

**SAMPLE
SERVICE AGREEMENT**

This Agreement, made and entered into on _____, 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 and 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, the DEPARTMENT has determined that a provision of services is required for PROJECT IDENTIFICATION, and such project 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, with the provisions of Attachment A - Scope of Services, 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 5 of this Article II - Performance, shall survive the termination and expiration of this Agreement.

6. The SERVICE PROVIDER shall not proceed with work until the SERVICE PROVIDER receives a written "Notice to Proceed" from 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.

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 (1) 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 (NAC), 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 X - "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 X - "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 USC § 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, and final payment is made.

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 X - 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 annually 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 X. 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 COST PER UNITS 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 rate.

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

4. 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 X - 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.

#. 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.

#. 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.

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

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 a consultant and if necessary 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 written 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 X. Any unresolved disputes will be referred to a nonbinding dispute resolution process pursuant to the terms outlined in Attachment X. 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 be liable to the State of Nevada, and the employees, officers, and agents of the State of Nevada for any liabilities, damages, losses, claims, actions, or proceedings, including, without limitation, reasonable attorney's fees, that are caused by the negligence, errors, omissions, reckless, or intentional misconduct of the SERVICE PROVIDER or the employees or agents of the SERVICE PROVIDER in the performance of this Agreement.

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 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, Nevada 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 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.