



REGIONAL TRANSPORTATION COMMISSION

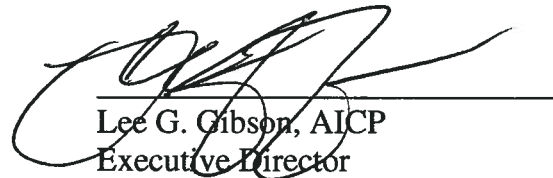
Public Transportation • Streets and Highways • Planning

February 17, 2012

AGENDA ITEM 5.6

TO: Regional Transportation Commission

FROM: Jeff Hale, P.E.
Director of Engineering



Lee G. Gibson, AICP
Executive Director

**SUBJECT: Independent Cost Estimator for the Construction Manager at Risk
Pre-Construction Services for Phase 1 of the SouthEast Connector Project.**

RECOMMENDATION

Approve the selection of Atkins for the Independent Cost Estimator (ICE) for the Construction Manager at Risk for Pre-Construction Services for Phase 1 of the SouthEast Connector; authorize the Executive Director to negotiate and execute a contract.

SUMMARY

One key component of CMAR contracting is that it allows the contractor to submit bids without competition. Bidding can be done at various stages of design development and for multiple construction packages depending upon how the owner decides to phase the construction. To determine if the contractor pricing is acceptable, a third party estimator is often used to provide estimated bids. Some agencies require the third party or ICE and the CMAR to be within 10% of each other before the CMAR bid can be accepted. In the event that there are pricing differences greater than 10%, the line items of the bids are reviewed to determine if the estimators considered the same assumptions for risk and measurement and payment descriptions. In order to reduce the amount of pricing conflicts between the ICE and the CMAR, discussions will be held prior to bidding that are intended to minimize the differences between the ICE and the contractor's price as well as between the engineer's estimate and the contractor's price. These discussions are intended to make sure all the parties understand the issues, that the estimates are based on the same assumptions and that the RTC receives the best possible contract pricing.

Using ICE services to perform independent bidding will ensure that contractor pricing is competitive and reasonable as possible. These services also require expertise not only in construction cost estimating, but risk assessment and scheduling as well.

Independent Cost Estimator services are used by public agencies including NDOT to assist in developing cost estimates and expectations. NDOT recently issued a Request for Proposals for ICE services for their CMAR program and it is included with this item for reference (see Attachment A). A qualified ranked list of five firms was developed from this solicitation. The firm that scored the highest based upon the proposal evaluations was Atkins. In addition to being local, ATKINS has CMAR experience with Utah Department of Transportation and the Southern Nevada RTC for ICE work and if they are approved by the RTC, the work would be managed out of the Reno office.

Authorizing staff to utilize the qualified list developed by the NDOT for ICE services will eliminate a duplication of effort and reduce costs associated with soliciting a new request for proposals.

It is anticipated that these services would cost between \$75,000 and \$150,000.

FISCAL IMPACT

Appropriations for the project design and construction services have been approved in the FY 2013 Regional Road Impact Fee Program of projects and funds are included in the FY 2012 RTC approved budget.

PREVIOUS ACTIONS BY BOARD

There are no previous actions by the Board.

ADVISORY COMMITTEE(S) RECOMMENDATION

There are no advisory committee recommendations pertaining to this agenda item.

Attachment

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STATE OF NEVADA

DEPARTMENT OF TRANSPORTATION

REQUEST FOR QUALIFICATIONS

Instructions for Submitting Qualifications to Furnish

Independent Cost Estimator Services

For the

Construction Manager at Risk Program

in

Statewide



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

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SECTION I - INSTRUCTIONS TO FIRMS

The enclosed "Request for Qualifications" (RFQ) is being advertised for use in submitting information that will be used to establish a shortlist of qualified firms interested in providing Independent Cost Estimator (ICE) services for the Nevada Department of Transportation (NDOT). The ICE services will be in support of NDOT's Construction Manager at Risk (CMAR) Program. Firms interested in providing these services should complete a submittal using the information contained in this RFQ.

This RFQ is part of a two-step procurement process. Step 1 shall include the RFQ submittal, prequalification, a pass/fail evaluation, and establishment of a shortlist of firms by a Review Committee. Step 2 shall include a project specific interview, evaluation, selection, negotiation, and award. Selection of a firm to provide ICE services will be on a qualifications basis in accordance with the evaluation criteria set forth in this RFQ.

Responses to this RFQ must be submitted in a Portable Document Format (PDF). Faxed information will not be accepted. The submittal must be received **NO LATER THAN 3:00 P.M., on January 6, 2012**, and e-mailed to agreeservices@dot.state.nv.us with the e-mail subject line addressed **exactly** as follows: **RFQ Submittal for RFQ for Independent Cost Estimator (ICE) services.**

Submittals 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 State.

The NDOT Prequalification Program currently has no discipline for ICE services. Statements of Qualifications (SOQs) submitted by firms in response to this RFQ will be reviewed to determine if they meet minimum prequalification requirements established for the ICE services. Any submittals that do not meet the minimum prequalification requirements, as outlined below, will be disposed of in an appropriate manner suitable to the State without further review. The ICE discipline will be a non-engineering discipline. An "NDOT Statement of Qualification" form will be required as part of this RFQ submittal. The Statement of Qualification form for non-engineering disciplines is included as an attachment to this RFQ and may also be obtained by contacting NDOT Agreement Services at (775) 888-7070 or visiting the website at www.nevadadot.com. (This form is not included in the page limitation for the RFQ submittal.)

Independent Cost Estimator (ICE):

Provide ICE development services for projects advancing through design and into construction. Complete ICE services with contractor-style (production-based) methodologies and estimating software.

Any submittal received prior to the date and time specified above for receipt of submittals may be withdrawn or modified by written request of the firm. To be considered, however, the modified submittal must be received by the time and date specified above.

All materials submitted in accordance with the prescribed deadline become the property of the Nevada Department of Transportation (NDOT) and will not be returned. NDOT's selection or rejection of a submittal does not affect this right. The submittal will be signed by a person legally authorized to bind the firm. Submittals are considered confidential and copies will not be released to persons requesting them until negotiations are completed and an agreement has been successfully executed. Any request for copies of submittals must be submitted in

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writing for further consideration by NDOT by utilizing the process on the NDOT website at http://www.nevadadot.com/Public_Involvement/Public_Involvement.aspx#prrequests.

Confidential Information, Trade Secrets and/or Proprietary Information must be sealed in a separate package and clearly marked Confidential. The failure to separate and mark this information shall constitute a complete waiver of any and all claims for damages caused by release of the information by the State.

Please direct all questions concerning this RFQ to Agreement Services at (775) 888-7070 or agreeservices@dot.state.nv.us.

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

The NDOT reserves the right to issue supplements to this RFQ prior to the closing date. In the event it becomes necessary to supplement any part of this RFQ, NDOT will provide copies of the supplements to all who have communicated to NDOT Agreement Services that they received the RFQ.

The NDOT assumes no financial responsibility in connection with the costs incurred in the preparation and submission of the firm's submittal packet.

With this RFQ, NDOT has furnished a copy of the draft agreement. **To maintain consistency between the NDOT and its Service Providers, only those portions of the "Draft Agreement" that are open for negotiation shall be blank.** The method of compensation shall be determined dependent upon the project and disclosed following selection.

Contact with the NDOT personnel, other than Agreement Services, regarding these services will not be allowed during the solicitation period of this Request for Qualifications. Any questions raised by firm's must be submitted in writing to Agreement Services, 1263 South Stewart Street, Room 101, Carson City, Nevada 89712, faxed to (775) 888-7101 or email to agreeservices@dot.state.nv.us and received by 3:00 p.m., on December 28, 2011. Written responses will be distributed by NDOT on or before December 30, 2011.

SECTION II - DBE REQUIREMENTS

There are no Disadvantage Business Enterprises (DBE) requirements for this RFQ. DBE requirements for a specific project, if required, will be provided with the Invitation to Interview.

SECTION III – NEVADA BUSINESS LICENSE REQUIREMENT

The Nevada State Board of Examiners (BOE) passed a resolution requiring any vendor entering into an agreement with the State of Nevada to perform any work, is contingent upon verification the vendor has a valid and active Nevada Business License and if they are Nevada corporation, LLC, LP, LLP, or LLLP, or non-profit corporation, that their corporation is active and in good standing with the Nevada Secretary of State. Additionally, if they are a corporation, LLC, LP, LLP, or LLLP, or non-profit corporation based out of state, they must be registered as a foreign business entity equivalent in Nevada, in active status and in good standing.

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

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

To apply for your Nevada Business license or to file appropriate formation documents with the Secretary of State's office, please visit www.nvsos.gov. Business licenses can be obtained immediately by applying on-line; paper applications may take 4-8 weeks for processing.

SECTION IV - SELECTION PROCESS

Submittals meeting the minimum prequalification requirements for the ICE services will be evaluated based on the factors shown on the attached Evaluation Criteria Form by a Review Committee comprised of NDOT staff and others that shall remain anonymous. The evaluators will use the information submitted to arrive at a qualified shortlist of firms for the ICE discipline. Based on the number of written submittals received, NDOT may elect to include all, or just some of the prequalified firms on the shortlist. The shortlist of firms qualified for ICE services will expire on June 30, 2013.

Once a project has been identified to advance as part of NDOT's CMAR Program, some or all firms on the shortlist will be provided project-specific information and will be invited to an interview. In connection with such interview, shortlisted firms may also be required to submit supplemental written information about the potential project and their capabilities. Evaluation Criteria for the interview will be provided with the Invitation to Interview. Failure of a firm to appear at the interview will be considered non-responsive, and that firm will be eliminated from any further consideration. The Interview Evaluation Committee will be comprised of NDOT staff and, potentially, others designated by NDOT (which may include other public agency personnel and stakeholders).

All evaluators may use the information in the firm's written submittal package, any supplemental information that may be requested in response to the invitation to interview, and the information presented at the interview to arrive at the final ranking. The firms will be ranked and an agreement shall be negotiated following the selection of the firm. If an acceptable agreement cannot be reached with the selected firm, NDOT shall proceed to negotiate with the next highest ranked firm and so on until an acceptable agreement is negotiated.

Inclusion on the ICE discipline shortlist is not meant to be interpreted as a promise of work or an opportunity to interview. It is a process to facilitate the procurement, as required, for ICE services on multiple projects anticipated to advance concurrently within NDOT's CMAR Program. Additional projects identified to advance as part of NDOT's CMAR Program may utilize the aforementioned ICE discipline shortlist to procure the ICE services through an interview process. Subject to applicable federal and state law, including provisions relating to

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organizational conflicts of interest, firms selected for ICE services on a project will be eligible for selection as an ICE provider on other projects in NDOT's CMAR Program.

The Department may enter into at least three (3) separate agreements for each project that is part of the CMAR Program: one (1) with a design service provider responsible for design of the project ("Design Service Provider"), one (1) with a construction manager responsible for providing pre-construction services for the project and, potentially, for construction of the project ("Construction Manager"), and one (1) with the ICE. In order to promote collaboration among all parties, any firm selected for one (1) of the three (3) roles listed above on a specific project shall not be eligible for selection of either of the other roles on that same project, either in a prime or subcontractor role. In addition, the following firms are ineligible for selection as a potential ICE provider: Jacobs Engineering, Inc.

SECTION V - BACKGROUND

NDOT has a need for a Program that will deliver projects utilizing the construction manager at risk (CMAR) project delivery method beginning in the first quarter of calendar year 2012. The intent of the CMAR project delivery method is to form a coordinated team with NDOT as the owner along with a Design Service Provider, an ICE, and a Construction Manager all working for NDOT to deliver the project using the CMAR project delivery method. The goal of this coordination and delivery model is to, among other things, minimize risk, improve construction schedule, and incorporate innovations to meet or exceed project goals. As part of this program, NDOT has procured the services of a program manager and intends to procure the services of Construction Managers, Design Service Providers, and ICE firms to assist in the development and construction of projects.

The ICE shall work with and become a part of the project team, which also consists of the NDOT's Program and Project Managers, a Design Service Provider, and a Construction Manager (collectively, the "Project Team"). During the design process, the ICE shall work with the Project Team to develop and validate project cost estimates and construction schedules at various design milestones so that assumptions, contingency, risk, and approach to the estimate are fully understood by the Project Team.

This RFQ is intended to develop a shortlist of qualified firms able to serve as an ICE and, following interview and selection, to execute agreements to provide independent cost estimating services for individual projects in the CMAR Program.

SECTION VI – ICE QUALIFICATIONS

The following comprise desirable minimum qualifications for firms submitting for ICE services:

A. Construction Cost Estimating

1. Knowledge and Skills

- Working knowledge of risk management strategies, including risk identification assessment, and cost quantification and assignment of the probability of occurrence.
- Working knowledge in multiple production-based, heavy civil estimation software platforms as well as proficiency in at least one (1) production-based, heavy civil estimation software platform.

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- The ability to provide summary and detailed cost breakdown in Microsoft Excel 2007 (or newer) and be able to translate production based estimates into the NDOT common unit rate project estimate format.
- Financial management and accounting experience, including the expertise to prepare contractor costs and quotes as well as the ability to develop and track budgets.
- Working knowledge of construction/design scheduling, constructability, and staff training.
- Working knowledge of the design profession's responsibilities and project development work methods and practice in development of transportation projects.
- Negotiation and conflict management experience, including the ability to confer with others to reach an agreement on terms, conditions, and costs.
- General understanding of the CMAR delivery method.
- Familiarity or working knowledge of NDOT standard construction contracts, specifications, standards, and basis for measurement and payment; and Nevada labor laws.
- Working knowledge related to aspects of construction, including work package breakdown (project phasing), labor planning, construction site access, site layout, sequence of design and construction, rigging plan, availability and procurement of equipment and materials, prefabrication, pre-assembly, modularization, quality management, materials management, site facilities, safety, operability, and maintainability.

2. **Qualities**

Individuals proposed for the lead estimator role in response to this RFQ are expected to be organized, good communicators, responsive, thorough, complete, timely, and accurate in estimate development. Individuals are also expected to provide clear, concise written suggestions for specification changes as needed and be capable of teaching concepts and training NDOT staff, all the while being respectful of others' ideas.

3. **Experience**

Individuals performing as lead estimator for the ICE are expected to:

- Have ten (10) or more years of recent and relevant estimating experience in all trades of heavy civil, transportation, and building construction, along with a thorough knowledge of construction means, methods, and equipment in these areas and within Nevada and/or adjacent states.
- Demonstrate recent and relevant experience through participation on at least two (2) projects in development of project plans, specifications, and/or construction estimates.
- Have been an active participant on at least two construction or CMAR projects of varying size, scope, and construction complexity within the last five (5) years in formal partnering efforts as a contractor or owner's representative on heavy civil, transportation, and/or building construction projects. Preference is for experience within the State of Nevada with contractors who have worked with NDOT.

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4. License and Education

No professional license is required. Preference is for individuals possessing a Professional Engineering license in the State of Nevada and/or a four-year degree in a Construction Management-related field.

B. Scheduling

1. Knowledge and Skills

Individuals proposed for roles in response to this RFQ are expected to have:

- The ability to independently develop resource-loaded construction schedules for heavy civil, transportation, and/or building construction projects. This includes:
 - Clearly identifying project phasing and sequencing scenarios in schedule development and tying each into the cost estimate breakdown.
 - Producing charts, graphs, and reports to clearly communicate potential scheduling issues to beginner, novice, and expert reviewers from NDOT, the designer, and all applicable third-party partners.
 - Creating and modifying (as appropriate) schedules at various preconstruction stages as well as understanding how the level of project detail progresses over the course of the CMAR process.
- Working knowledge in multiple production-based, heavy civil scheduling software platforms and proficiency in development of schedules using Primavera P6 scheduling software.
- The ability to review Contractor's construction schedule and provide written analysis and recommendations to improve its usefulness to the project team. Individuals are expected to demonstrate practicality in approach and concentrate remarks and discussions on critical path and high-risk activities while avoiding the details of perfect schedule administration.
- The ability to perform sensitivity analysis to support evaluation of alternative concepts developed by various CMAR team members to ascertain benefits to project schedules as needed.

2. Qualities

Individuals proposed for scheduler role in response to this RFQ are expected to be organized, good communicators, responsive, thorough, complete, timely, and accurate in schedule development and review. Individuals are expected to provide clear, concise written suggestions for scheduling specification development and be capable of teaching concepts and training NDOT staff, all the while being respectful of others' ideas. Individuals are expected to exercise good judgment as exhibited through focus on project goals and not schedule mechanics.

3. Experience

Individuals performing as a scheduler for the ICE are expected to:

- Have eight (8) years or more of recent and relevant scheduling experience in all trades of heavy civil, transportation, and building construction, along with a thorough knowledge of construction means, methods, and equipment in these areas and within Nevada and/or adjacent states.

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- Have advanced computer skills and proficiency with document control and scheduling software, including expertise with Primavera P6 or greater, Microsoft Project, Microsoft Excel 2007 running under Windows XP professional or newer platform, etc.
- Demonstrate proficiency in critical path scheduling and analysis on at least three (3) construction projects within the last five (5) years.

4. License and Education

No professional license is required. Preference is for individuals with professional training and certifications in construction scheduling.

C. Project Management

1. Knowledge and Skills

Individuals proposed for the project manager role in response to this RFQ are expected to have:

- Ability to effectively develop, track, and control scope, schedule, and budget.
- Demonstrated ability and technical knowledge in all areas of heavy civil construction for transportation and construction means, methods, and equipment.
- An understanding and experience in partnering for construction.
- An understanding of design and plan development as well as experience interacting with utilities, regulatory agencies, local governments, and right-of-way acquisition.
- Working knowledge of the design professional's responsibilities and project development work methods and practice in development of transportation projects.
- An understanding and demonstrated experience in management of design plan development.
- The ability to facilitate constructive dialogue among the Project Team, including the ICE, NDOT, and the Construction Manager.
- Demonstrated experience in value engineering and probabilistic cost estimating processes through working with multi-disciplined teams that explored and created alternate ways of delivering on project goals and applying construction methods/approaches to improve design, lower project construction cost, manage and mitigate risks, and/or reduce project delivery schedule.
- Familiarity or working knowledge of NDOT standard construction contracts, specifications, standards, and basis for measurement and payment; Nevada labor laws; the local labor union environment; local contractor's performing work for NDOT; etc.

2. Qualities

Individuals are expected to be organized, good communicators, and responsive when managing the project. Individuals are expected to provide clear, concise written suggestions for altering specifications and describing plan set needs development. Individuals are expected to be inquisitive and respectful of others' ideas.

3. Experience

Individuals performing as a project manager for the ICE are expected to:

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- Have ten (10) years of recent and relevant construction experience in all trades of heavy civil, transportation, and building construction, along with a thorough knowledge of construction means, methods, and equipment in these areas and within Nevada and/or adjacent states.
- Demonstrate recent and relevant experience through participation on at least two (2) projects in development of project plans, specifications, and/or construction estimates.
- Performed as a project manager overseeing a team for construction estimating, scheduling, and constructability review on at least five (5) construction and/or CMAR projects of varying size, scope, and construction complexity within the last five (5) years.

4. License and Education

No professional license is required. Preference is for individuals that possess a Professional Engineering license in the State of Nevada and/or a four-year degree in a Construction Management-related field.

D. Constructability Review

1. Knowledge and Skills

Individuals are expected to have:

- The ability to review construction contract documents for quality concerning bidding and construction and ability to eliminate conflicts and ambiguities in the documents that could lead to change orders or disputes.
- The ability to integrate construction phasing, sequencing, and scheduling knowledge and experience into the design process.
- Demonstrated, practical experience introducing or integrating innovative construction practices into transportation projects with the intent to reduce project cost, schedule, and/or improve quality.
- Demonstrated experience in value engineering and probabilistic cost estimating processes through working with multi-disciplined teams that explored and created alternate ways of delivering on project goals and applying construction methods/approaches to improve design, manage and mitigate risk, lower project construction cost, and/or reduce project delivery schedule.
- Familiarity or working knowledge of NDOT standard construction contracts, specifications, standards, and basis for measurement and payment; and Nevada labor laws.

2. Qualities

Individuals proposed for the constructability reviewer role in response to this RFQ are expected to be organized, good communicators, responsive, thorough, complete, timely, and accurate in review. Individuals are expected to provide clear, concise written suggestions for altering specifications and describing plan set needs development. Individual are expected to be inquisitive, refrain from positional stances, and seek to encourage innovative construction delivery concepts, all the while being respectful of others' ideas. Individuals are expected to exercise good judgment as exhibited through a focus on project goals and through providing practical solutions and recommendations to the design team regarding necessary plan and specifications development that would need to be implemented.

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3. Experience

Individuals performing as a Constructability Reviewer are expected to:

- Have ten (10) years or more of recent and relevant review experience in all trades of heavy civil, transportation, and building construction, along with a thorough knowledge of construction means, methods, and equipment in these areas and within Nevada or adjacent states.
- Demonstrate recent and relevant experience through participation on at least two (2) projects in development of project plans, specifications, and/or construction estimates.

4. License and Education

No professional license is required. Preference is for individuals that possess a Professional Engineering license in the State of Nevada and/or a four-year degree in a Construction Management-related field.

SECTION VII - SCOPE OF SERVICES

The scope of services to be provided by the ICE shall include but is not limited to:

A. Construction Cost Estimating

1. Provide independent cost estimates for CMAR projects advancing through design and into construction. Utilize contractor style (production-based) methodologies and production-based heavy civil estimating software platforms.
2. Provide negotiation and conflict management support, including the ability to confer with others to reach an agreement on terms, conditions, and costs.
3. Provide risk management strategies including risk identification, assessment, and cost quantification and assignment of the probability of occurrence.
4. Provide summary and detailed cost breakdowns and translate production based estimates into the NDOT unit price estimate format. Utilize NDOT standards with a demonstrated familiarity of Nevada labor laws; the local labor union environment; and contractor's performing work for NDOT.
5. Provide assistance to the Project Team with respect to determining cost impacts of: package breakdown (project phasing), labor availability, mobilization and site access, sequence of design and construction, availability and procurement of equipment and materials, and maintainability.

B. Scheduling

1. Develop resource-loaded construction schedules for transportation and other construction projects utilizing Primavera P6 scheduling software. This includes:
 - a. Clearly identifying project phasing and sequencing scenarios in schedule development and tying each into the cost estimate breakdown.
 - b. Producing charts, graphs, and reports to clearly communicate potential scheduling issues to beginner, novice, and expert reviewers from NDOT, the Design Service Provider, Construction Manager, and all applicable third-party partners.
 - c. Creating and modifying schedules at various preconstruction stages as well as understanding how the level of project detail progresses over the course of the CMAR process.

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2. Review Construction Manager's construction schedule and provide written analysis and recommendations to improve its usefulness to the project team. Demonstrate practicality in approach and concentrate remarks and discussions on critical path and high-risk activities.
3. Perform sensitivity analysis to support evaluation of alternative concepts developed by various Project Team members to ascertain benefits to project schedules as needed.

C. Project Management

1. Participate in development and improvement of a Project Management Plan for each assigned project following NDOT's Project Management Guidelines. A working draft of the guidelines can be found at: www.nevadadot.com/Documents/Doing_Business/RFP/RFQ/RFI_Opportunities.aspx
2. Provide financial management and accounting experience to prepare contractor costs and quotes as well as the ability to develop and track scope, schedule, and budget.
3. Interact with members of the Project Team as well as utilities, regulatory agencies, local governments and other stakeholders and parties identified by NDOT. Utilize an understanding and familiarity with partnering on construction projects and facilitate constructive dialogue between the NDOT and the contractor.
4. Assist in administering value engineering and probabilistic cost estimating processes to create alternate ways of delivering on project goals and applying construction methods/approaches to improve design, manage and mitigate risk, lower project construction cost, and/or reduce project delivery schedule.

D. Constructability Review

1. Review construction contract documents for adequate quality for bidding and construction and to eliminate conflicts and ambiguities in the documents that could lead to change orders or disputes.
2. Integrate construction scheduling knowledge and experience into the design process.

Separate Task Orders for work may be issued under a Master Agreement for ICE services as the work on a project is further defined.

SECTION VIII - PROJECT SCHEDULE

The shortlist of firms qualified for ICE services will expire on June 30, 2013.

It is anticipated that the Project Team for an initial CMAR project will be assembled in the first quarter of calendar year 2012. The term of agreement for ICE services for a specific project will be determined based on the requirements of that project.

Additional Project Teams may be assembled, including the ICE, for additional projects to meet the needs of NDOT's CMAR program.

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SECTION IX – SUBMITTAL CONTENT

Submittals shall be brief and to the point. One (1) section shall be devoted to each topic listed below with sections separated by a divider. The cover letter should not exceed one (1) single-spaced, single-sided 8½" x 11" page and should include the firm's contact person relative to the submittal and the invoice address to which payment shall be made. The submittals shall include:

A. PASS/FAIL ITEMS

Submittals shall include the items listed below. Any submittals that do not contain these items **will not** be considered and will be disposed of in an appropriate manner suitable to the State.

1. RFQ Submittal meeting the requirements of this Section IX
2. Statement of Qualifications Form
3. Reference Questionnaires
4. Nevada Business License Information outlined in Section III

B. EVALUATION CRITERIA ITEMS

1. **Qualifications:**
 - a. Identify qualifications and experience for cost estimating, scheduling, project management, and constructability review with respect to execution of the ICE services, as described in Sections VI and VII above.
 - b. Identify potential complications that might be encountered in the implementation of the ICE services along with suggested resolutions for each.
2. **Key Personnel and Organization:**
 - a. Provide a summary of the education and past experience on similar projects for each key member of the proposed team's staff who will be performing the ICE services. For each key member of the proposed team, provide the name, address, phone number, and email address of the prior three (3) employers.
 - b. Include a current organizational chart of the proposed team, including any subcontractor(s) with responsibilities of team members identified therein.
3. **Experience and Past Performance of the firm:**
 - a. Describe the proposer's experience (within the past three (3) years) with similar projects including a detailed description of each project listed.
 - b. Using the enclosed Reference Questionnaire, provide a minimum of three (3) references from similar projects performed by the firm for state and/or local government clients within the last three (3) years. The Reference Questionnaire attached to this RFQ must be submitted to the business references listed within the submittal. The business references must submit the Reference Questionnaire directly to NDOT, Agreement Services, Nevada Department of Transportation, 1263 South Stewart Street, Room 101, Carson City, NV 89712, or by e-mail to: agreeservices@dot.state.nv.us. It is the firm's responsibility to ensure the

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completed forms are received by NDOT on or before the submittal submission deadline for inclusion in the evaluation process. Failure to provide three (3) references may result in the firm being disqualified. NDOT may contact any or all business references for validation of information submitted.

C. SUBMITTAL LIMITATIONS

The written submittals shall be limited by the following:

1. The total submittal package shall not exceed fifteen (15) double-spaced, single-sided 8½" x 11" pages, which does not include the cover letter.
2. Statement of Qualifications form, Nevada Business License, Reference Letters, and section dividers without text or graphics do not count towards the page limitations.
3. Pages contained within the submittal which are 11" x 17" will be counted as two (2) pages.

SECTION X – PROTEST PROCEDURE

Protests may be filed only with respect to:

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

A. DEADLINES FOR PROTESTS

Protests concerning the issues described in Section X(1) and contained in the RFQ must be filed no later than ten (10) calendar days prior to the submittal due date, and those contained in any supplemental notice to the RFQ must be filed no later than three (3) business days after NDOT distributes the related supplemental notice.

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

Protests concerning the issues described in Section X (3) must be filed within ten (10) calendar days after the NDOT issues the notification of the Shortlist.

Protests concerning the issues described in Section X (4) must be filed within ten (10) calendar days after the NDOT issues the Notice of Award.

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

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B. PROTEST CONTENTS

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

C. FILING OF PROTEST

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

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

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

D. COMMENTS FROM OTHER FIRMS

Other firms may file statements in support of or in opposition to the protest within seven (7) calendar days of the filing of the protest. The NDOT 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 NDOT may, in its sole discretion, discuss the protest with the protester and other firms. No hearing will be held on the protest. The protest shall be decided on the basis of written submissions.

F. DECISION ON PROTEST

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

G. PROTESTER'S PAYMENT OF COSTS

If a protest is denied, the firm filing the protest shall be liable for the NDOT'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.

ATTACHMENT A

H. RIGHTS AND OBLIGATIONS OF FIRMS

Each firm, by responding to the RFQ, expressly recognizes the limitation on its rights to protest provided in this Section X and expressly waives all other rights and remedies and agrees that the decision on the protest is final and conclusive. If a firm disregards, disputes, or does not follow the exclusive protest remedies provided in this section, it shall indemnify and hold harmless the NDOT 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 firm's actions. **Each firm, by responding to the RFQ, shall be deemed to have irrevocably and unconditionally agreed to this indemnity obligation.**

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

Attachments:

- Evaluation Criteria Form
- Statement of Qualification Form
- Reference Questionnaire
- Sample Agreement

ATTACHMENT A

EVALUATION CRITERIA FORM

PROJECT DESCRIPTION: Independent Cost Estimator (ICE) for the Construction Manager at Risk (CMAR) Program

CONSULTANT: _____

SUB-CONSULTANT(S): _____

<i>EVALUATION ITEMS</i>	<i>MAX SCORE</i>	<i>SCORE</i>
1. Qualifications: Qualifications for Cost Estimating, Scheduling, Project Management, and Constructability Review with respect to the execution of the ICE Scope of Services. Identification of potential complications that might be encountered in the implementation of the services along with suggested resolutions for each.		
2. Key Personnel and Organization: Key personnel to be assigned, education, experience, responsibilities and organization chart.		
3. Experience and Past Performance: Past experience of the firm on similar projects completed within the last three (3) years including a detailed description of each project. Information provided on the Reference Questionnaire forms verified with the business references.		
<i>TOTAL</i>	100	

Committee Member

Date

ATTACHMENT A
State of Nevada
Department of Transportation

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

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

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

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

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

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

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

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

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

PROJECT NAME	REFERENCE	TELEPHONE
		()
		()
		()

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

ATTACHMENT A



State of Nevada
Department of Transportation

RFP No. _____ REFERENCE QUESTIONNAIRE
FOR:

(Name of company requesting reference)

This form is being submitted to your company for completion as a business reference for the company listed above. Please return this form to the Nevada Department of Transportation (NDOT) via email to agreeservices@dot.state.nv.us, or fax to (775) 888-7101 no later than _____ at 3:00 pm. **Do not** remit this document to the company requesting the reference.

The information contained in this questionnaire will be confidential and will not be accessible to the referenced company. For questions or concerns regarding this form, please contact the Agreement Services Division by phone - (775) 888-7070 or email - agreeservices@dot.state.nv.us and refer to the RFP number.

CONFIDENTIAL INFORMATION

Company providing reference _____
Contact name and title/position _____
Contact telephone number _____
Contact email address _____

Questions:

1. In what capacity have you worked with this company in the past? Please explain the company's responsibilities.
COMMENTS:

2. How would you rate this company's knowledge and expertise?
____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
COMMENTS:

3. How would you rate the company's flexibility relative to changes in the project scope and timelines?
____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
COMMENTS:

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4. What was your level of satisfaction with hard-copy materials/products developed by the company?
___ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
COMMENTS:

5. Was the work done by this company completed on time and within budget?
COMMENTS on Time:

COMMENTS on Budget:

6. Who were the company's principal representatives involved in your project and how would you rate them individually? Please comment on the skills, knowledge, behaviors or other factors on which you base your rating.
(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

Name: _____ Rating: _____

Name: _____ Rating: _____

Name: _____ Rating: _____

Name: _____ Rating: _____

COMMENTS:

7. With which aspect(s) of this company were you:
Most satisfied with
COMMENTS:

Least satisfied with
COMMENTS:

8. Would you recommend this company's service to your organization again?
COMMENTS:

ATTACHMENT A

Agreement Number _____

AGREEMENT FOR SERVICES

This Agreement is made and entered into the _____ day of _____, _____ by and between the STATE OF NEVADA, acting by and through its Department of Transportation, hereinafter called the DEPARTMENT and [name, state of incorporation (if applicable), and address] hereinafter called the SERVICE PROVIDER.

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, the DEPARTMENT desires the SERVICE PROVIDER to provide services as an Independent Cost Estimator (ICE) to assist in the development of transportation improvement projects in a short period of time. (Hereinafter "PROJECT"); and

WHEREAS, the DEPARTMENT has procured the services of a Program Manager to assist in the development of the overall Program, including the management of the ICE teams (hereinafter "PROGRAM MANAGER"); and

WHEREAS, the SERVICE PROVIDER is willing, able and qualified to perform Independent Cost Estimating and Scheduling services and agrees to be bound by the provisions of this Agreement; and

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

WHEREAS, the SERVICE PROVIDER agrees to perform Task Orders issued by the DEPARTMENT in consideration of being listed as eligible to receive Task Orders from the DEPARTMENT.

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

ARTICLE I - SCOPE OF SERVICES

1. The SERVICE PROVIDER agrees to perform services as required on an as-needed basis and as specified in Task Orders directed to the SERVICE PROVIDER from the DEPARTMENT. Such services shall be performed in accordance with the provisions of the Task Orders, if such Task Orders are issued.

2. As set forth in Attachment A – Task Order, attached hereto and incorporated herein, shall be completed and signed for each and every task order. Once signed by all parties, all of the provisions of a Task Order shall remain in full force and effect as if set forth therein.

ATTACHMENT A

3. The SERVICE PROVIDER may be issued one (1) or more Task Orders during the term of this Agreement, or the SERVICE PROVIDER may not be issued any Task Orders. This Agreement does not guarantee or imply the promise of work. In the event Task Orders are issued as provided for in this Agreement, the terms and conditions of this Agreement and the Task Orders shall both apply in interpreting this Agreement. In the event of a conflict between the terms and conditions of this Agreement and a Task Order, the terms and conditions of this Agreement shall be given precedence.

4. As set forth in each Task Order, the SERVICE PROVIDER is required to describe the scope of work, define agreed upon tasks, milestones and deliverables, provide a schedule, and identify costs. These items will be in writing as an attachment to its respective Task Order, when the SERVICE PROVIDER executes and returns a Task Order to the PROGRAM MANAGER, and it shall remain in full force and effect as if set forth herein.

5. Costs for individual Task Orders will be negotiated at the time each Task Order is issued and will be included in the Task Order. Changes ordered by the DEPARTMENT which substantially modify the scope or character of services provided for in the Task Order shall be considered extra professional services and shall be specified in an amendment to the Task Order which shall set forth the nature and scope thereof. Terms of the such amendment shall be decided through negotiations between the SERVICE PROVIDER and the DEPARTMENT. Depending on the changes made, an amendment may or may not provide for a change in the amount of money to be paid the SERVICE PROVIDER under the terms of this Agreement. Should additional payment be approved by the DEPARTMENT, the method of payment shall be specified in such amendment at the time it is written. No costs shall be incurred by the SERVICE PROVIDER, nor shall any additional services be initiated by the SERVICE PROVIDER until authorized to do so by the DEPARTMENT.

6. The SERVICE PROVIDER agrees to furnish all labor, materials, services, equipment, tools and personal expenses necessary to perform the professional services required under the terms of this Agreement, except as specifically provided herein.

7. The SERVICE PROVIDER agrees to comply with all requirements contained in the Request for Qualifications, which is incorporated into this Agreement by reference. The SERVICE PROVIDER agrees to provide the key personnel as submitted within its Statement of Qualifications (SOQ), which is incorporated into this Agreement by reference. Any change to key positions listed in the SOQ contained in the SERVICE PROVIDER Task Orders must be approved by the DEPARTMENT before payment will be authorized.

ARTICLE II - PERFORMANCE

1. The term of this Agreement shall be from the date first written above through and including _____, 201__, unless a change is further agreed to by written Amendment signed by all parties. The SERVICE PROVIDER shall have until the time listed in each Task Order to complete the scope of services for each Task Order.

2. 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, and the Task Order is fully completed and executed as provided in Article I above, which shall then constitute a 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

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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.

3. A new Task Order cannot be issued to this Agreement subsequent to _____, 201__. However, ongoing professional services on Task Orders issued prior to the expiration date referenced above, may continue to be paid until the agreed time limit specified in the Task Order is reached. The provisions of this Agreement, under which a Task Order is issued, will remain in full force and effect during the term of the Task Order even when the end date of the Task Order exceeds the expiration date of this Agreement.

4. The SERVICE PROVIDER shall make all necessary revisions or corrections resulting from any error or omission on the part of the SERVICE PROVIDER without undue delays and without additional compensation. Acceptance of the professional services by the DEPARTMENT will not relieve the SERVICE PROVIDER of the responsibility for subsequent correction of any such error or omission and the clarification of any ambiguity. Should the DEPARTMENT use its own personnel, supplies or equipment to remedy the deficiency, such costs will be deducted from the sum due the SERVICE PROVIDER at the time of the next invoice. The SERVICE PROVIDER will be held responsible for additional costs in subsequent related construction resulting from any error or omission resulting from negligence or carelessness.

5. Professional services shall be performed in accordance with the schedule shown in each Task Order.

6. The SERVICE PROVIDER shall at all times maintain control over and have complete responsibility for all services performed by the SERVICE PROVIDER and any sub-service providers under this Agreement.

7. The SERVICE PROVIDER shall assign one individual throughout the life of this Agreement who shall have overall project responsibility unless illness or termination should require replacement.

8. A key person is defined as any individual identified by the SERVICE PROVIDER in its submittal 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 submittal. The SERVICE PROVIDER shall notify the DEPARTMENT in writing within two (2) calendar days when a key person leaves the PROJECT team.

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a. If a key person leaves the PROJECT team, the SERVICE PROVIDER shall promptly propose a replacement within four (4) business days 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 submittal 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 four days of the date when the key person is changed or has left the PROJECT team.

9. 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.

10. This Agreement, any Task Orders, and 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 prosecution. 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.

11. 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 an amendment which will set forth the nature and scope thereof. The method of payment for extra professional services shall be specified at the time such amendment is written.

12. The SERVICE PROVIDER shall not assign or subcontract any of the professional services performed under this Agreement and related Task Orders, if any, 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

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the contract or agreement for said professional services. Should the SERVICE PROVIDER subcontract any professional services under this Agreement, it is the SERVICE PROVIDER's responsibility to ensure that the sub-service provider is in compliance with all provisions of 48 CFR Chapter 1, Part 31. Should the SERVICE PROVIDER fail to ensure that sub-service provider comply with 48 CFR Chapter 1, Part 31, then the SERVICE PROVIDER will be responsible for any costs or deficiencies resulting from such non compliance. Any attempted assignment of rights or delegation of duties under this Agreement and related Task Orders, if any, without the prior written consent of the DEPARTMENT, shall be void.

13. 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.

14. This Agreement is contingent upon verification 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 and related Task Orders, if any, without cause five (5) calendar days after service of a termination letter to the SERVICE PROVIDER. In the event this Agreement is terminated in this manner, the SERVICE PROVIDER shall be paid for the cost of the professional services which have been completed and accepted by the DEPARTMENT up to the date of termination.

2. The continuation of this Agreement beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the Nevada State Legislature and/or Federal sources. The DEPARTMENT may terminate this Agreement, and the SERVICE PROVIDER waives any and all claim(s) 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 upon the occurrence of any of the following circumstances:

a. If the SERVICE PROVIDER fails to provide or satisfactorily perform any of the conditions, professional services, deliverables, goods or 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

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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'S Errors and Omissions Insurance or General Commercial Liability Insurance is cancelled; or

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

e. If either party materially breaches any material duty under this Agreement and any such breach impairs the other party's ability to perform; or

f. If it is found by the DEPARTMENT that any quid pro quo or gratuity 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 professional services under this Agreement, shall be deducted from any money due or which may become due to said SERVICE PROVIDER. In case 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. Whenever the professional services contemplated and covered by this Agreement and related Task Orders, if any, have been completely performed on the part of the SERVICE PROVIDER, and all items of professional services have been approved and accepted by the DEPARTMENT, and the final payment made, this Agreement shall be terminated.

ARTICLE IV- COST

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 approved in the individual approved Task Order(s). The fixed fee, to cover profit, shall be as set forth in each Task Order. This fixed fee will not vary irrespective of final PROJECT Task Order costs except in the event of a material and substantial change to the PROJECT scope.

3. The cost of services for each Task Order will be negotiated prior to performing the services. The SERVICE PROVIDER shall not commence work on an assignment until

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receipt of written approval by the DEPARTMENT. Receipt of an executed copy of a Task Order will constitute a written Notice to Proceed.

4. 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 _____ and ___/100 percent (_____%) of direct labor costs. This rate may be adjusted to the actual indirect cost rate at the time of final audit.

5. The total cost of the services by the SERVICE PROVIDER shall not exceed the sum of _____ (\$_____), which includes the fixed fee.

ARTICLE V - SCHEDULE OF PAYMENTS

1. The SERVICE PROVIDER shall submit a signed invoice monthly for all services rendered along with one (1) copy of substantiating documentation. The invoice must be submitted on the SERVICE PROVIDER's stationery using 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.

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

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

4. The total cost of services for this Agreement is the negotiated amount described 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:

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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;

ATTACHMENT A

- d. Participation or contributions by either the SERVICE PROVIDER or the DEPARTMENT to the Public Employees Retirement System;
- e. Accumulation of vacation leave or sick leave; or
- f. Unemployment compensation coverage provided by the DEPARTMENT.

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

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

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

6. The SERVICE PROVIDER shall furnish a Certificate, 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.

7. 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.

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

9. 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.

10. 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.

11. Upon completion, termination or cancellation of the services embraced under this Agreement, all professional services inclusive of research, investigation and analysis data,

ATTACHMENT A

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

12. All reports and notes for special provisions shall be delivered to the DEPARTMENT on compact disc or flash drive, using the most current version of Microsoft Word or WordPerfect as set forth in the Task Order. Delivery of a hard copy of reports and notes for special provisions shall also be required.

13. 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. 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 obligations under this Agreement without the prior written consent of the DEPARTMENT.

14. The SERVICE PROVIDER and all 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.

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

16. 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.

ATTACHMENT A

17. 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 49 CFR § 21.5, 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

ATTACHMENT A

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.

18. 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.

19. 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.

20. 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.

21. 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.

ATTACHMENT A

22. 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.

23. 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/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.

24. 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) days prior to making said change.

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

FOR DEPARTMENT: Susan Martinovich, P.E., Director
Attn:
Nevada Department of Transportation
Division:
1263 South Stewart Street
Carson City, NV 89712
Phone (775) 888-
Fax: (775) 888-
E-mail:

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

26. 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 First Judicial District Court, Carson City, Nevada, for enforcement of this Agreement.

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

28. 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

ATTACHMENT A

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.

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

30. 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.

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

32. 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 sub-agreement 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.

33. 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.

34. 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.

35. 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 pursuant to the terms or provisions of this Agreement.

36. 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.

ATTACHMENT A

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

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

SERVICE PROVIDER:
[insert Name]

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

Director

Name & Title (Print)

Approved as to Legality and Form:

Deputy

Attorney

General

DRAFT

ATTACHMENT A

AUTHORIZATION PROCESS

The NDOT Project Manager will determine the need for use of SERVICE PROVIDER services as required to support the Project. The following process shall be followed for all Task Orders:

1. The SERVICE PROVIDER will be contacted with a problem statement, which will need to be completed in a short time frame.
2. The SERVICE PROVIDER and the NDOT Project Manager will negotiate the scope, cost, and time of the Task Order in the most convenient method to both parties.
3. After agreeing upon the scope of work, costs, and time, the SERVICE PROVIDER will complete, sign, and return the original Task Order to the DEPARTMENT.
4. After receiving the Task Order, the DEPARTMENT will review and, if satisfied, will have the Task Order approved by the Attorney General for legality and form, execute, and return a fully executed signed copy of this document to the SERVICE PROVIDER.
5. The SERVICE PROVIDER is authorized to start work on the Task Order immediately after receiving a signed copy of the Task Order. Receipt of this document will constitute a written Notice to Proceed.

ATTACHMENT A

ATTACHMENT A
TASK ORDER NO. ____ FOR AGREEMENT NO. _____

This Task Order is issued to **[Service Provider name & address]**, hereinafter called the SERVICE PROVIDER on the ____ day of _____, _____, by the Nevada Department of Transportation, hereinafter called the DEPARTMENT in accordance with the terms and conditions of Agreement No. _____.

WITNESSETH:

WHEREAS, the DEPARTMENT has requested the SERVICE PROVIDER to **[complete description of project and location]**; and

WHEREAS, _____ **[project identification]** is necessary for _____ **[why, i.e. safety, congestion, local entity request, etc]**; and

WHEREAS, the SERVICE PROVIDER is willing, able and qualified to perform the services outlined below.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - SCOPE OF SERVICES

1. The SERVICE PROVIDER shall provide the services for this Task Order as outlined in the "Scope of Services", hereinafter referred to as "Attachment ____", attached hereto and incorporated herein.

ARTICLE II - PERFORMANCE

1. The SERVICE PROVIDER shall have through and including the ____ day of _____, _____ to complete the scope of services for this Task Order.

ARTICLE IV - COST

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

2. The total cost of the services by the SERVICE PROVIDER shall not exceed the sum of _____ and ___/100 Dollars (\$_____).

3. 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 _____ and ___/100 Dollars (\$_____). The fixed fee, to cover profit, shall be _____ 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.

4. Indirect costs (overhead) of the SERVICE PROVIDER shall be apportioned among all work projects being done by the SERVICE PROVIDER during the term of this

ATTACHMENT A

Agreement and will be billed at the provisional indirect cost rate of _____ percent (___%) of direct labor costs. This rate may be adjusted to the actual indirect cost rate at the time of final audit.

5. 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 75 percent. The lodging rate excludes taxes and fees. Taxes and fees are reimbursable. See this website for lodging in Nevada: <http://www.gsa.gov/portal/catalog/100120>. The SERVICE PROVIDER shall provide lodging receipts.

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

7. 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.

OTHER PROVISIONS

1. All of the other provisions of [Agreement No. _____ dated _____, and Amendment No. _____ dated _____, and Task Order No. _____ dated _____, and Amendment No. _____ dated _____,] shall remain in full force and effect as if set forth herein.

IN WITNESS WHEREOF, the SERVICE PROVIDER has signed and the DEPARTMENT has caused its name to be signed herein on the date first written above.

SERVICE PROVIDER: [Name]

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

[Name], Title:

Name (Print)

Approved as to Legality and Form:

Title (Print)

Deputy Attorney General

ATTACHMENT A
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.

STATE OF _____ }
COUNTY OF _____ } SS

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

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

(Insert Exceptions, attach additional sheets)

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

Signature

Title

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

Signature

Notary Public, Judge or other Official

(SEAL)

ATTACHMENT A

Attachment C

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

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

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

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

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

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

Name (please type or print)

Signature

Title

ATTACHMENT A

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

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

1. Identify the type of covered Federal action for which lobbying activity in and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, first Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

ATTACHMENT A

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

Approved by OMB
0348-0046

<p>1. Type of Federal Actions:</p> <ul style="list-style-type: none"> a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance 	<p>2. Status of Federal Action:</p> <ul style="list-style-type: none"> a. bid/offer/application c. Initial award d. post-award 	<p>3. Report Type:</p> <ul style="list-style-type: none"> a. initial filing b. material change <p style="text-align: right; margin-top: 10px;">For Material Change Only: year ____ quarter ____ date of last report ____</p>
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description:</p> <p style="margin-top: 20px;">CFDA Number, if applicable: _____</p>	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known: \$ _____</p>	
<p>10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI):</p> <p style="margin-top: 20px;"><i>(attach Continuation Sheet(s) SF-LLL-A, if necessary)</i></p>	<p>b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):</p> <p style="margin-top: 20px;"><i>(attach Continuation Sheet(s) SF-LLL-A, if necessary)</i></p>	
<p>12. Form of Payment (check all that apply):</p> <ul style="list-style-type: none"> a. cash b. in-kind; specify: nature _____ value _____ 	<p>13. Type of Payment (check all that apply):</p> <ul style="list-style-type: none"> a. retainer b. one-time fee c. commission d. contingent fee e. deferred f. other; specify: _____ 	
<p>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:</p>		
<p>16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>	<p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No.: _____ Date: _____</p>	
<p>Federal Use Only:</p>		<p>Authorized for Local Reproduction Standard Form - LLL</p>

ATTACHMENT A
Attachment D
Service Providers Cost
Certification of Final Indirect Costs

Firm Name: _____

Indirect Cost Rate Proposal: _____

Date of Proposal Preparation (mm/dd/yyyy): ____/____/____

Agreement Period (mm/dd/yyyy to mm/dd/yyyy): ____/____/____ to ____/____/____

I the undersigned, certify that I have reviewed the proposal to establish final indirect cost rates for the fiscal period as specified above and to the best of my knowledge and belief

1.) All costs included in this proposal to establish final indirect cost rates are allowable in accordance with the cost principles of the Federal Acquisition Regulations (FAR) of title 48, Code of Federal Regulations (CFR), part 31.

2.) This proposal does not include any costs which are expressly unallowable under the cost principles of the FAR of 48 CFR 31.

All known material transactions or events that have occurred affecting the firm's ownership, organization and indirect cost rates have been disclosed.

Signature: _____

Name of Certifying Official (Print): _____

Title: _____

Date of Certification (mm/dd/yyyy): ____/____/____

ATTACHMENT A

Attachment E

WORKER'S COMPENSATION INSURANCE AFFIDAVIT
(Required under Section 2 of Nevada Revised Statutes (NRS) 616B.627 of July 1, 2001)

STATE OF _____ }
COUNTY OF _____ } SS

I, _____ (Name of sole proprietor
signing this affidavit _____ (title) being
duly sworn do depose and say that:

- (a) In accordance with the provisions of NRS 616B.659, I have not elected to be included with the terms, conditions and provisions of Chapters 616A to 616D, inclusive, of NRS; and
- (b) I am otherwise in compliance with those terms, conditions and provisions.

The above exceptions supercede the requirement to furnish a certificate of insurance for work completed under the terms of this agreement. Providing false information may result in criminal prosecution or administrative sanctions. The failure to furnish this affidavit shall disqualify the party from performing work under this agreement.

Signature

Title

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

Signature

(SEAL)

Notary Public, Judge or other Official

ATTACHMENT A

Per Diem Rates Allowed State Employees (For Information Only)

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