL 02-00-151), and Association of Diving Contractors International "CONSENSUS STANDARDS For Commercial Diving Operations".

Notes:

- All bridge elements generally lie in less than 10 feet of water depth. Anticipated water velocities are less than 1.0 kt. At all pre-identified sites during inspection season. Visibilities are generally 1 foot to 3 feet. Water temperatures vary between high 40's to mid 60's (degrees Fahrenheit) during anticipated inspection season. Diving can generally be done from shore, with no diving boat needed.
- For all bridges, channel cross section measurements shall be taken directly along the upstream bridge fascia, at a minimum. Site-specific conditions may warrant that additional channel profile, pier scour measurements be taken.

KNOWN BRIDGES REQUIRING INCREASED FREQUENCY UNDERWATER DIVING INSPECTIONS

The following SEVEN (7) bridges have each been assigned a 12 month frequency for Underwater Inspection. As such, each bridge will likely require a Routine Underwater Inspection in calendar year 2015, 2016, 2017 and 2018.

District II

<u>BRIDGE #</u>	<u>LOCATION</u>	<u>IN WATER</u>	<u>DONI</u>
B 28	SR 396 over Humboldt River; Lovelock	7 Pile Bents	9/08/2015
B 178	Virginia Street over Truckee River; Reno	2 Abuts/ 1 Pier	9/07/2015
B 303	Sierra St. over Truckee River; Reno	2 Abuts/ 1 Pier	9/07/2015

B 474	Muller Lane/W. Chnl Carson River; Minden	1 Pier	9/07/2015
B 364	Old SR 8A Over Quinn River	2 Abuts/ 2 Piers	9/08/2015

District III

BRIDGE #	LOCATION	IN WATER	DONI
B 395	US 40; near Dunphy	4 Piers, Maximum	9/09/2015
B541	SR 225/ E. Fork Owyhee River; Mtn. City	2 Barrel RCB	9/10/2015

Note that additional bridges could be added to this Increased Frequency Inspection listing, as a result of any conditions that may cause damage or deterioration occurring to Nevada’s bridge inventory during the agreement period.

KNOWN BRIDGES REQUIRING ROUTINE UNDERWATER DIVING INSPECTIONS

There are approximately 60 bridges requiring routine underwater inspections in 2015 and 3 bridges requiring routine underwater bridge inspections in 2016. Routine inspections are to be done from July 2015 through September 2015 and are located throughout the State of Nevada.

Note that additional bridges may be added to the routine underwater roster during the agreement period.

PROVISIONS FOR ALL ROUTINE AND SPECIAL UNDERWATER INSPECTIONS

For all inspections, an underwater structural and scour inspection shall be conducted at each bridge, following criteria outlined in FHWA’s “Bridge Inspector’s Reference Manual”, AASHTO’s “The Manual for Bridge Evaluation”, the National Bridge Inspection Standards, DEPARTMENT policy and as by the DEPARTMENT’s Assistant Chief Structures Engineer – Inventory/Inspection. Documentation to be provided shall include updated waterway cross-section measurements along the upstream fascia of each bridge, along with sketches and photos of significant deficiencies, as appropriate.

Inspection reports for each bridge inspection shall be prepared by the SERVICE PROVIDER, using the DEPARTMENT’s computerized inspection reporting program. Both electronic and hard-copy records shall be submitted to the DEPARTMENT. All bridge inspection reports submitted to the DEPARTMENT shall be reviewed by a Professional Engineer registered in the State of Nevada, and shall bear that engineer’s validated stamp indicating that all work has been completed in a proper and professional manner. The individual providing this review shall be the SERVICE PROVIDER’s Project Manager or (with prior DEPARTMENT approval) his/her designated representative.

The SERVICE PROVIDER shall perform inspections in a timely manner. All inspections shall commence no sooner than thirty (30) calendar days prior to the “Date of Next Inspection” (“DONI”) assigned by the DEPARTMENT, and no later than the last day of the month on the of the assigned “DONI”. SERVICE PROVIDER should attempt to conduct all inspections coinciding as close to the structure’s assigned “DONI” as is feasible. Bridge inspection reports for each bridge shall be completed and submitted no later than forty-five (45) calendar days following the date of inspection. Any inspection report subsequently returned to the SERVICE PROVIDER for correction shall be re-submitted to the DEPARTMENT for final acceptance no later than seventy-five (75) calendar days following the date of inspection.

Attachment B
Statement of Qualification

An electronic copy can be found here:

http://www.nevadadot.com/uploadedFiles/NDOT/Doing_Business/Vendors/Statement_of_Qualification_Form.pdf

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

1. Date prepared: _____
2. Firm's name: _____
3. Firm's address: _____
Phone: _____ FAX: _____
4. Is your local office the main office? _____ or branch office? _____ or sole office? _____
5. Year your firm was established: _____
6. Year your local office was established: _____
7. Location of:
 - a. Main office: _____
 - b. Local office: _____
 - c. Invoice remit-to office: _____
8. Year former firm(s) were established:
 - a. _____
 - b. _____
 - c. _____
 - d. _____
9. Name, title, telephone number, address and e-mail address of one principal in firm who may be contacted:

10. List locations of other offices (no more than five):

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

11. Total employees presently employed:
- a. At your local Northern Nevada office: _____
 - At your local Southern Nevada office: _____
 - b. Total in your firm: _____
12. By category, give the number of projects your firm is working on / has worked:
- | | <u>Current/Active</u> | <u>Last Five (5) Years</u> |
|------------------------|-----------------------|----------------------------|
| a. Public/Governmental | _____ | _____ |
| b. Commercial | _____ | _____ |
| c. Residential | _____ | _____ |
| d. Other | _____ | _____ |
13. Nevada Department of Transportation encourages the participation and utilization of minority and women-owned businesses.
- a. Is your firm certified as a minority-owned, women-owned or disabled veteran-owned business?
 Yes ___ No ___ Specify _____
 - b. If yes, by what governmental agency? _____
14. Specialty: _____ (i.e.: Project Management, etc.)

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

I. Briefly describe your specialty as it applies to this Project's discipline, and the scope of the services that your firm provides.

II. Select three recent projects that have applicability to this Project, and list a reference that the DEPARTMENT may contact for each.

PROJECT NAME	REFERENCE	TELEPHONE
		()
		()
		()

Attachment C Checklist

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

1. Number of Pages within Page Range (see Section X (B))
2. Sections match Evaluation Criteria Items (see Section X (A))
3. Technical Proposal
4. Statement of Qualification (see Section X (B))
5. Nevada State Business License (see Section V)
6. Nevada Contractor's or Professional Engineer's License

Attachment D
Title VI Compliance Questionnaire

Title VI is a statute provision of the Civil Rights Act of 1964:

“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” (42 U.S.C. Sec 2000d)

The following information will be used by the Nevada Department of Transportation (DEPARTMENT) and the Federal Highway Administration (FHWA) for statistical purposes only. This information will be stored confidentially, and will not affect any decisions made by the DEPARTMENT.

Your participation is voluntary, but would be greatly appreciated.

Choose one ethnic group with which the principal owner(s) most identify:

- Black** (Not of Hispanic origin: All persons having origins in any of the Black racial groups.)
- Asian/Pacific Islander** (All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.)
- Hispanic** (All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.)
- Native American** (All persons having origins in any of the original peoples of North America and who maintain cultural identification through a tribal affiliation or community recognition.)
- White** (Not of Hispanic origin: All persons having origins in any of the original peoples of Europe, North Africa, or Middle East.)
- Other** (All persons not matching one of the other choices.)

Sex: Male Female

- I understand my participation is voluntary and decline to provide the requested information

Firm Name: _____

Owner Name (Print): _____

Owner Name (Sign): _____

Date: _____

Attachment E
Agreement Sample
SERVICE AGREEMENT

This Agreement, made and entered into the _____ day of _____, _____ by and between the STATE OF NEVADA, acting by and through its DEPARTMENT OF TRANSPORTATION (hereinafter "DEPARTMENT") and **NAME AND ADDRESS** (hereinafter "SERVICE PROVIDER"). Individually they are each a "Party" and collectively they are the "Parties."

WITNESSETH:

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

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

WHEREAS, **PROJECT IDENTIFICATION**, is necessary for **PROJECT EXPLANATION** (hereinafter "PROJECT"); and

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

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

ARTICLE I - SCOPE OF SERVICES

1. The SERVICE PROVIDER agrees to **SUMMARIZE PROJECT DESCRIPTION OR INSERT**: perform services listed in Attachment A - Scope of Services attached hereto and incorporated herein.
2. The SERVICE PROVIDER agrees to furnish all labor, materials, services, equipment, tools and other expenses necessary to perform the professional services required under the terms of this Agreement, except as specifically provided otherwise herein.
3. The SERVICE PROVIDER agrees to comply with all requirements contained in the underlying Request for Proposal which is incorporated into this Agreement by reference. **ONLY USE PARAGRAPH IF APPLICABLE**

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 the DEPARTMENT prior to such term expiration date.

OR

1. The term of this Agreement shall be from the date first written above through and including **DATE**, thereby terminating **NUMBER (#)** years from the above date or upon completion of the case, including any appeal, whichever comes first. **ONLY USE PARAGRAPH FOR EXPERT WITNESS OR LEGAL**

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

3. The SERVICE PROVIDER, on behalf of itself, its spouses, heirs, executors, administrators, successors, subrogees, servants, insurers, attorneys, independent representatives, personal representatives, agents, and assigns, does hereby waive, release, and forever discharge the State of Nevada, the DEPARTMENT, and each and every of their departments, divisions, agencies, officers, directors, agents, contractors, and employees, from any and all claims, demands, liens, liability, actions, causes of action, and suits for damages, at law and in equity, in any way connected with or arising from the SERVICE PROVIDER's provision of services and work performed following termination of this Agreement, and/or

following the expiration date of this Agreement, as it may be amended from time to time through written amendment signed by the parties hereto and approved by appropriate official action of the DEPARTMENT's governing body, prior to such expiration date.

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

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

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

OR

6. The SERVICE PROVIDER shall not proceed with work until the SERVICE PROVIDER receives a written "Notice to Proceed" from the DEPARTMENT. 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 the DEPARTMENT or any of its agents, employees, or affiliates, or on any dates of performance, deadlines, indemnities, or any other term contained in this Agreement or otherwise prior to the Notice to Proceed and/or Final Execution Date. In the event the SERVICE PROVIDER violates the provisions of this Section, the SERVICE PROVIDER waives any and all claims and damages against the DEPARTMENT, its employees, agents, and/or affiliates, including but not limited to monetary damages and/or any other available remedy at law or in equity arising under the terms of this Agreement. **ONLY USE PARAGRAPH FOR PARTIALLY OR FULLY FEDERALLY FUNDED PROJECTS**

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

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

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

9. The SERVICE PROVIDER shall assign one individual throughout the life of this Agreement who shall have overall PROJECT responsibility unless illness or termination requires replacement. **IF APPLICABLE ADD:** 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, Chapter 625.

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

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

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

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

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

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

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

11. 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.

12. 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 **OR** SERVICE PROVIDERS performing the same or similar services at the time said services are performed.

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

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

15. The SERVICE PROVIDER shall not assign or subcontract, any of the professional services performed under this Agreement without the prior written approval of the DEPARTMENT. The SERVICE PROVIDER will, subsequent to obtaining written approval from the DEPARTMENT, provide the DEPARTMENT with a copy of the contract or agreement for professional services. The SERVICE PROVIDER shall require any subcontractor to comply with all provisions of 48 CFR Chapter 1, Part 31, in its agreement with the subcontractor, if the SERVICE PROVIDER subcontracts any professional services contemplated by this Agreement. The SERVICE PROVIDER will be responsible for any costs or deficiencies resulting from noncompliance if the subcontractors fail to comply with 48 CFR Chapter 1, Part 31.

16. The SERVICE PROVIDER agrees to complete and sign Attachment B - "AFFIDAVIT REQUIRED UNDER SECTION 112(c) of Title 23 United States Code, Act of August 27, 1958 and Part 29 of Title 49, Code of Federal Regulations, November 17, 1987," Attachment C - "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. **ONLY USE PARAGRAPH IF PROJECT IS FEDERALLY FUNDED; RE-LETTER ATTACHMENTS IF NECESSARY**

17. The SERVICE PROVIDER acknowledges that the DEPARTMENT has established a Disadvantaged Business Enterprise (DBE) participation requirement of **NUMBER** percent (#%) 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 U.S.C. § 632 or by 49 CFR Subtitle A, Part 26. **ONLY USE PARAGRAPH IF APPLICABLE**

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, the DEPARTMENT 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 the DEPARTMENT;

(c) Remove the SERVICE PROVIDER from the prequalified list for repeated violations, falsifications, or misrepresentations; and/or

(d) Terminate the Agreement.

19. This Agreement shall not become effective until and unless approved by the State Board of Examiners. **ONLY USE PARAGRAPH IF APPLICABLE**

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

ARTICLE III - TERMINATION

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV - COST

CHOOSE ONE OF THE FOLLOWING METHODS OF PAYMENT

COST PLUS FIXED FEE

1. The "cost plus fixed fee" method of compensation shall be used for the SERVICE PROVIDER's services.

2. Costs shall include direct salary costs, other direct costs, indirect costs and fixed fee as set forth in 48 CFR Chapter 1, Part 31, incorporated herein by reference. The total cost for direct salary costs, other direct costs and indirect costs shall not exceed the sum of **NUMBER** and **#/100 Dollars (\$#)**. The fixed fee, to cover profit, shall be **NUMBER** and **#/100 Dollars (\$#)**. This fixed fee will not vary irrespective of final PROJECT costs except in the event of a material and substantial change to the PROJECT scope.

3. Indirect costs (overhead) of the SERVICE PROVIDER shall be apportioned among all professional services projects being done by the SERVICE PROVIDER during the term of this Agreement and will be billed at the provisional indirect cost rate of **NUMBER** percent (**#%**) of direct labor costs. This rate may be adjusted to the actual indirect cost rate at the time of final audit.

4. The total cost of the services by the SERVICE PROVIDER shall not exceed the sum of **NUMBER** and **#/100 Dollars (\$#)**, which includes the fixed fee.

5. The SERVICE PROVIDER agrees to complete and sign Attachment D - Service Provider Cost Certification of Final Indirect Costs, attached hereto and incorporated herein. **ONLY USE FOR PROJECTS PARTIALLY OR FULLY FEDERALLY FUNDED; RE-LETTER ATTACHMENTS IF NECESSARY**

LUMP SUM

1. "The lump sum" method of compensation shall be used for the SERVICE PROVIDER's services.
2. The total cost of the services by the SERVICE PROVIDER shall not exceed the sum of **NUMBER** and #/100 Dollars (\$#). **IF APPLICABLE ADD:** Payment will be based on actual quantities delivered/services provided.
3. The cost of the work to be performed under this Agreement will be paid for by the DEPARTMENT upon completion **OR** monthly **OR** bi-weekly **OR** quarterly **OR** semi-annual **OR** yearly and upon acceptance of the work. **IF APPLICABLE ADD:** The DEPARTMENT will certify the work and enumerate all costs of the work by utilizing the bid proposal. Payment will be based upon the prices shown in the bid proposal, attached hereto and incorporated in Attachment E. **RE-LETTER ATTACHMENTS IF NECESSARY**
4. No additional costs shall be allowed to the SERVICE PROVIDER for assistance by, or services of others, except by express permission in writing by the DEPARTMENT.
5. The SERVICE PROVIDER shall furnish the DEPARTMENT, on the form provided, prior to commencement of work, the performance and labor and material bonds in the amount equal to the cost of the contract. **ONLY USE FOR PUBLIC WORKS PROJECTS**
6. The DEPARTMENT shall pay the SERVICE PROVIDER in installments, based upon monthly progress reports showing the status of the professional services and the degree of completion. The DEPARTMENT, at its discretion, may by written notification waive this limitation.

COST PER UNIT OF WORK

1. The "cost per unit of work" 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 (\$#).

INCLUDE HERE OR ADD AS AN ATTACHMENT

3. The DEPARTMENT will pay the SERVICE PROVIDER in monthly installments based upon progress and final payment reports submitted by the SERVICE PROVIDER in the DEPARTMENT's format and in accordance with the unit price scheduled in this Agreement.

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 fixed fee.
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. The DEPARTMENT will pay the SERVICE PROVIDER in monthly installments based upon progress and final payment reports submitted by the SERVICE PROVIDER and as approved by the DEPARTMENT. **ONLY USE PARAGRAPH IF APPLICABLE**

5. The SERVICE PROVIDER is required to submit a monthly progress report in the DEPARTMENT'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 D - Service Provider Cost Certification of Final Indirect Costs, attached hereto and incorporated herein. **ONLY USE FOR PROJECTS PARTIALLY OR FULLY FEDERALLY FUNDED; RE-LETTER ATTACHMENTS IF NECESSARY**

IF APPLICABLE, INSERT THE FOLLOWING THREE PARAGRAPHS AT THE END OF THE METHOD OF COMPENSATION CHOSEN AND RENUMBER THEM ACCORDINGLY, EXCEPT WHEN THE LUMP SUM METHOD OF PAYMENT IS USED, IN WHICH CASE THEY ARE NOT TO BE INSERTED.

X. Travel costs will be reimbursed at the current rates allotted to state employees. Travel costs will be reimbursed based on actual costs limited by Federal Travel Regulations (FTR) and the CONUS rate for Nevada. The FTR breaks down meals and incidental expenses at its website: www.gsa.gov/mie. The first and last travel days are calculated at seventy-five percent (75%). The lodging rate excludes taxes and fees. Taxes and fees are reimbursable. See this website for lodging in Nevada: <http://www.gsa.gov/portal/category/100120>. The SERVICE PROVIDER shall provide lodging receipts.

X. The SERVICE PROVIDER shall be reimbursed for the use of company vehicles as agreed upon with the Project Manager. Cost shall include a direct expense that includes anticipated mileage, insurance, maintenance and a lease fee, if applicable.

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

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

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

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

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

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

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

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

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

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

ARTICLE VI - MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

OR

6. The SERVICE PROVIDER, as a sole proprietor who does not use the services of his employees, if any, shall, before commencing professional services under the provisions of this Agreement, furnish to the DEPARTMENT Attachment E - "Worker's Compensation Insurance Affidavit." **ONLY USE PARAGRAPH IF APPLICABLE; RE-LETTER ATTACHMENTS IF NECESSARY**

7. The SERVICE PROVIDER shall furnish a Certificate of Errors and Omissions Insurance with a minimum limit of One Million and No/100 Dollars (\$1,000,000.00). **INCREASE FROM \$1,000,000.00 UP TO \$3,000,000.00 DEPENDING UPON THE SIZE OF THE PROJECT**

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

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

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

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

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

13. 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 the DEPARTMENT, without limitation. Reuse of said materials, information or data, during performance or following termination of this Agreement, on any other project or for any other purpose except as provided for herein, shall be at the DEPARTMENT's discretion and the DEPARTMENT's sole decision. The SERVICE PROVIDER shall not utilize any materials, information or data obtained as a result of performing the services called for in this Agreement in any commercial or academic publication or presentation without the express written permission of the DEPARTMENT. The SERVICE PROVIDER shall not reference an opinion of an employee or agent of the DEPARTMENT obtained as a result of performing the services called for in this Agreement, in any publication or presentation, without the written permission of the employee or agent to whom the opinion is attributed, in addition to the permission of the DEPARTMENT. **ONLY USE PARAGRAPH IF APPLICABLE**

14. All design drawings must be created and delivered to the DEPARTMENT in Microstation "dgn" format. Drawing files converted to Microstation format from other formats will not be accepted by the DEPARTMENT. Files must be delivered to the DEPARTMENT via FTP or email. All files must adhere to the DEPARTMENT's standards. **ONLY USE PARAGRAPH IF APPLICABLE**

15. All roadway design engineering files must be created and delivered to the DEPARTMENT in InRoads format. Design files converted to InRoads format from other formats will not be accepted by the DEPARTMENT. Files must be delivered to the DEPARTMENT via FTP or email. All files must adhere to the DEPARTMENT's standards. **ONLY USE PARAGRAPH IF APPLICABLE**

16. All reports and notes for special provisions shall be delivered to the DEPARTMENT via FTP or email using the most current version of Microsoft Word. **ONLY USE PARAGRAPH IF APPLICABLE**

17. The SERVICE PROVIDER agrees that any reports, materials, studies, photographs, negatives, drawings or other documents prepared by the SERVICE PROVIDER in the performance of its obligations under this Agreement shall be the exclusive property of the DEPARTMENT. The SERVICE PROVIDER shall remit all such documents to the DEPARTMENT upon completion, termination or cancellation of this Agreement or upon written request of the

DEPARTMENT. The SERVICE PROVIDER shall not use, willingly allow or cause to have such documents used for any purpose other than performance of the SERVICE PROVIDER's obligation under this Agreement, without the prior written consent of the DEPARTMENT. **ONLY USE PARAGRAPH IF APPLICABLE**

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

19. 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, the DEPARTMENT shall have the right to annul this Agreement without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

20. It is the intent of the Parties to avoid and resolve disputes at the lowest level possible. Accordingly, the DEPARTMENT and the SERVICE PROVIDER will enter into a partnering relationship, pursuant to the provisions set forth in Attachment **LETTER**. Any unresolved disputes will be referred to a nonbinding dispute resolution process pursuant to the terms outlined in Attachment **LETTER**. Nothing herein contained shall impair the Parties' right to file suit in the state district courts of the State of Nevada in the event the dispute resolution process is unsuccessful. **ONLY USE PARAGRAPH IF APPLICABLE**

OR

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

21. 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 PROVIDER for professional services to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the SERVICE PROVIDER of the SERVICE PROVIDER's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, age, religion, sex, creed, handicap or national origin.

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

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

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

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

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

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

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

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

b. ADA: The SERVICE PROVIDER and subcontractor shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1980, as amended, and regulations adopted thereunder contained in 49 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.

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

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

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

26. 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.

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

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

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

FOR DEPARTMENT: Rudy Malfabon, P.E., Director
Attn: **DIVISION CHIEF**
Nevada Department of Transportation
Division:
1263 South Stewart Street
Carson City, NV 89712
Phone:
Fax:
E-mail:

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

30. 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.

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

32. 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.

33. In connection with the performance of work under this Agreement, the SERVICE PROVIDER agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, disability, pregnancy, sexual orientation, genetic information (GINA) or gender identity or expression, including, without limitation, with regard to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including without limitation apprenticeship. The SERVICE PROVIDER further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials. **ONLY USE PARAGRAPH FOR STATE FUNDED PROJECTS**

34. 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.

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

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

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

38. 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.

39. 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.

40. 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.

41. 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.

SAMPLE