



REGIONAL TRANSPORTATION COMMISSION

Metropolitan Planning • Public Transportation & Operations • Engineering & Construction


Metropolitan Planning Organization of Washoe County, Nevada

September 18, 2020

AGENDA ITEM 3.10

TO: Regional Transportation Commission

FROM: Amy Cummings, AICP/LEED AP
Director of Planning, Deputy
Executive Director



Bill Thomas, AICP
Executive Director

SUBJECT: Professional Services Agreement (PSA) for the Electric and Alternative Fuel Vehicle Infrastructure and Advanced Mobility Plan

RECOMMENDATION

Approve a Professional Services Agreement (PSA) with HDR Engineering Inc. in an amount not to exceed \$82,498.00 for consulting services on the Electric and Alternative Fuel Vehicle Infrastructure and Advanced Mobility Plan; authorize the RTC Executive Director to execute the agreement.

SUMMARY

Two proposals were received in response to the Request for Proposal for the Electric Vehicle and Alternative Fuel Infrastructure and Advanced Mobility Plan to address systems planning and design for electric vehicle charging, autonomous and connected vehicles, autonomous transit, and micromobility. The technical evaluation of the proposals was conducted by an Evaluation Committee, composed of five individuals including four staff from RTC and one staff person from the University of Nevada, Reno. All members of the Evaluation Committee evaluated and scored the Electric and Alternative Fuel Vehicle Infrastructure and Advanced Mobility Plan. The Evaluation Committee had a consensus meeting and the proposal from HDR Engineering Inc. received the highest score. All Evaluation Committee members recommended awarding the PSA to HDR Engineering Inc.

FISCAL IMPACT

Appropriations are included in the FY 2021 Budget and FY 2020 – FY 2021 Unified Planning Work Program (UPWP).

PREVIOUS ACTIONS BY BOARD

May 22, 2020 Approved procurement for the selection of Engineering Professional Services for the Electric Vehicle and Alternative Fuel Infrastructure and Advanced Mobility Plan

May 20, 2019

Approved the FY 2020 – FY 2021 Unified Planning Work Program
(UPWP)

ADDITIONAL BACKGROUND

The objective of this plan will be to examine the role of technology and shared mobility as transportation options continue to evolve in Washoe County, and identify potential safety, air quality, and equity implications. Tasks include the following:

- Review government and private sector policy and initiatives at the state and local level that support implementation of electric vehicle (EV) infrastructure, alternative fuels and mobility solutions.
- Identify and evaluate potential advanced mobility options for the area and recommend specific corridors where testing and/or implementation would be feasible.
- Provide a summary of preferred technological platforms and national best practices.

This study will outline the steps necessary to integrate mobility solutions within the planned and existing transportation network.

ADVISORY COMMITTEE(S) RECOMMENDATION

There are no advisory committee recommendations pertaining to this report.

Attachment

**AGREEMENT
FOR
PROFESSIONAL SERVICES**

This agreement (this “Agreement”) is dated and effective as of September 18, 2020, by and between the Regional Transportation Commission of Washoe County (“RTC”) and HDR Engineering, Inc. (“CONSULTANT”).

WITNESSETH:

WHEREAS, RTC issued a Request for Proposals for interested persons and firms to perform Professional Services in connection with the Electric and Alternative Fuel Vehicle Infrastructure and Advanced Mobility Plan, RFP # RTC20-18; and

WHEREAS, CONSULTANT submitted a proposal (the “Proposal”) and was selected to perform the work.

NOW, THEREFORE, RTC and CONSULTANT, in consideration of the mutual covenants and other consideration set forth herein, do hereby agree as follows:

ARTICLE 1 – TERM AND ENGAGEMENT

- 1.1. The term of this Agreement shall be from the date first written above through June 30, 2022, unless terminated at an earlier date, or extended to a later date, pursuant to the provisions herein.
- 1.2. CONSULTANT will perform the work using the project team identified in the proposal. Any changes to the project team must be approved by RTC’s Project Manager.
- 1.3. CONSULTANT will promptly, diligently and faithfully execute the work to completion in accordance with applicable professional standards subject to any delays due to strikes, acts of God, act of any government, civil disturbances, or any other cause beyond the reasonable control of CONSULTANT.
- 1.4. CONSULTANT shall not proceed with work until both parties have executed this Agreement and a purchase order has been issued to CONSULTANT. If CONSULTANT violates that prohibition, CONSULTANT forfeits any and all right to reimbursement and payment for that work and waives any and all claims against RTC, its employees, agents, and affiliates, including but not limited to monetary damages, and any other remedy available at law or in equity arising under the terms of this Agreement. Furthermore, prior to execution and issuance of a purchase order, CONSULTANT shall not rely on the terms of this Agreement in any way, including but not limited to any written or oral representations, assurances or warranties made by RTC or any of its agents, employees or affiliates, or on any dates of performance, deadlines, indemnities, or any term contained in this Agreement or otherwise.

ARTICLE 2 - SERVICES OF CONSULTANT

2.1. SCOPE OF SERVICES

The scope of services consist of the tasks set forth in Exhibit A.

2.2. SCHEDULE OF SERVICES

Tasks and subtasks shall be completed in accordance with the schedule in Exhibit A. Any change(s) to the schedule must be approved by RTC's Project Manager.

2.3. CONTINGENCY

Contingency line items identified in the scope of services are for miscellaneous increases within the scope of work. Prior to the use of any contingency amounts, CONSULTANT shall provide a letter to RTC's Project Manager detailing the need, scope, and not-to-exceed budget for the proposed work. Work to be paid for out of contingency shall proceed only with the RTC Project Manager's written approval.

2.4. OPTIONS

RTC shall have the right to exercise its option(s) for all or any part of the optional tasks or subtasks identified in Exhibit A. CONSULTANT will prepare and submit a detailed scope of services reflecting the specific optional services requested, a schedule for such services, and a cost proposal. RTC will review and approve the scope of services and RTC and CONSULTANT will discuss and agree upon compensation and a schedule. CONSULTANT shall undertake no work on any optional task without written notice to proceed with the performance of said task. RTC, at its sole option and discretion, may select another individual or firm to perform the optional tasks or subtasks identified in Exhibit A.

2.5. ADDITIONAL SERVICES

CONSULTANT will provide additional services when agreed to in writing by RTC and CONSULTANT.

2.6. PERFORMANCE REQUIREMENTS

Any and all design and engineering work furnished by CONSULTANT shall be performed by or under the supervision of persons licensed to practice architecture, engineering, or surveying (as applicable) in the State of Nevada, by personnel who are careful, skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the work, and who shall assume professional responsibility for the accuracy and completeness of documents prepared or checked by them, in accordance with appropriate prevailing professional standards. Notwithstanding the provision of any drawings, technical specifications, or other data by RTC, CONSULTANT shall have the

responsibility of supplying all items and details required for the deliverables required hereunder.

Any sampling and materials testing shall be performed by an approved testing laboratory accredited by AASHTO or other ASTM recognized accrediting organization in the applicable test methods. If any geotechnical or materials testing is performed by a sub-consultant, that laboratory shall maintain the required certification. Proof of certification shall be provided to RTC with this Agreement. If certification expires or is removed during the term of this Agreement, CONSULTANT shall notify RTC immediately, and propose a remedy. If an acceptable remedy cannot be agreed upon by both parties, RTC may terminate this Agreement for default.

CONSULTANT shall provide only Nevada Alliance for Quality Transportation Construction (NAQTC) qualified personnel to perform field and laboratory sampling and testing during the term of this Agreement. All test reports shall be signed by a licensed NAQTC tester and notated with his/her license number.

2.7. ERRORS AND OMISSIONS

CONSULTANT shall, without additional compensation, correct or revise any negligent deficiencies, errors, or omissions caused by CONSULTANT in its analysis, reports, and services. CONSULTANT also agrees that if any negligent error or omission is found, CONSULTANT will expeditiously make the necessary correction, at no expense to RTC. If an error or omission was directly caused by RTC, and not by CONSULTANT and RTC requires that such error or omission be corrected, CONSULTANT may be compensated for such additional work.

ARTICLE 3 - COMPENSATION

3.1. CONSULTANT shall be paid for hours worked at the hourly rates and rates for testing in Exhibit B. RTC shall not be responsible for any other costs or expenses except as provided in Exhibit B.

3.2. The maximum amount payable to CONSULTANT to complete each task is equal to the not-to-exceed amounts identified in Exhibit B. CONSULTANT can request in writing that RTC's Project Manager reallocate not-to-exceed amounts between tasks. A request to reallocate not-to-exceed amounts must be accompanied with a revised fee schedule, and must be approved in writing by RTC's Project Manager prior to performance of the work. In no case shall CONSULTANT be compensated in excess of the following not-to exceed amounts:

Total Services (Tasks 1 to 5)	\$74,999.00
<u>Contingency</u>	<u>\$7,499.00</u>
Total Not-to-Exceed Amount	\$82,498.00

- 3.3. For any work authorized under Section 2.4, "Additional Services," RTC and CONSULTANT will negotiate not-to-exceed amounts based on the standard hourly rates and rates for testing in Exhibit B. Any work authorized under Section 2.4, "Additional Services," when performed by persons who are not employees or individuals employed by affiliates of CONSULTANT, will be billed at a mutually agreed upon rate for such services, but not more than 105% of the amounts billed to CONSULTANT for such services.
- 3.4. CONSULTANT shall receive compensation for preparing for and/or appearing in any litigation upon mutual agreement of RTC and consultant, except: (1) if such litigation costs are incurred by CONSULTANT in defending its work or services or those of any of its sub-consultants; or (2) as may be required by CONSULTANT's indemnification obligations. Compensation for litigation services requested by RTC shall be paid at a mutually agreed upon rate and/or at a reasonable rate for such services.

ARTICLE 4 - INVOICING

- 4.1. CONSULTANT shall submit monthly invoices in the format specified by RTC. Invoices must be submitted to accountspayable@rtcwashoe.com. RTC's payment terms are 30 days after the receipt of the invoice. Simple interest will be paid at the rate of half a percent (0.5%) per month on all invoices approved by RTC that are not paid within thirty (30) days of receipt of the invoice.
- 4.2. RTC shall notify CONSULTANT of any disagreement with any submitted invoice for consulting services within thirty (30) days of receipt of an invoice. Any amounts not in dispute shall be promptly paid by RTC.
- 4.3. CONSULTANT shall maintain complete records supporting every request for payment that may become due. Upon request, CONSULTANT shall produce all or a portion of its records and RTC shall have the right to inspect and copy such records.

ARTICLE 5 - ACCESS TO INFORMATION AND PROPERTY

- 5.1. Upon request and without cost to CONSULTANT, RTC will provide all pertinent information that is reasonably available to RTC including surveys, reports and any other data relative to design and construction.
- 5.2. RTC will provide access to and make all provisions for CONSULTANT to enter upon RTC facilities and public lands, as required for CONSULTANT to perform its work under this Agreement.

ARTICLE 6 - OWNERSHIP OF WORK

- 6.1. Plans, reports, studies, tracings, maps, software, electronic files, licenses, programs, equipment manuals, and databases and other documents or instruments of service prepared or obtained by CONSULTANT in the course of performing work under this Agreement,

shall be delivered to and become the property of RTC upon payment in full of undisputed amounts Software already developed and purchased by CONSULTANT prior to the Agreement is excluded from this requirement. CONSULTANT and its sub-consultants shall convey and transfer all copyrightable interests, trademarks, licenses, and other intellectual property rights in such materials to RTC upon completion of all services under this Agreement and upon payment in full of all compensation due to CONSULTANT in accordance with the terms of this Agreement. Basic survey notes, sketches, charts, computations and similar data prepared or obtained by CONSULTANT under this Agreement shall, upon request, also be provided to RTC. Re-use of any such deliverables or materials for purposes not contemplated in this Agreement shall be at the re-user's sole risk and without liability to Consultant.

- 6.2. CONSULTANT represents that it has secured all necessary licenses, consents, or approvals to use the components of any intellectual property, including computer software, used in providing services under this Agreement, that it has full legal title to and the right to reproduce such materials, and that it has the right to convey such title and other necessary rights and interests to RTC.
- 6.3. CONSULTANT shall bear all costs arising from the use of patented, copyrighted, trade secret, or trademarked materials, equipment, devices, or processes used on or incorporated in the services and materials produced under this Agreement.
- 6.4. CONSULTANT agrees that all reports, communications, electronic files, databases, documents, and information that it obtains or prepares in connection with performing this Agreement shall be treated as confidential material and shall not be released or published without the prior written consent of RTC; provided, however, that CONSULTANT may refer to this scope of work in connection with its promotional literature in a professional and commercially reasonable manner. The provisions of this subsection shall not apply to information in whatever form that comes into the public domain. The provisions of this paragraph also shall not restrict CONSULTANT from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency, or other entity with proper jurisdiction, or if it is reasonably necessary for CONSULTANT to defend itself from any suit or claim.

ARTICLE 7 - TERMINATION

7.1. CONTRACT TERMINATION FOR DEFAULT

If CONSULTANT fails to perform services in the manner called for in this Agreement or if CONSULTANT fails to comply with any other provisions of this Agreement, RTC may terminate this Agreement for default after written notice of and ten (10) days to cure such default. Termination shall be effected by serving a notice of termination on CONSULTANT setting forth the manner in which CONSULTANT is in default. CONSULTANT will only be paid the contract price for services delivered and accepted, or services performed in accordance with the manner of performance set forth in this Agreement.

If it is later determined by RTC that CONSULTANT had an excusable reason for not performing, such as a fire, flood, or events which are not the fault of or are beyond the control of CONSULTANT, RTC, after setting up a new performance schedule, may allow CONSULTANT to continue work, or treat the termination as a termination for convenience.

7.2. CONTRACT TERMINATION FOR CONVENIENCE

RTC may terminate this Agreement, in whole or in part, at any time by written notice to CONSULTANT when it is in RTC's best interest. CONSULTANT shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. CONSULTANT shall promptly submit its termination claim to RTC to be paid CONSULTANT. If CONSULTANT has any property in its possession belonging to RTC, CONSULTANT will account for the same, and dispose of it in the manner RTC directs.

ARTICLE 8 - INSURANCE

- 8.1. CONSULTANT shall not commence any work or permit any employee/agent to commence any work until satisfactory proof has been submitted to RTC that all insurance requirements have been met.
- 8.2. In conjunction with the performance of the services/work required by the terms of this Agreement, CONSULTANT shall obtain all types and amounts of insurance set forth in Exhibit C, and shall comply with all provisions set forth therein.

ARTICLE 9 - HOLD HARMLESS

- 9.1. CONSULTANT's obligation under this provision is as set forth in Exhibit C. Said obligation would also extend to any liability of RTC resulting from any action to clear any lien and/or to recover for damage to RTC property.

ARTICLE 10 - EQUAL EMPLOYMENT OPPORTUNITY

- 10.1. During the performance of this Agreement, CONSULTANT agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, or national origin. CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated fairly during employment, without regard to their race, color, religion, sex, age, disability, or national origin. Such action shall include, but not be limited to, the following: 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 apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by RTC setting forth the provisions of this nondiscrimination clause.

- 10.2. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that well qualified applicants will receive consideration of employment without regard to race, color, religion, sex, age, disability, or national origin.
- 10.3. CONSULTANT will cause the foregoing provisions to be inserted in all sub-agreements for any work covered by this Agreement so that such provisions will be binding upon each sub-consultant.

ARTICLE 11 - RESOLUTION OF CLAIMS AND DISPUTES

11.1. NEGOTIATED RESOLUTION

In the event that any dispute or claim arises under this Agreement, the parties shall timely cooperate and negotiate in good faith to resolve any such dispute or claim. Such cooperation shall include providing the other party with all information in order to properly evaluate the dispute or claim and making available the necessary personnel to discuss and make decisions relative to the dispute or claim.

11.2. MEDIATION

If the parties have been unable to reach an informal negotiated resolution to the dispute or claim within thirty (30) days following submission in writing of the dispute or claim to the other party, or such longer period of time as the parties may agree to in writing, either party may then request, in writing, that the dispute or claim be submitted to mediation (the "Mediation Notice"). After the other party's receipt or deemed receipt of the Mediation Notice, the parties shall endeavor to agree upon a mutually acceptable mediator, but if the parties have been unable to agree upon a mediator within ten (10) days following receipt of the Mediation Notice, then each party shall select a mediator and those two selected mediators shall select the mediator. A mediator selected by the parties' designated mediators shall meet the qualification set forth in as provided in Rule 4 of Part C., "Nevada Mediation Rules" of the "Rules Governing Alternative Dispute Resolutions adopted by the Nevada Supreme Court." Unless otherwise agreed to by the parties, in writing, the mediator shall have complete discretion over the conduct of the mediation proceeding. Unless otherwise agreed to by the parties, in writing, the mediation proceeding must take place within thirty (30) days following appointment of the mediator. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Washoe County, Nevada, unless otherwise agreed to by the parties, in writing. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

11.3. LITIGATION

In the event that the parties are unable to settle and/or resolve the dispute or claim as provided above, then either party may proceed with litigation in the Second Judicial District Court of the State of Nevada, County of Washoe.

11.4. CONTINUING CONTRACT PERFORMANCE

During the pendency of any dispute or claim the parties shall proceed diligently with performance of this Agreement and such dispute or claim shall not constitute an excuse or defense for a party's nonperformance or delay.

ARTICLE 12 – PROJECT MANAGERS

- 12.1. RTC's Project Manager is James Weston or such other person as is later designated in writing by RTC. RTC's Project Manager has authority to act as RTC's representative with respect to the performance of this Agreement.
- 12.2. CONSULTANT' Project Manager is Jim Hanson, P.E., PTOE or such other person as is later designated in writing by CONSULTANT. CONSULTANT's Project Manager has authority to act as CONSULTANT's representative with respect to the performance of this Agreement.

ARTICLE 13 - NOTICE

- 13.1. Notices required under this Agreement shall be given as follows:

RTC: Bill Thomas
Executive Director
James Weston
RTC Project Manager
Regional Transportation Commission
1105 Terminal Way
Reno, Nevada 89502
(775)335-1915

CONSULTANT: Jim Hanson, P.E., PTOE
Project Manager
HDR, Inc.
9805 Double R Blvd., Suite 101
Reno, NV 89521
(720) 219-7993

ARTICLE 14 - DELAYS IN PERFORMANCE

- 14.1. TIME IS OF THE ESSENCE

It is understood and agreed that all times stated and referred to herein are of the essence. The period for performance may be extended by RTC's Executive Director pursuant to the process specified herein. No extension of time shall be valid unless reduced to writing and signed by RTC's Executive Director.

14.2. UNAVOIDABLE DELAYS

If the timely completion of the services under this Agreement should be unavoidably delayed, RTC may extend the time for completion of this Agreement for not less than the number of days CONSULTANT was excusably delayed. A delay is unavoidable only if the delay is not reasonably expected to occur in connection with or during CONSULTANT's performance, is not caused directly or substantially by acts, omissions, negligence or mistakes of CONSULTANT, is substantial and in fact causes CONSULTANT to miss specified completion dates, and cannot adequately be guarded against by contractual or legal means.

14.3. NOTIFICATION OF DELAYS

CONSULTANT shall notify RTC as soon as CONSULTANT has knowledge that an event has occurred or otherwise becomes aware that CONSULTANT will be delayed in the completion of the work. Within ten (10) working days thereafter, CONSULTANT shall provide such notice to RTC, in writing, furnishing as much detail on the delay as possible and requesting an extension of time.

14.4. REQUEST FOR EXTENSION

Any request by CONSULTANT for an extension of time to complete the work under this Agreement shall be made in writing to RTC. CONSULTANT shall supply to RTC documentation to substantiate and justify the additional time needed to complete the work and shall provide a revised schedule. RTC shall provide CONSULTANT with notice of its decision within a reasonable time after receipt of a request.

ARTICLE 15 - GENERAL PROVISIONS

15.1. SUCCESSORS AND ASSIGNS

RTC and CONSULTANT bind themselves and their successors and assigns to the other party and to the successors and assigns of such party, with respect to the performance of all covenants of this Agreement. Except as set forth herein, neither RTC nor CONSULTANT shall assign or transfer interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating a personal liability on the part of any officer or agent or any public body which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than RTC and CONSULTANT.

15.2. NON TRANSFERABILITY

This Agreement is for CONSULTANT's professional services, and CONSULTANT's rights and obligations hereunder may not be assigned without the prior written consent of RTC.

15.3. SEVERABILITY

If any part, term, article, or provision of this Agreement is, by a court of competent jurisdiction, held to be illegal, void, or unenforceable, or to be in conflict with any law of the State of Nevada, the validity of the remaining provisions or portions of this Agreement are not affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular part, term, or provision held invalid.

15.4. RELATIONSHIP OF PARTIES

CONSULTANT is an independent contractor to RTC under this Agreement. Accordingly, CONSULTANT is not entitled to participate in any retirement, deferred compensation, health insurance plans or other benefits RTC provides to its employees. CONSULTANT shall be free to contract to provide similar services for others while it is under contract to RTC, so long as said services and advocacy are not in direct conflict, as determined by RTC, with services being provided by CONSULTANT to RTC.

15.5. WAIVER/BREACH

Any waiver or breach of a provision in this Agreement shall not be deemed a waiver of any other provision in this Agreement and no waiver is valid unless in writing and executed by the waiving party. An extension of the time for performance of any obligation or act shall not be deemed an extension of time for the performance of any other obligation or act. This Agreement inures to the benefit of and is binding upon the parties to this Agreement and their respective heirs, successors and assigns.

15.6. REGULATORY COMPLIANCE

- A. CONSULTANT shall comply with all applicable federal, state and local government laws, regulations and ordinances. CONSULTANT shall be responsible for obtaining all necessary permits and licenses for performance of services under this Agreement. Upon request of RTC, CONSULTANT shall furnish RTC certificates of compliance with all such laws, orders and regulations.
- B. CONSULTANT represents and warrants that none of the services to be rendered pursuant to this Agreement constitute the performance of public work, as that term is defined by Section 338.010(17) of the Nevada Revised Statutes. To the extent CONSULTANT does engage in such public work, CONSULTANT shall be responsible for paying the prevailing wage as required by Chapter 338 of the Nevada Revised Statutes.

15.7. EXCLUSIVE AGREEMENT

There are no verbal agreements, representations or understandings affecting this Agreement, and all negotiations, representations and undertakings are set forth herein with

the understanding that this Agreement constitutes the entire understanding by and between the parties.

15.8. AMENDMENTS

No alteration, amendment or modification of this Agreement shall be effective unless it is in writing and signed by both parties.

15.9. CONTINUING OBLIGATION

CONSULTANT agrees that if, because of death or any other occurrence it becomes impossible for any principal or employee of CONSULTANT to render the services required under this Agreement, neither CONSULTANT nor the surviving principals shall be relieved of any obligation to render complete performance. However, in such event, RTC may terminate this Agreement if it considers the death or incapacity of such principal or employee to be a loss of such magnitude as to affect CONSULTANT's ability to satisfactorily complete the performance of this Agreement.

15.10. APPLICABLE LAW AND VENUE

The provisions of this Agreement shall be governed and construed in accordance with the laws of the State of Nevada. The exclusive venue and court for all lawsuits concerning this Agreement shall be the Second Judicial District Court of the State of Nevada, County of Washoe, and the parties hereto submit to the jurisdiction of that District Court.

15.11. ATTORNEYS' FEES

In the event of a dispute between the parties result in a proceeding in any Court of Nevada having jurisdiction, the prevailing party shall be entitled to an award of costs and a reasonable attorneys' fees.

15.12. CERTIFICATION REQUIRED BY NEVADA SENATE BILL 27 (2017)

CONSULTANT expressly certifies and agrees, as a material part of this Agreement, that it is not currently engaged in a boycott of Israel. CONSULTANT further agrees, as a material part of this Agreement, it will not engage in a boycott of Israel for the duration of this Agreement. If, at any time during the formation or duration of this Agreement, CONSULTANT is engaged or engages in a boycott of Israel, it will constitute a material breach of this Agreement.

ARTICLE 16 - FEDERAL FORMS AND CLAUSES

- 16.1. CONSULTANT has completed and signed the following: (1) Affidavit of Non-Collusion; (2) Certification Regarding Debarment, Suspension, Other Ineligibility and Voluntary Exclusion; (3) Certification Required by 31 U.S.C. § 1352, Restrictions on Lobbying Using Federal Appropriated Funds, and "Instructions for Completion of SF-LLL, Disclosure of

Lobbying Activities”. CONSULTANT affirms that such certifications remain valid and shall immediately notify RTC if circumstances change that affect the validity of these certifications.

- 16.2. This Agreement is funded in whole or in part with money administered by the Nevada Department of Transportation on behalf of the Federal Highway Administration. As a condition for receiving payment under this Agreement, CONSULTANT agrees to comply with the federally required clauses set forth in Exhibit D, E and F.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement the day and year first above written.

REGIONAL TRANSPORTATION COMMISSION
OF WASHOE COUNTY

By: _____
Bill Thomas, AICP, Executive Director

HDR ENGINEERING, INC.

By: _____
Craig Smart, Managing Principal

Exhibit A

Scope of Services

Introduction

The Regional Transportation Commission of Washoe County (RTC) is proposing the development of an Electric Vehicle and Alternative Fuel Infrastructure and Advanced Mobility Plan to address existing electric vehicle infrastructure needs in the area as well as to best prepare for continued advances in mobility technology, including the following:

- Systems planning for autonomous and connected transportation infrastructure
- Systems planning and engineering services for autonomous transit infrastructure
- Traffic analysis for micromobility systems and projects
- Systems planning for electric and hydrogen fuel cell charging infrastructure
- Traffic analysis relating to safety of these proposed systems

The RTC currently has 21 electric buses in its fleet, and the Reno-Sparks area is poised to be an early adopter of an alternative fueled transportation network. In order to create a more convenient, connected and environmentally-friendly transportation network, the plan will investigate various mobility solutions that could be integrated into the existing transportation framework or fully implemented within new transportation improvement projects.

This study will outline the steps necessary to design and integrate mobility solutions within the planned existing transportation network.

Objective

Examine the role of technology and shared mobility as transportation options continue to evolve in Washoe County, and identify potential safety, air quality, and equity implications. Review government and private sector policy and initiatives at the state and local level that support implementation of electric vehicle (EV) infrastructure, Alternative Fuels and mobility solutions. Identify and evaluate potential advanced mobility design options for the area and recommend specific corridors where testing and/or implementation would be feasible. Provide a summary and evaluation of preferred technological platforms and national best practices. This study will outline the steps necessary to design and integrate mobility solutions within the planned existing transportation network.

Task 1. Project Management

- 11 Invoicing and Progress Reports – Progress reports, invoices and billing will be prepared monthly.
- 12 Collaboration and Coordination – A kickoff meeting will consist of members from RTC; state agencies such as the Nevada Department of Transportation (NDOT), the Nevada Governor’s Office of Economic Development (GOED) and Office of Energy, and the University of Nevada, Reno (UNR); local agency jurisdictions such as Washoe County and the Cities of Reno and Sparks; the Reno-Sparks Indian Colony; the Reno-Tahoe Airport Authority; and other pertinent parties. A meeting schedule will be implemented for the length of the study. The consultant will work closely with project manager, communicating weekly.
- 13 Management Plan – The management plan should be provided by the consultant and identify organizational structure and process. It should also include a schedule for budget, tasks and deliverables.

Task 2. Existing Conditions Analysis

- 2.1 Policy Research – Identify current federal policies, programs and Nevada Revised Statutes (NRS) and Bill Draft Requests (BDRs) related to advanced mobility and EVs, as well as policy and initiatives from local jurisdictions. Identify programs from other areas which might be applied to this region.
- 2.2 Existing Electric Vehicle Infrastructure – Review and documentation of existing EV infrastructure such as charging stations and Liquid Hydrogen stations and their capabilities in Washoe County and along the Interstate system and major state highways in Nevada. Washoe RTC shall provide the location of all aforementioned existing EV infrastructure in available GIS format. Review recent and planned implementation for public and private use.
- 2.3 Vehicle-to-Vehicle (V2V)/Vehicle-to-Infrastructure (V2I) Operations – Provide an overview of existing platforms for V2V and V2I communications and present a comparison of the various technologies, including the benefits and challenges of each. In addition, identify resources needed to support different platforms from a utility perspective and develop a strategy for RTC to include fiber optic cable in roadway construction projects.
- 2.4 Other Existing Resources – Review and define all mobility services currently in operation in Washoe County and address interoperability challenges/solutions. Identify mobility and connected and autonomous transportation (CAT) technologies currently being deployed in Washoe County either as a pilot project, study, or within an established framework.

- 2.5 Safety Analysis – Collect and summarize available safety statistics related to various advanced mobility services to analyze potential issues and mitigation strategies. Washoe RTC shall provide all safety related data and statistics for review and analysis.
- 2.6 Travel Demand Modeling – Identify means to represent alternative modes (micromobility, rideshare, autonomous vehicles) in travel demand modeling process.
- 2.7 Air Quality and Equity Issues – Identify potential air quality impacts of various mobility services and compare potential benefits and risks associated with each.
- 2.8 Freight and Commercial Fleet Impacts – Identify possible impacts of EVs, alternative fuels, and Autonomous Vehicles on existing freight and commercial fleets operations.

Task 3. Public & Agency involvement

- 3.1 RTC Project Committee Meetings – Facilitate monthly progress meetings during the study period to review issues and findings. These progress meetings will be in conjunction with other established meetings such as the kick-off meeting technical kick-off meeting and the stakeholder meetings.
- 3.2 Stakeholder Meetings – Identify stakeholders and coordinate with appropriate parties as necessary.
- 3.3 Public Information Meetings and Planning Workshops – Facilitate up to three public information meetings in an open-house or workshop format during the study period and utilize social media platforms and other technology/tools to invite participation. Conduct outreach to residents, business owners and/or community groups via an online open house, an initial e-survey and three targeted strategic workshops. Washoe RTC will provide a list of the residents, business owners and/or community groups that will need to be contacted and engaged..

Task 4. Develop System Design Options & Recommendations

- 4.1 Develop System Design Options & Analysis – Develop system design options for regional ITS requirements to support autonomous and connected vehicles, as well as the RTC autonomous bus project. Develop recommendations for traffic analysis methodology of autonomous and connected vehicle, autonomous transit, ride hailing, and micro mobility systems.

Develop Plan/Strategy – Prepare mission, purpose, background and goals for this study. The statement should incorporate community and stakeholder input.

- 4.2 Develop Narratives – Prepare narratives on key elements pertaining to the development of the plan that includes key RTC personnel and responsibilities and coordination with other state/local plans. Prepare narrative for public outreach and include methods on public participation through available outlets.
- 4.3 Develop Action Plan – Identify methods to address advanced mobility options.

Identify feasible advanced mobility solutions for outlying areas, such as the Tahoe-Reno Industrial Center. Include a list of possible funding sources, project cost estimates, and implementation strategies for new technologies, supporting infrastructure, and transportation modes.

Task 5. Report Preparation

- 5.1 Draft Report – Prepare a concise and focused draft including graphics, illustrations of alternatives and recommended policies/procedures.
- 5.2 Draft Revision – Review and comments from RTC and other appropriate parties. Present revised report to technical committees and public for review.
- 5.3 Final Report – Incorporate final comments from technical committees and public for final output.

Deliverables

- Meeting Materials – Meeting agendas, minutes, and displays for public, stakeholder and technical committee meetings
- Data/GIS Materials – Maps or other data sets as needed.
- Reports – Electronic copy of draft review to RTC for comments. Five printed copies of final report and one electronic copy.

Milestones & Possible Schedule

- RTC Coordination Meeting – Month 1
- Technical Committee Kick-Off Meeting – Month 2
- Public Information/Workshop Meetings – Month 4 and Month 7
- Draft Report – Month 10
- Draft Revision – Month 11
- Final Report – Month 12

Exhibit B

Regional Transportation Commission
 Electric and Alternative Fuel Vehicle Infrastructure and Advanced Mobility Plan

Task No.	Task Description	Project Manager	Project Principal	Quality Manager	CV/AV Specialist	Micro Mobility Specialist	Electric Mobility Lead	Hydrogen Fuel Cell Mobility Lead	Traffic Lead	Transportation Technology Planner	Public Involvement	Transportation Engineer	Transportation Planner	Admin	Project Accountant	Total Labor Hours	Total Labor (\$)	Total Cost (\$)	
	Rates	\$ 317.57	\$ 251.39	\$ 266.99	\$ 180.57	\$ 248.17	\$ 389.76	\$ 366.23	\$ 231.97	\$ 187.60	\$ 150.76	\$ 101.39	\$ 111.60	\$ 79.60	\$ 92.30				
Task 1. Project Management																			
1.1	Invoicing and Progress Reports	6												3	16	25	\$3,621	\$3,621	
1.2	Collaboration and Coordination	6	1													7	\$2,157	\$2,157	
1.3	Management Plan	2	1													3	\$887	\$887	
	Subtotal Task 1	14	2	0	0	0	0	0	0	0	0	0	0	3	16	35	\$6,664	\$6,664	
Task 2. Existing Conditions Analysis																			
2.1	Policy Research	1			1		1						12			15	\$2,227	\$2,227	
2.2	Existing Electric Vehicle Infrastructure	1			2		1	1				8				13	\$2,246	\$2,246	
2.3	V2V/V2I Operations	1			4							8				13	\$1,851	\$1,851	
2.4	Other Existing Resources	1				1				1			8			11	\$1,646	\$1,646	
2.5	Safety Analysis	1							2			8				11	\$1,593	\$1,593	
2.6	Travel Demand Modeling	1			4	2			2	2						11	\$2,375	\$2,375	
2.7	Air Quality and Equity Issues	1			2	2				1			4			10	\$1,809	\$1,809	
2.8	Freight and Commercial Fleet Impacts	1			2		1	1		1			4			10	\$2,069	\$2,069	
	Subtotal Task 2	8	0	0	15	5	3	2	4	5	0	24	28	0	0	94	\$15,816	\$15,815.83	
Task 3. Public & Agency Involvement																			
3.1	RTC Project Committee Meetings	6			4	2	2	2	2	1	2		6			27	\$6,259	\$6,259	
3.2	Stakeholder Meetings	8	1	1	4		2				16	8	6			46	\$8,454	\$8,454	
3.3	Public Information Meetings and Planning Workshops	8	1	1	4		2				16	8	6			46	\$8,454	\$8,454	
	Subtotal Task 3	22	2	2	12	2	6	2	2	1	34	16	18	0	0	119	\$23,166	\$23,166	
Task 4. Develop System Design Options & Recommendations																			
4.1	Develop System Design Options & Analysis	2		4	4					1		6				17	\$3,221	\$3,221	
4.2	Develop Plan/Strategy	2		2	2	1	1	1	2	1						12	\$3,186	\$3,186	
4.3	Develop Narratives	2		2	2	1	1	1	2	1	4	4	4			24	\$4,641	\$4,641	
4.4	Develop Action Plan	4		2	2	1	1	1	2	1		6	6			26	\$5,099	\$5,099	
	Subtotal Task 4	10	0	10	10	3	3	3	6	4	4	16	10	0	0	79	\$16,147	\$16,147	
Task 5. Report Presentation																			
5.1	Draft Report	2		2	1	1	1	1	1	1		20	20			50	\$7,033	\$7,033	
5.2	Draft Revision	2		2								12	12			28	\$3,725	\$3,725	
5.3	Final Report	2		2								6	6			16	\$2,447	\$2,447	
	Subtotal Task 5	6	0	6	1	1	1	1	1	1	0	38	38	0	0	94	\$13,206	\$13,206	
PROJECT TOTALS		60	4	18	38	11	13	8	13	11	38	94	94	3	16	421	\$74,999	\$74,999	

Exhibit C

INDEMNIFICATION AND INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICE AGREEMENTS

2019-11-11 Version

1. INTRODUCTION

IT IS HIGHLY RECOMMENDED THAT CONSULTANTS CONFER WITH THEIR INSURANCE CARRIERS OR BROKERS TO DETERMINE THE AVAILABILITY OF THESE INSURANCE CERTIFICATES AND ENDORSEMENTS IN ADVANCE OF PROPOSAL SUBMISSION. IF THERE ARE ANY QUESTIONS REGARDING THESE INSURANCE REQUIREMENTS, IT IS RECOMMENDED THAT THE AGENT/BROKER CONTACT RTC'S FINANCE DIRECTOR AT (775) 335-1845.

2. INDEMNIFICATION

CONSULTANT agrees to defend, save and hold harmless and fully indemnify RTC, Washoe County, City of Reno, and City of Sparks, including their elected officials, officers, employees and agents (hereafter, "Indemnitees") from and against any and all claims, proceedings, actions, liability and damages, including reasonable attorneys' fees and defense costs incurred in any action or proceeding (collectively "Damages") arising out of:

- A. Any breach of duty, neglect, willful misconduct or fraud committed in the conduct of CONSULTANT'S profession, work or services rendered by (i) CONSULTANT, its employees, agents, officers, or directors, (ii) subconsultants (hereafter, "Subs"), or (iii) anyone else for which CONSULTANT may be legally responsible; and
- B. The negligent acts of CONSULTANT, its employees, agents, officers, directors, Subs, or anyone else for which CONSULTANT is legally responsible; and
- C. The infringement of any patent or copyright resulting from the use by the Indemnitees of any equipment, part, component or other deliverable (including software) supplied by CONSULTANT under or as a result of this Agreement, but excluding any infringement resulting from the modification or alteration by the Indemnitees of any equipment, part, component, or other deliverable (including software) except as consented to by CONSULTANT.

The Damages shall include, but are not limited to, those resulting from personal injury to any person, including bodily injury, sickness, disease or death and injury to real property or personal property, tangible or intangible.

If an Indemnitee is found to be liable in the proceeding, then CONSULTANT'S obligation hereunder shall be limited to the proportional share of the liability attributed to CONSULTANT.

In determining whether a claim is subject to indemnification, the incident underlying the claim shall determine the nature of the claim.

In the event of a violation or an infringement under paragraph 2.C above and the use is enjoined, CONSULTANT, at its sole expense, shall either (1) secure for the Indemnitees the right to continue using the materials by suspension of any injunction or by procuring a license or licenses for the Indemnitees; or (2) modify the materials so that they become non-infringing. This covenant shall survive the termination of this Agreement.

3. GENERAL REQUIREMENTS

Prior to the start of any work on a RTC project, CONSULTANT shall purchase and maintain insurance of the types and limits as described herein insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by CONSULTANT, its Subs, or their employees, agents, or representatives. The cost of all such insurance shall be borne by CONSULTANT.

4. VERIFICATION OF COVERAGE

CONSULTANT shall furnish RTC with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth herein, on forms acceptable to RTC. All deductibles and self-insured retentions requiring RTC approval shall be shown on the certificate. All certificates and endorsements are to be addressed to RTC's Finance Director and be received and approved by RTC before work commences. The CONSULTANT agrees that RTC has the right to inspect CONSULTANT'S and the Sub's insurance policies, or certified copies of the policies, at any reasonable time. Copies of applicable policy forms or endorsements confirming required additional insured, waiver of subrogation and notice of cancellation provisions are required to be provided with any certificate(s) evidencing the required coverage.

5. NOTICE OF CANCELLATION

CONSULTANT or its insurers shall provide at least thirty (30) days' prior written notice to RTC prior to the cancellation or non-renewal of any insurance required under this Agreement. An exception may be included to provide at least ten (10) days' written notice if cancellation is due to non-payment of premium. CONSULTANT shall be responsible to provide prior written notice to RTC as soon as practicable upon receipt of any notice of cancellation, non-renewal, reduction in required limits or other material change in the insurance required under this Agreement.

6. SUBCONSULTANTS & SUBCONTRACTORS

CONSULTANT shall include all Subcontractors and Subconsultants (referred to collectively as "Subs") as insureds under its liability policies OR shall cause Subs employed by CONSULTANT to purchase and maintain separate liability coverages and limits of the types specified herein. If any Subs maintain separate liability coverages and limits, each shall include the RTC, Washoe County, City of Reno and City of Sparks as additional insureds under its commercial general liability policy, subject to the same requirements stated herein, without requiring a written contract or agreement between each of the additional insureds and any sub-consultant or sub-contractor. Any separate coverage limits of liability maintained by Subs shall be at least **\$1,000,000** per occurrence and at least **\$2,000,000** for any applicable coverage aggregates or the amount

customarily carried by the Sub, whichever is GREATER. If any Subs provide their own insurance with limits less than required of the Contractor, Contractor shall include Subs in their coverage up to the full limits required of the Contractor. When requested by RTC, CONSULTANT shall furnish copies of certificates of insurance evidencing coverage for each Sub. The CONSULTANT need not require its non-design subcontractors to carry Professional Errors and Omissions Liability insurance.

7. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions that exceed \$5,000 per occurrence or claim must be declared to and approved by RTC's Finance Director prior to signing this Agreement. RTC is entitled to request and receive additional documentation, financial or otherwise, prior to giving its approval of the deductibles and self-insured retentions. Any changes to the deductibles or self-insured retentions made during the term of this Agreement or during the term of any policy must be approved by the RTC's Finance Director prior to the change taking effect.

8. ACCEPTABILITY OF INSURERS

Required insurance is to be placed with insurers with a Best's rating of no less than A-VII and acceptable to RTC. RTC may accept coverage with carriers having lower Best's ratings upon review of financial information concerning CONSULTANT and the insurance carrier. RTC reserves the right to require that CONSULTANT'S insurer(s) be licensed and admitted in the State of Nevada or meet any applicable state and federal laws and regulations for non-admitted insurance placements.

9. OTHER CONDITIONS

- A. Failure to furnish the required certificate(s) or failure to maintain the required insurance may result in termination of this Agreement at RTC's option.
- B. If CONSULTANT fails to furnish the required certificate or fails to maintain the required insurance as set forth herein, RTC shall have the right, but not the obligation, to purchase said insurance at CONSULTANT's expense.
- C. Any waiver of CONSULTANT's obligation to furnish such certificate or maintain such insurance must be in writing and signed by an authorized representative of RTC. Failure of RTC to demand such certificate or other evidence of full compliance with these insurance requirements or failure of RTC to identify a deficiency from evidence that is provided shall not be construed as a waiver of CONSULTANT's obligation to maintain such insurance, or as a waiver as to the enforcement of any of these provisions at a later date.
- D. By requiring insurance herein, RTC does not represent that coverage and limits will necessarily be adequate to protect CONSULTANT, and such coverage and limits shall not be deemed as a limitation on CONSULTANT's liability under the indemnities granted to RTC in this contract.

E. If CONSULTANT'S liability policies do not contain the standard ISO separation of insureds condition, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

10. COMMERCIAL GENERAL LIABILITY

CONSULTANT shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than **\$2,000,000** each occurrence. If such CGL insurance contains a general aggregate limit, it shall be increased to equal twice the required occurrence limit or revised to apply separately to this project.

CGL insurance shall be written on ISO occurrence form CG 00 01 04 13 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

RTC and any other Indemnitees listed in Section 2. INDEMNIFICATION of this Agreement shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 07/04 or CG 20 33 07/04 or a substitute providing equivalent coverage, and under the commercial umbrella, if any.

This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to RTC or any other Indemnitees under this Agreement.

CONSULTANT waives all rights against RTC and any other Indemnitees listed in Section 2. INDEMNIFICATION of this Agreement for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained pursuant to this agreement. CONSULTANT's insurer shall endorse CGL policy to waive subrogation against RTC with respect to any loss paid under the policy.

11. COMMERCIAL AUTOMOBILE LIABILITY

CONSULTANT shall maintain automobile liability and, if necessary, commercial umbrella liability insurance with a limit of not less than **\$1,000,000** each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos).

Coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 25, or a substitute form providing equivalent liability coverage for all owned, leased, hired (rented) and non-owned vehicles (as applicable). RTC may agree to accept auto liability for non-owned and hired (rented) vehicles under the CGL if CONSULTANT does not own or operate any owned or leased vehicles.

CONSULTANT waives all rights against RTC, its officers, employees and volunteers for recovery of damages to the extent these damages are covered by the automobile liability or commercial umbrella liability insurance obtained by CONSULTANT pursuant to this Agreement.

12. INDUSTRIAL (WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY) INSURANCE

It is understood and agreed that there shall be no Industrial (Worker's Compensation and Employer's Liability) Insurance coverage provided for CONSULTANT or any Subs by RTC. The CONSULTANT, and any Subs, shall procure, pay for and maintain the required coverages.

CONSULTANT shall maintain workers' compensation and employer's liability insurance meeting the statutory requirements of the State of Nevada, including but not limited to NRS 616B.627 and NRS 617.210. The employer's liability limits shall not be less than **\$1,000,000** each accident for bodily injury by accident or **\$1,000,000** each employee for bodily injury by disease.

CONSULTANT shall provide a Final Certificate for itself and each Sub evidencing that CONSULTANT and each Sub maintained workers' compensation and employer's liability insurance throughout the entire course of the project.

If CONSULTANT, or any Sub is a sole proprietor, coverage for the sole proprietor must be purchased and evidence of coverage must appear on the Certificate of Insurance and Final Certificate.

CONSULTANT waives all rights against RTC, its elected officials, officers, employees and agents for recovery of damages to the extent these damages are covered by the workers compensation and employer's liability or commercial umbrella liability insurance obtained by Tenant pursuant to this agreement. CONSULTANT shall obtain an endorsement equivalent to WC 00 03 13 to affect this waiver.

13. PROFESSIONAL ERRORS AND OMISSIONS LIABILITY

CONSULTANT shall maintain professional liability insurance applying to liability for a professional, error, act, or omission arising out of the scope of CONSULTANT'S services provided under this Agreement with a limit of not less than **\$1,000,000** each claim and annual aggregate. CONSULTANT shall maintain professional liability insurance during the term of this Agreement and, if coverage is provided on a "claims made" or "claims made and reported" basis, shall maintain coverage or purchase an extended reporting period for a period of at least three (3) years following the termination of this Agreement.

Exhibit D

Federally Required Clauses

1. **PROMPT PAYMENT PROVISION**

CONSULTANT must pay all subconsultants for satisfactory performance of their contracts no later than thirty (30) days from the receipt of payment made to CONSULTANT by RTC. Prompt return of retainage payments from CONSULTANT to the subconsultants will be made within fifteen (15) days after each subconsultant's work is satisfactorily completed. Any delay or postponement of payment among the parties may take place only for good cause and with RTC's prior written approval. If CONSULTANT determines the work of the subconsultant to be unsatisfactory, it must notify RTC's project manager immediately in writing and state the reasons. The failure by CONSULTANT to comply with this requirement will be construed to be a breach of the Contract and may be subject to sanctions as specified in the Contract or any other options listed in 49 C.F.R. 26.29.

2. **NONDISCRIMINATION**

During the performance of this Contract, CONSULTANT, for itself, its assignees, and successors in interest, agrees as follows:

A. **Compliance with Regulations.** CONSULTANT shall comply with the regulations relative to nondiscrimination in DOT-assisted programs, 49 C.F.R. Part 21, as they may be amended from time to time (referred to in this section as the "Regulations"), which are herein incorporated by reference and made a part of this Contract.

B. **Nondiscrimination.** CONSULTANT shall not discriminate on the grounds of age, race, color, sex, or national origin in the selection and retention of subconsultants, including procurement of materials and leases of equipment. CONSULTANT shall not participate, either directly or indirectly, in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

C. **Solicitations for Subcontracts, including Procurement of Materials and Equipment.** In all solicitations, whether by competitive proposing or negotiation made by CONSULTANT for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subconsultant or supplier must be notified by CONSULTANT of CONSULTANT's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of age, race, color, sex, or national origin.

D. **Information and Reports.** CONSULTANT must provide all information and reports required by the Regulations or directives issued pursuant thereto, and must permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by RTC to be pertinent to ascertain compliance with such Regulations, orders, and instructions.

Where any information is required, or the information is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT must so certify to RTC, and must set forth what efforts it has made to obtain the information.

E. **Sanctions for Noncompliance.** In the event of CONSULTANT's noncompliance with the nondiscrimination provisions of this Contract, RTC shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to: (1) withholding of payments to CONSULTANT under the Contract until CONSULTANT complies, and/or (2) cancellation, termination, or suspension of the Contract, in whole or in part.

CONSULTANT shall include the provisions of this clause in every subcontract. CONSULTANT must take such action with respect to any subcontract or procurement as RTC may direct as a means of enforcing those provisions, including sanctions for noncompliance. However, if CONSULTANT becomes involved in or is threatened with litigation with a subconsultant as a result of such direction, CONSULTANT may request RTC to enter into the litigation to protect the interests of RTC.

3. AFFIRMATIVE ACTION IN EMPLOYMENT

CONSULTANT shall comply with the provisions of Section 503 of the Rehabilitation Act of 1973 (the "Rehabilitation Act").

A. CONSULTANT will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. CONSULTANT agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

B. CONSULTANT agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor pursuant to the Rehabilitation Act.

C. In the event of CONSULTANT's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor pursuant to the Rehabilitation Act.

D. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the director, provided by or through the contracting officer. Such notices shall state CONSULTANT's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

E. CONSULTANT shall include the provisions of this clause in every subcontract or

purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary of Transportation issued pursuant to Section 503 of the Rehabilitation Act, so that such provisions will be binding upon each subconsultant or vendor. CONSULTANT will take such action with respect to any subcontract or purchase order as the director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance (41 C.F.R. 60-741.4.4).

4. INTEREST OF MEMBERS OF, OR DELEGATES TO, CONGRESS

In accordance with 18 U.S.C. 431, no member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising therefrom.

5. INTEREST OF PUBLIC OFFICIALS

No member, officer, or employee of any public body, during his tenure, or for one (1) year thereafter, shall have any interest, direct or indirect, in this Contract or the benefits thereof.

6. CIVIL RIGHTS

The following requirements apply to the underlying Contract:

A. Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132, and Federal transit law at 49 U.S.C. 5332, CONSULTANT agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age or disability.

B. Equal Employment Opportunity. The following equal employment opportunity requirements apply to the underlying contract:

- (1) Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. 2000e, and Federal transit laws at 49 U.S.C. 5332, CONSULTANT agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor", 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, Equal Employment Opportunity", as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity", 42 U.S.C. 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. CONSULTANT agrees to take affirmative action to ensure that applicants are employed, and that employees are treated equally during employment, without regard to their race, color, creed,

national origin, sex, or age. Such action must include, but not be limited to, the following: 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 apprenticeship.

- (2) Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 623 and Federal transit law at 49 U.S.C. 5332, CONSULTANT agrees to refrain from discrimination against present and prospective employees for reason of age.
- (3) Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. 12112, CONSULTANT agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act", 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities.

C. CONSULTANT also agrees to include these requirements in each subcontract.

7. INELIGIBLE CONSULTANTS

In the event CONSULTANT is on the Comptroller General's List of Ineligible Consultants for Federally financed or assisted projects, this contract may be canceled, terminated, or suspended by RTC.

8. NOTICE OF FEDERAL REQUIREMENTS

New Federal laws, regulations, policies, and administrative practices may be established after the date of this Contract, which may apply to this Contract. If Federal requirements change, the changed requirements will apply to the Contract or the performance of work under the Contract as required. All standards or limits set forth in this Contract to be observed in the performance of the work are minimum requirements.

9. THIRD-PARTY RIGHTS

Notwithstanding anything herein to the contrary, the services provided under this Agreement shall not give rise to, nor shall be deemed to or construed so as to confer any rights on any other party, as a third-party beneficiary or otherwise.

10. RECORDS RETENTION; AUDIT AND INSPECTION OF RECORDS

A. CONSULTANT shall permit the authorized representatives of RTC, FHWA, the U.S. Department of Transportation's Inspector General, NDOT, and the Comptroller General of the United States, or any of their duly authorized representatives to inspect and audit all data and records of CONSULTANT relating to its performance under the contract until

the expiration of three (3) years after final payment under this Contract.

B. CONSULTANT further agrees to include in all subcontracts hereunder a provision to the effect that the subconsultant agrees that RTC, FHWA, the U.S. Department of Transportation's Inspector General, NDOT, and the Comptroller General of the United States, or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any books, documents, papers, and records of the subconsultant directly pertinent to this contract. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding \$10,000 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

C. The periods of access and examination described above, for records which relate to (1) appeals under the dispute clause of this Contract, (2) litigation or the settlement of claims arising out of the performance of this Contract, or (3) costs and expenses of this Contract to which an exception has been taken by the U.S. Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims or exceptions have been disposed of.

11. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

A. RTC and CONSULTANT acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to RTC, Consultant, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.

B. CONSULTANT agrees to include the above clause in each subcontract. It is further agreed that the clause shall not be modified, except to identify the subconsultant who will be subject to its provisions.

12. DEBARMENT, SUSPENSION, OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION

A. This Contract is a covered transaction for purposes of 2 C.F.R. Part 1200 and 2 C.F.R. Part 180. As such, CONSULTANT is required to verify that none of CONSULTANT, its principals, as defined at 2 C.F.R. 180.995, or affiliates, as defined at 2 C.F.R. 180.905, are excluded or disqualified as defined at 2 C.F.R. 180.940 and 180.945.

B. CONSULTANT is required to comply with 2 C.F.R. 180, Subpart C, and must include the requirement to comply with 2 C.F.R. 180, Subpart C, in all contracts for lower-tier transactions over \$25,000 and in all solicitations for lower tier contracts.

C. CONSULTANT agrees that it shall not knowingly enter into any lower-tier covered

transaction with a person or firm who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this contract.

13. COMPLIANCE WITH FEDERAL LOBBYING POLICY

Section 1352 of Title 31, United States Code, provides in part that no appropriated funds may be expended by the recipient of a federal contract, grant, loan, or cooperative agreement to pay any person by 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 any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement.

Consultants who apply or bid for an award of \$100,000 or more shall file the certification required by 49 C.F.R. Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Federal Agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal Contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal Contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

CONSULTANT also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance.

14. REPORTING REQUIREMENTS

CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant 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 RTC or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to RTC, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.

Exhibit E

During the performance of this contract, CONTRACTOR, for itself, its assignees, and successors in interest, agrees as follows:

1. **Compliance with Regulations:** The Consultant (hereinafter includes subconsultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The Consultant, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The Consultant will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subconsultant or supplier will be notified by the Consultant of the Consultant's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The Consultant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish the information, the Consultant will so certify to the Recipient or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Consultant's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the Consultant under the contract until the Consultant complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Consultant will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of

equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Consultant will take action with respect to any subcontract or procurement as the Recipient or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Consultant becomes involved in, or is threatened with litigation by a subconsultant, or supplier because of such direction, the Consultant may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Consultant may request the United States to enter into the litigation to protect the interests of the United States.

SAMPLE

Exhibit F

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

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 C.F.R. Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability), and 49 C.F.R. Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and Consultants, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against

minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 et seq).

SAMPLE