

NDOT'S RESPONSE TO GOVERNOR SISOLAK'S EXECUTIVE ORDER 2019-2

COMPLIANCE WITH EXECUTIVE ORDER 2019-02

EXECUTIVE BRANCH AGENCY: NEVADA DEPARTMENT OF TRANSPORTATION (NDOT)

The Nevada Department of Taxation, Nevada Gaming Control Board, and the Nevada Department of Administration's Purchasing Division were directed in Executive Order 2019-02 to collect sexual harassment and discrimination policies and procedures from all current State vendors. As described in this Executive Order, such vendors are subject to the State Purchasing Act provision codified in NRS 333 and regulations promulgated by the Administrator of State Purchasing. The Nevada Department of Transportation (NDOT) is excepted from State Purchasing's contract provisions under NRS 333 and has independent contracting authority delegated to its Board of Directors under NRS 408.131.

Given NDOT contracts independently with State vendors, staff analyzed Executive Order 2019-02 (EO 2019-02) and consulted with counsel from the Attorney General's Office. The resulting determination was that the intent EO 2019-02 appeared to be that each agency within the executive branch would comply with the order.

As an agency within the executive branch, the NDOT Office of the Director proactively communicated with the Governor's Office stating the Department would join the effort and submit a report. The summary provided below outlines how NDOT conducts business with vendors, the methodology to collect policies, a description of how NDOT currently ensures compliance, and general findings/conclusions.

Conducting Business with State Vendors

In accordance with NRS 408, the Nevada Department of Transportation (NDOT) has independent authority to enter into contracts and agreements with vendors and conduct procurements in accordance with federal and state laws and regulations (i.e., 23 CFR Part 172, 40 U.S.C. 1101-1104 the "Brooks Act", NRS 408, NRS 333, NAC 333, SAM 338, delegated authority under NRS 341, etc.).

Procurements are generally divided between two Divisions within NDOT: the Administrative Services Division and the Equipment Division. The Administrative Services Division consists of the Agreement Services Section and the Contract Services Section. These two Sections conduct the majority of the business with State vendors. The type of project, service or equipment/materials required to meet a business need determines which Division will lead each procurement. Both Divisions participated in the request for, and collection of, sexual harassment and discrimination policies. The next section of this document details the method by which these policies were collected.

Implementation of Executive Order 2019-02 – Methodology to Collect Policies

NDOT provides online access to registration and procurement participation for all current and prospective State vendors: Agreement Services procurements (<https://www.nevadadot.com/doing-business/vendor-opportunities>) and Contract Services procurements (<https://www.nevadadot.com/doing-business/contractors-construction>). Once registered, vendors are linked to email updates through the publication of regular bulletins from each Section. State vendors may then also participate in procurements through NDOT's online systems: Agreements Services: E-Procurement and Tracking System (EPATS), and Contract Services: E-Bidding Portal (E-Bidding).

The Agreement Services Section published its first bulletin requesting all current vendors submit their sexual harassment and discrimination policies through EPATS in February 2019 (See Attachment A), and the Contract Services Section released its bulletin requesting the same policies from all of its registered vendors via NDOT's E-Bidding Portal at the same time (See Attachment B). During the month of March, both Sections released another bulletin on the first Wednesday of the month. To increase the number of policies submitted, both Agreement Services and Contract Services released updated bulletins as a call to action for all vendors (See Attachments C and D) and the bulletin publication frequency was increased to twice a week until the end of April 2019. A total of 18 bulletins were published, 9 bulletins from each Section.

In an effort to reach every possible vendor, the Equipment Division also sent a mailer with similar language requesting sexual harassment and discrimination policies from all of its vendors, who may or may not be registered with Agreement Services or Contract Services. The policies received from the Equipment Division request are included.

NDOT Agreements and Contracts – Compliance with State and Federal Policies

Over half of NDOT's annual revenue is received from federal funding. As such, NDOT is required to comply with Title VI of the Civil Rights Act of 1964, as well as other statutes and policies, prohibiting discrimination and sexual harassment. Through its established Civil Rights Office, NDOT ensures through annual review that all contractors comply with the Federal Highway Administration and Federal Transit Association-approved 48-page Title VI Plan and submits annual update reports detailing compliance with the plan.

In addition, NDOT is proactive in its compliance with state and federal laws by including nondiscrimination language in the agreement and contract templates that the prospective vendors must agree to in order to provide goods and services for the State. Should the Task Force be interested in viewing the language in the existing templates, a copy of each is attached. As a note to guide the review process, NDOT distinguishes its templates in accordance with the funding source: state or federal. Those templates for Agreement Services and Contract Services are noted below with state and federal funding identifiers.

- Attachment E: Agreement Template – State Funding
- Attachment F: Agreement Template – Federal Funding
- Attachment G: Contract Template – State Funding
- Attachment H: Contract Template – Federal Funding

General Findings and Conclusions

NDOT's Human Resources Division reviewed a sampling of the policies submitted by State vendors in response to the bulletins published by the Agreement Services Section, the Contract Services Section, and the Equipment Division. Submitted policies varied in content and length. As would be anticipated, several were sufficiently detailed, and others would benefit from improvements. In general, the majority referred to federal and state policies. Very few policies address required training. What all policies in the sample shared was at least a statement informing employees of the company that sexual harassment and discrimination will not be tolerated.

The most comprehensive policies included the following:

1. Policy Statement
2. Definition of Sexual Harassment
 - a. Physical Conduct
 - b. Verbal Conduct
 - c. Non-Verbal Conduct
3. Complaint Procedure
 - a. Informal Complaint Mechanism
 - b. Formal Complaints Mechanism to include investigation process
 - c. Outside Complaints Mechanism
4. Sanctions and Disciplinary Measures
5. Implementation of the Policy and Required Training Statement
6. Monitoring and Evaluation of the Sexual Harassment Policy and Confidentiality

State vendors vary in the size of the company and the nature of the good/services provided. As such, it is expected that policies would range in content and length. With that said, NDOT incorporates compliance with sexual harassment and discrimination policies in current business practices and in daily operations for all State vendors. Should the Task Force see fit, NDOT could take additional measures to review existing language in all agreement and contract templates to determine whether any current language could be updated.

NEVADA DEPARTMENT OF TRANSPORTATION
SPECIAL VENDOR BULLETIN

DATE

Request to Submit Sexual Harassment and Discrimination Policies and Procedures -
Executive Order 2019-2

This special bulletin is released to comply with Governor Steve Sisolak's State of Nevada Executive Order 2019-2—Order to Collect Sexual Harassment and Discrimination Policies from Marijuana and Gaming Privileged License Holders and State Vendors.

In compliance with 2019-2, the Nevada Department of Transportation (NDOT) is collecting sexual harassment and discrimination policies and procedures from all current and prospective State vendors. NDOT will also help to ensure that all prospective State registered vendors submit such policies and procedures for review and that any awardee of a State contract submit similar documentation for review.

These policies and procedures will be collected through mid-April of 2019 and submitted to The Governor's Task Force on Sexual Harassment and Discrimination Law and Policy for review (per Executive Order 2019-1), no later than May 1, 2019.

Please submit a copy of your Sexual Harassment and Discrimination Policies and Procedures to Agreement Services email at: AgreeServices@dot.nv.gov. If you have any questions about this request, please email or call Leon Ferran at (775) 888-7070 Opt. 1. Comments should be emailed to: AgreeServices@dot.nv.gov.

Thank you for your cooperation and compliance.

SPECIAL BULLETIN

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These policies and procedures will be collected through mid-April of 2019 and submitted to The Governor's Task Force on Sexual Harassment and Discrimination Law and Policy for review (per Executive Order 2019-1), no later than May 1, 2019.

Please submit a copy of your Sexual Harassment and Discrimination Policies and Procedures to Contract Services email at: NDOTContractServices@dot.nv.gov. If you have any questions about this request, please email or call Contract Services at 775-888-7070 Opt. 2. Comments should be emailed to: NDOTContractServices@dot.nv.gov.

Thank you for your cooperation and compliance.

NEVADA DEPARTMENT OF TRANSPORTATION

VENDOR CALL TO ACTION

DATE

This special bulletin is a call to action for ALL vendors to comply with Governor Steve Sisolak's State of Nevada Executive Order 2019-2 (EO-2) — Nevada Department of Transportation (NDOT) to collect information from current and future vendors intending to do business with NDOT. We are requesting ALL vendors supply a PDF/electronic copy of your sexual harassment and discrimination policies via email to AgreeServices@dot.nv.gov. Per EO-2, these policies will be reported to the Governor's Task Force on Sexual Harassment and Discrimination Law Policy no later than May 1, 2019.

Any vendor who has not complied with the EO-2 by April 30, 2019 may be jeopardizing their ability to enter into a contract with NDOT, or the State, after May 1, 2019.

If you have any questions about this request, please email AgreeServices@dot.nv.gov or call us at (775) 888-7070 Opt. 1.

Thank you for your timely response and cooperation.

NEVADA DEPARTMENT OF TRANSPORTATION
CONTRACTOR CALL TO ACTION
*****NOTICE*****

DATE

This special bulletin is a call to action for ALL vendors to comply with Governor Steve Sisolak's State of Nevada Executive Order 2019-2 (EO-2) — Nevada Department of Transportation (NDOT) to collect information from current and future vendors intending to do business with NDOT. We are requesting ALL vendors supply a PDF/electronic copy of your sexual harassment and discrimination policies via email to NDOTContractServices@dot.nv.gov. Per EO-2, these policies will be reported to the Governor's Task Force on Sexual Harassment and Discrimination Law Policy no later than May 1, 2019.

Any contractor who has not complied with the EO-2 by April 30, 2019 may be jeopardizing their ability to enter into a contract with NDOT, or the State, after May 1, 2019.

If you have any questions about this request, please email NDOTContractServices@dot.nv.gov or call us at (775) 888-7070 Opt. 2.

Thank you for your timely response and cooperation.

Agreement Number **XXX-XX-XXX**

SERVICE AGREEMENT

This Agreement, made and entered into on _____, by and between the State of Nevada, acting by and through its Department of Transportation (hereinafter "DEPARTMENT") and **NAME AND ADDRESS** (hereinafter "SERVICE PROVIDER"). Individually they are each a "Party" and collectively they are the "Parties."

WITNESSETH:

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

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

WHEREAS, the DEPARTMENT has determined that a provision of services is required for **PROJECT IDENTIFICATION**, and such project is necessary for **PROJECT EXPLANATION** (hereinafter "PROJECT"); and

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

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

ARTICLE I - SCOPE OF SERVICES

1. The SERVICE PROVIDER agrees to **SUMMARIZE PROJECT DESCRIPTION OR INSERT:** perform services listed in Attachment A - Scope of Services attached hereto and incorporated herein.

2. The SERVICE PROVIDER agrees to furnish all labor, materials, services, equipment, tools, and other expenses necessary to perform the professional services required under the terms of this Agreement, with the provisions of Attachment A - Scope of Services, except as specifically provided otherwise herein.

3. The SERVICE PROVIDER agrees to comply with all requirements contained in the underlying Request for Proposal which is incorporated into this Agreement by reference. **ONLY USE PARAGRAPH IF APPLICABLE**

ARTICLE II - PERFORMANCE

1. The term of this Agreement shall be from the date first written above through and including **DATE**, unless a change extending the term is further agreed to by written amendment signed by all parties to this Agreement, and approved by appropriate official action of the governing body of the DEPARTMENT prior to such term expiration date.

OR

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

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

3. The SERVICE PROVIDER, on behalf of itself, its spouses, heirs, executors, administrators, successors, subrogees, servants, insurers, attorneys, independent representatives, personal representatives, agents, and assigns, does hereby waive, release, and forever discharge the State of Nevada, the DEPARTMENT, and each and every of their departments, divisions, agencies, officers, directors, agents, contractors, and employees, from any and all claims, demands, liens, liability, actions, causes of action, and suits for damages, at law and in equity, in any way connected with or arising from the SERVICE PROVIDER's provision of services and work performed following termination of this Agreement, and/or following the expiration date of this Agreement, as it may be amended from time to time through written amendment signed by the parties hereto and approved by appropriate official action of the DEPARTMENT's governing body, prior to such expiration date.

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

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

6. The SERVICE PROVIDER shall not proceed with work until the SERVICE PROVIDER receives a written "Notice to Proceed" from the DEPARTMENT. If the SERVICE PROVIDER does commence said work prior to receiving said Notice to Proceed, the SERVICE PROVIDER shall forfeit any and all right to reimbursement for that portion of the work performed prior to said dates. Furthermore, the SERVICE PROVIDER shall not rely on the terms of this Agreement in any way, including but not limited to any written or oral representations and warranties made by the DEPARTMENT or any of its agents, employees, or affiliates, or on any dates of performance, deadlines, indemnities, or any other term contained in this Agreement or otherwise prior to receipt of the Notice to Proceed. In the event the SERVICE PROVIDER violates the provisions of this Section, the SERVICE PROVIDER waives any and all claims and damages against the DEPARTMENT, its employees, agents, and/or affiliates, including but not limited to monetary damages and/or any other available remedy at law or in equity arising under the terms of this Agreement.

7. The SERVICE PROVIDER agrees to complete the PROJECT within **NUMBER (#)** calendar **OR** working days of the commencement day of the PROJECT and agrees to pay to the DEPARTMENT, the sum of **NUMBER** and **#/100 Dollars (\$#)** for each and every calendar day past said date when the delay is caused by negligence, lack of adequate resources, or any other

cause within the SERVICE PROVIDER's direct control. These damages are not intended as a penalty. Damages are difficult to ascertain and the Parties agree that this amount is a reasonable estimate of presumed actual damages. **ONLY USE PARAGRAPH IF APPLICABLE**

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

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

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

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

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

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

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

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

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

11. The SERVICE PROVIDER shall at all times maintain control over and have complete responsibility for all services performed pursuant to this Agreement by the SERVICE PROVIDER and any of its subcontractors.

12. The SERVICE PROVIDER warrants that all deliverables and professional services produced under this Agreement shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry. The standard of care applicable to SERVICE PROVIDER's services will be of the degree of skill and diligence normally employed by professional engineers OR service providers performing the same or similar services at the time said services are performed.

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

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

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

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

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

18. Failure by the Service Provider to fulfill the DBE Agreement requirements and to demonstrate good faith efforts, either in the SERVICE PROVIDER's proposal or during the performance period, constitutes a breach of this Agreement. In event of such a breach, the DEPARTMENT may: **ONLY USE PARAGRAPH 17. a, b, c, & d IF APPLICABLE**

a. Withhold progress payments or a portion thereof;

b. Deduct, as damages, an amount equal to the unmet portion of the DBE commitment not achieved. This amount will be determined by multiplying the percentage of DBE participation proposed by the total cost set forth in the agreement and then multiplying the actual percentage of DBE participation used during the agreement by the total cost set forth in the agreement. In the event the actual percentage of DBE participation is less than the proposed percentage of DBE participation, the difference in these two figures shall be the amount of damages due to the DEPARTMENT;

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

d. Terminate the Agreement.

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

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

ARTICLE III - TERMINATION

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

2. The continuation of this Agreement beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the Nevada State Legislature and/or federal sources. The DEPARTMENT may terminate this Agreement, and the SERVICE PROVIDER waives any and all claims for damages, effective immediately upon receipt of written notice, or any date specified therein, if for any reason the

DEPARTMENT's funding from state and/or federal sources is not appropriated or is withdrawn, limited or impaired.

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

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

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

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

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

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

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

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

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

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

ARTICLE IV - COST

CHOOSE ONE OF THE FOLLOWING METHODS OF PAYMENT

COST PLUS FIXED FEE

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

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

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

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

LUMP SUM

1. "The lump sum" method of compensation shall be used for the SERVICE PROVIDER's services.

2. The total cost of the services by the SERVICE PROVIDER shall not exceed the sum of **NUMBER** and #/100 Dollars (\$#). **IF APPLICABLE ADD:** Payment will be based on actual quantities delivered/services provided.

3. The cost of the work to be performed under this Agreement will be paid for by the DEPARTMENT upon completion **OR** monthly **OR** bi-weekly **OR** quarterly **OR** semi-annual **OR** annually and upon acceptance of the work. **IF APPLICABLE ADD:** The DEPARTMENT will certify the work and enumerate all costs of the work by utilizing the bid proposal. Payment will be based upon the prices shown in the bid proposal, attached hereto and incorporated in Attachment X. **RE-LETTER ATTACHMENTS IF NECESSARY**

4. No additional costs shall be allowed to the SERVICE PROVIDER for assistance by, or services of others, except by express permission in writing by the DEPARTMENT.

5. The SERVICE PROVIDER shall furnish the DEPARTMENT, on the form provided, prior to commencement of work, the performance and labor and material bonds in the amount equal to the cost of the contract. **ONLY USE FOR PUBLIC WORKS PROJECTS**

6. The DEPARTMENT shall pay the SERVICE PROVIDER in installments, based upon monthly progress reports showing the status of the professional services, and the degree of completion. The DEPARTMENT, at its discretion, may by written notification waive this limitation.

COST PER UNIT OF WORK

1. The "cost per unit of work" method of compensation shall be used for the SERVICE PROVIDER's services.

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

INCLUDE COST PER UNITS HERE OR ADD AS AN ATTACHMENT

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

SPECIFIC RATES OF COMPENSATION

1. The "specific rates of compensation" method of compensation shall be used for the SERVICE PROVIDER's services.

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

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

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

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

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

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

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

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

ARTICLE V - SCHEDULE OF PAYMENTS

1. The SERVICE PROVIDER shall submit a signed invoice monthly **OR** bi-weekly **OR** quarterly **OR** semi-annually **OR** annually **OR** upon completion for all services rendered along with one (1) copy of substantiating documentation. The invoice must be submitted on the SERVICE PROVIDER's stationery using the DEPARTMENT's format or submitted on the DEPARTMENT's standard invoice form. The DEPARTMENT will utilize its normal accounting procedure in the payment of the invoices submitted. **IF APPLICABLE ADD:** The Fixed Fee shall be paid monthly and shall be calculated as a percentage of the direct salary plus overhead costs of that month's invoice until the full agreed upon fee is paid.

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

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

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

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

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

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

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

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

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

ARTICLE VI - MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

OR

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

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

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

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

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

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

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

13. Upon completion, termination or cancellation of the services embraced under this Agreement, all professional services inclusive of research, investigation, and analysis data, reports (including files stored on mobile media), computations, tabulations, original drawings, and design files (including CAD information stored on mobile media), correspondence input from external sources (including subcontractors), etc., shall be delivered to and become the property of the DEPARTMENT, without limitation. Reuse of said materials, information or data, during performance or following termination of this Agreement, on any other project or for any other purpose except as provided for herein, shall be at the DEPARTMENT's discretion and the DEPARTMENT's sole decision. The SERVICE PROVIDER shall not utilize any materials,

information, or data obtained as a result of performing the services called for in this Agreement in any commercial or academic publication or presentation without the express written permission of the DEPARTMENT. The SERVICE PROVIDER shall not reference an opinion of an employee or agent of the DEPARTMENT obtained as a result of performing the services called for in this Agreement, in any publication or presentation, without the written permission of the employee or agent to whom the opinion is attributed, in addition to the written permission of the DEPARTMENT. **ONLY USE PARAGRAPH IF APPLICABLE**

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

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

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

17. The SERVICE PROVIDER agrees that any reports, materials, studies, photographs, negatives, drawings, or other documents prepared by the SERVICE PROVIDER in the performance of its obligations under this Agreement shall be the exclusive property of the DEPARTMENT. The SERVICE PROVIDER shall remit all such documents to the DEPARTMENT upon completion, termination, or cancellation of this Agreement or upon written request of the DEPARTMENT. The SERVICE PROVIDER shall not use, willingly allow, or cause to have such documents used for any purpose other than performance of the SERVICE PROVIDER's obligation under this Agreement, without the prior written consent of the DEPARTMENT. **ONLY USE PARAGRAPH IF APPLICABLE**

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

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

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

21. During the performance of this Agreement, the SERVICE PROVIDER, for itself, its assignees and successors in interest agrees as follows:

a. Compliance with Regulations: The SERVICE PROVIDER shall comply with all of the regulations relative to nondiscrimination in federally-assisted programs of 49 CFR Part 21 as they may be amended from time to time (hereinafter "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

b. Nondiscrimination: The SERVICE PROVIDER, with regard to the professional services performed by it during the Agreement, shall not discriminate on the grounds of race, color, age, religion, sex, creed, handicap, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The SERVICE PROVIDER shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5. of the Regulations, including employment practices, when the Agreement covers a program set forth in Appendix B of the Regulations.

c. Solicitations for Subcontracts, Including Procurement of Materials, and Equipment: In all solicitations either by competitive bidding or negotiation made by the SERVICE PROVIDER for professional services to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the SERVICE PROVIDER of the SERVICE PROVIDER's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, age, religion, sex, creed, handicap, or national origin.

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

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

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

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

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

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

involved in, or is threatened with litigation by a subcontractor or supplier as a result of such direction, the SERVICE PROVIDER may request the DEPARTMENT to enter into such litigation to protect the interests of the DEPARTMENT and the SERVICE PROVIDER may request the United States to enter into such litigation to protect the interests of the United States.

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

a. Debarment and/or Suspension: The SERVICE PROVIDER certifies that neither it nor its subcontractors, nor their principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. SERVICE PROVIDER is subject to suspension and debarment actions as specified in 2 CFR part 1200 and 2 CFR part 180, potential cause of action under the False Claims Act as specified in 32 U.S.C. 3729-3733, and prosecution for making a false statement as specified in 18 U.S.C. 1020.

b. ADA: The SERVICE PROVIDER and subcontractor shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1980, as amended, and regulations adopted thereunder contained in 49 CFR, Part 27, and any relevant program-specific regulations.

c. Civil Rights: The SERVICE PROVIDER and subcontractor shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or person offered employment because of race, national origin, creed, color, sex, religion, age, disability, or handicap condition, including AIDS and AIDS-related conditions.

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

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

OR

24. To the fullest extent permitted by law, the SERVICE PROVIDER shall be liable to the State of Nevada, and the employees, officers, and agents of the State of Nevada for any liabilities, damages, losses, claims, actions, or proceedings, including, without limitation, reasonable attorney's fees, that are caused by the negligence, errors, omissions, reckless, or intentional misconduct of the SERVICE PROVIDER or the employees or agents of the SERVICE PROVIDER in the performance of this Agreement. **USE ONLY WITH ENGINEERING FIRMS**

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

26. The SERVICE PROVIDER warrants that all deliverables and work produced under this Agreement shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry.

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

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

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

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

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

30. This Agreement and the rights and obligations of the Parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. The Parties consent to the exclusive jurisdiction of the Nevada state district courts for enforcement of this Agreement.

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

32. Neither Party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder for any reason beyond its control, including, without limitation, strikes, inmate disturbances, acts of God, civil or military authority, act of public enemy, or accidents, fires, explosions, earthquakes, floods, winds, failure of public transportation, or any other similar serious cause beyond the reasonable control of either Party. In such an event the intervening cause must not be through the fault of the Party asserting such an excuse, and the excused Party is obligated promptly to perform in accordance with the terms of the Agreement after the intervening cause ceases.

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

34. The SERVICE PROVIDER shall keep confidential all information, in whatever form, produced, prepared, observed, or received by the SERVICE PROVIDER to the extent that such information is confidential by law or otherwise required by this Agreement.

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

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

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

38. Except as otherwise provided for by law or this Agreement, the rights and remedies of the Parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, the recovery of actual damages and the prevailing party's reasonable attorney's fees and costs.

39. It is specifically agreed between the Parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof a third party beneficiary status hereunder, or to authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or property damage, or pursuant to the terms or provisions of this Agreement.

40. The Parties hereto represent and warrant that the person executing this Agreement on behalf of each Party has full power and authority to enter into this Agreement and that the Parties are authorized by law to perform the services set forth herein.

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

modification or amendment to this Agreement shall be binding upon the Parties unless the same is in writing and signed by the respective Parties hereto and the Attorney General.

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

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

SERVICE PROVIDER:

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

Director

Name and Title (Print)

Approved as to Legality and Form:

Deputy Attorney General

DRAFT

**ONLY USE IF SERVICE PROVIDER IS A SOLE PROPRIETOR
Attachment X**

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

I, _____ (Name of sole proprietor signing 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 supersede 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

Date

ONLY USE IF APPLICABLE
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.

Agreement Number XXX-XX-XXX

SERVICE AGREEMENT

This Agreement, made and entered into on _____, by and between the State of Nevada, acting by and through its Department of Transportation (hereinafter "DEPARTMENT") and **NAME AND ADDRESS** (hereinafter "SERVICE PROVIDER"). Individually they are each a "Party" and collectively they are the "Parties."

WITNESSETH:

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

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

WHEREAS, the DEPARTMENT has determined that a provision of services is required for **PROJECT IDENTIFICATION**, and such project is necessary for **PROJECT EXPLANATION** (hereinafter "PROJECT"); and

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

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

ARTICLE I - SCOPE OF SERVICES

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

ARTICLE II - PERFORMANCE

1. The term of this Agreement shall be from the date first written above through and including **DATE**, unless a change extending the term is further agreed to by written amendment signed by all parties to this Agreement, and approved by appropriate official action of the governing body of the DEPARTMENT prior to such term expiration date.

OR

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

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

3. The SERVICE PROVIDER, on behalf of itself, its spouses, heirs, executors, administrators, successors, subrogees, servants, insurers, attorneys, independent representatives, personal representatives, agents, and assigns, does hereby waive, release, and forever discharge the State of Nevada, the DEPARTMENT, and each and every of their departments, divisions, agencies, officers, directors, agents, contractors, and employees, from any and all claims, demands, liens, liability, actions, causes of action, and suits for damages, at law and in equity, in any way connected with or arising from the SERVICE PROVIDER's provision of services and work performed following termination of this Agreement, and/or following the expiration date of this Agreement, as it may be amended from time to time through written amendment signed by the parties hereto and approved by appropriate official action of the DEPARTMENT's governing body, prior to such expiration date.

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

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

6. The SERVICE PROVIDER shall not proceed with work until the SERVICE PROVIDER receives a written "Notice to Proceed" from the DEPARTMENT. If the SERVICE PROVIDER does commence said work prior to receiving said Notice to Proceed, the SERVICE PROVIDER shall forfeit any and all right to reimbursement for that portion of the work performed prior to said dates. Furthermore, the SERVICE PROVIDER shall not rely on the terms of this Agreement in any way, including but not limited to any written or oral representations and warranties made by the DEPARTMENT or any of its agents, employees, or affiliates, or on any dates of performance, deadlines, indemnities, or any other term contained in this Agreement or otherwise prior to receipt of the Notice to Proceed. In the event the SERVICE PROVIDER violates the provisions of this Section, the SERVICE PROVIDER waives any and all claims and damages against the DEPARTMENT, its employees, agents, and/or affiliates, including but not limited to monetary damages and/or any other available remedy at law or in equity arising under the terms of this Agreement.

7. The SERVICE PROVIDER agrees to complete the PROJECT within **NUMBER (#)** calendar **OR** working days of the commencement day of the PROJECT and agrees to pay to the DEPARTMENT, the sum of **NUMBER** and **#/100 Dollars (\$#)** for each and every calendar day past said date when the delay is caused by negligence, lack of adequate resources, or any other

cause within the SERVICE PROVIDER's direct control. These damages are not intended as a penalty. Damages are difficult to ascertain and the Parties agree that this amount is a reasonable estimate of presumed actual damages. **ONLY USE PARAGRAPH IF APPLICABLE**

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

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

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

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

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

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

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

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

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

11. The SERVICE PROVIDER shall at all times maintain control over and have complete responsibility for all services performed pursuant to this Agreement by the SERVICE PROVIDER and any of its subcontractors.

12. The SERVICE PROVIDER warrants that all deliverables and professional services produced under this Agreement shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry. The standard of care applicable to SERVICE PROVIDER's services will be of the degree of skill and diligence normally employed by professional engineers OR service providers performing the same or similar services at the time said services are performed.

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

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

15. The SERVICE PROVIDER shall not assign or subcontract, any of the professional services performed under this Agreement without the prior written approval of the DEPARTMENT. The SERVICE PROVIDER will, subsequent to obtaining written approval from the DEPARTMENT, provide the DEPARTMENT with a copy of the contract or agreement for professional services. The SERVICE PROVIDER, when contemplating any professional services with any subcontractor, shall require the subcontractor to comply with all provisions of 48 CFR Chapter 1, Part 31, and, if the agreement exceeds One Hundred Thousand and No/00 Dollars (\$100,000.00), the subcontractor shall also comply with 49 CFR Part 20, in its Agreement. The SERVICE PROVIDER will be responsible for any costs or deficiencies resulting from noncompliance if the subcontractors fail to comply with 48 CFR Chapter 1, Part 31. Any attempted assignment of rights or delegation of duties under this Agreement without the prior written consent of the DEPARTMENT, shall be void.

16. The SERVICE PROVIDER agrees to complete and sign Attachment X - "AFFIDAVIT REQUIRED UNDER SECTION 112(c) of Title 23 United States Code, Act of August 27, 1958 and Part 29 of Title 49, Code of Federal Regulations, November 17, 1987," Attachment X - "CERTIFICATION REQUIRED BY SECTION 1352 of TITLE 31, UNITED STATES CODE, RESTRICTIONS OF LOBBYING USING APPROPRIATED FEDERAL FUNDS," and "Instructions for Completion of SF-LLL, Disclosure of Lobbying Activities," attached hereto and incorporated herein.

17. The SERVICE PROVIDER acknowledges that the DEPARTMENT has established a Disadvantaged Business Enterprise (DBE) participation requirement of **NUMBER** percent (#%) of the total dollar value of the Agreement costs. A DBE must be a small business concern as defined by the U.S. Small Business Act, 15 USC § 632 or by 49 CFR Subtitle A, Part 26. **ONLY USE PARAGRAPH IF APPLICABLE**

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

19. Failure by the Service Provider to fulfill the DBE Agreement requirements and to demonstrate good faith efforts, either in the SERVICE PROVIDER's proposal or during the performance period, constitutes a breach of this Agreement. In event of such a breach, the DEPARTMENT may: **ONLY USE PARAGRAPH 18. a, b, c, & d IF APPLICABLE**

a. Withhold progress payments or a portion thereof;

b. Deduct, as damages, an amount equal to the unmet portion of the DBE commitment not achieved. This amount will be determined by multiplying the percentage of DBE participation proposed by the total cost set forth in the agreement and then multiplying the actual percentage of DBE participation used during the agreement by the total cost set forth in the agreement. In the event the actual percentage of DBE participation is less than the proposed percentage of DBE participation, the difference in these two figures shall be the amount of damages due to the DEPARTMENT;

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

d. Terminate the Agreement.

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

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

ARTICLE III - TERMINATION

1. The DEPARTMENT may terminate this Agreement without cause **NUMBER** (#) calendar **OR** working days after service of a termination letter to the SERVICE PROVIDER. In the event this Agreement is terminated in this manner, the SERVICE PROVIDER shall be paid for

the cost of the professional services, which have been completed and accepted by the DEPARTMENT up to the date of termination.

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV - COST

CHOOSE ONE OF THE FOLLOWING METHODS OF PAYMENT

COST PLUS FIXED FEE

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

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

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

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

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

6. Consultant cost billing, reimbursement, and audit, will be accomplished in accordance with the DEPARTMENT's Chapter 5 of the Transportation Policies and Procedures, the DEPARTMENT's Accounting Manual and Audit Services Annual Management Report, and the Federal Cost Principles set forth in 48 CFR Chapter 1, Part 31.

LUMP SUM

1. "The lump sum" method of compensation shall be used for the SERVICE PROVIDER's services.

2. The total cost of the services by the SERVICE PROVIDER shall not exceed the sum of **NUMBER** and **#/100 Dollars (\$#)**. **IF APPLICABLE ADD:** Payment will be based on actual quantities delivered/services provided.

3. The cost of the work to be performed under this Agreement will be paid for by the DEPARTMENT upon completion **OR** monthly **OR** bi-weekly **OR** quarterly **OR** semi-annual **OR** annually and upon acceptance of the work. **IF APPLICABLE ADD:** The DEPARTMENT will certify the work and enumerate all costs of the work by utilizing the bid proposal. Payment will be based upon the prices shown in the bid proposal, attached hereto and incorporated in Attachment X.

RE-LETTER ATTACHMENTS IF NECESSARY

4. No additional costs shall be allowed to the SERVICE PROVIDER for assistance by, or services of others, except by express permission in writing by the DEPARTMENT.

5. The SERVICE PROVIDER shall furnish the DEPARTMENT, on the form provided, prior to commencement of work, the performance and labor and material bonds in the amount equal to the cost of the contract. **ONLY USE FOR PUBLIC WORKS PROJECTS**

6. The DEPARTMENT shall pay the SERVICE PROVIDER in installments, based upon monthly progress reports showing the status of the professional services, and the degree of completion. The DEPARTMENT, at its discretion, may by written notification waive this limitation.

7. Consultant cost billing, reimbursement, and audit, will be accomplished in accordance with the DEPARTMENT's Chapter 5 of the Transportation Policies and Procedures, the DEPARTMENT's Accounting Manual and Audit Services Annual Management Report, and the Federal Cost Principles set forth in 48 CFR Chapter 1, Part 31.

COST PER UNIT OF WORK

1. The "cost per unit of work" method of compensation shall be used for the SERVICE PROVIDER's services.

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

INCLUDE COST PER UNITS HERE OR ADD AS AN ATTACHMENT

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

4. Consultant cost billing, reimbursement, and audit, will be accomplished in accordance with the DEPARTMENT's Chapter 5 of the Transportation Policies and Procedures, the DEPARTMENT's Accounting Manual and Audit Services Annual Management Report, and the Federal Cost Principles set forth in 48 CFR Chapter 1, Part 31.

SPECIFIC RATES OF COMPENSATION

1. The "specific rates of compensation" method of compensation shall be used for the SERVICE PROVIDER's services.

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

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

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

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

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

7. Consultant cost billing, reimbursement, and audit, will be accomplished in accordance with the DEPARTMENT's Chapter 5 of the Transportation Policies and Procedures, the DEPARTMENT's Accounting Manual and Audit Services Annual Management Report, and the Federal Cost Principles set forth in 48 CFR Chapter 1, Part 31.

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

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

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

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

ARTICLE V - SCHEDULE OF PAYMENTS

1. The SERVICE PROVIDER shall submit a signed invoice monthly **OR** bi-weekly **OR** quarterly **OR** semi-annually **OR** annually **OR** upon completion for all services rendered along with one (1) copy of substantiating documentation. The invoice must be submitted on the SERVICE PROVIDER's stationery using the DEPARTMENT's format or submitted on the DEPARTMENT's standard invoice form. The DEPARTMENT will utilize its normal accounting procedure in the payment of the invoices submitted. **IF APPLICABLE ADD:** The Fixed Fee shall be paid monthly and shall be calculated as a percentage of the direct salary plus overhead costs of that month's invoice until the full agreed upon fee is paid.

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

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

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

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

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

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

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

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

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

ARTICLE VI - MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

OR

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

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

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

cancellation of said policies. The SERVICE PROVIDER shall furnish the DEPARTMENT with certificates of such insurance prior to commencement of professional services.

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

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

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

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

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

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

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

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

17. The SERVICE PROVIDER agrees that any reports, materials, studies, photographs, negatives, drawings, or other documents prepared by the SERVICE PROVIDER in the performance of its obligations under this Agreement shall be the exclusive property of the DEPARTMENT. The SERVICE PROVIDER shall remit all such documents to the DEPARTMENT upon completion, termination, or cancellation of this Agreement or upon written request of the DEPARTMENT. The SERVICE PROVIDER shall not use, willingly allow, or cause to have such documents used for any purpose other than performance of the SERVICE PROVIDER's obligation under this Agreement, without the prior written consent of the DEPARTMENT. **ONLY USE PARAGRAPH IF APPLICABLE**

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

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

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

21. During the performance of this Agreement, the SERVICE PROVIDER, for itself, its assignees and successors in interest agrees as follows:

a. Compliance with Regulations: The SERVICE PROVIDER shall comply with all of the regulations relative to nondiscrimination in federally-assisted programs of 49 CFR Part 21 as they may be amended from time to time (hereinafter "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

b. Nondiscrimination: The SERVICE PROVIDER, with regard to the professional services performed by it during the Agreement, shall not discriminate on the grounds of race, color, age, religion, sex, creed, handicap, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The SERVICE PROVIDER shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5. of the Regulations, including employment practices, when the Agreement covers a program set forth in Appendix B of the Regulations.

c. Solicitations for Subcontracts, Including Procurement of Materials, and Equipment: In all solicitations either by competitive bidding or negotiation made by the SERVICE

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

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

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

1. Withholding of payments to the SERVICE PROVIDER under the Agreement until the SERVICE PROVIDER complies, and/or
2. Cancellation, termination, or suspension of the Agreement, in whole or in part.

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

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

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

a. Debarment and/or Suspension: The SERVICE PROVIDER certifies that neither it nor its subcontractors, nor their principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. SERVICE PROVIDER is subject to suspension and debarment actions as specified in 2 CFR part 1200 and 2 CFR part 180, potential cause of action under the False Claims Act as specified in 32 U.S.C. 3729-3733, and prosecution for making a false statement as specified in 18 U.S.C. 1020.

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

and regulations adopted thereunder contained in 49 CFR, Part 27, and any relevant program-specific regulations.

c. Civil Rights: The SERVICE PROVIDER and subcontractor shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or person offered employment because of race, national origin, creed, color, sex, religion, age, disability, or handicap condition, including AIDS and AIDS-related conditions.

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

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

OR

24. To the fullest extent permitted by law, the SERVICE PROVIDER shall be liable to the State of Nevada, and the employees, officers, and agents of the State of Nevada for any liabilities, damages, losses, claims, actions, or proceedings, including, without limitation, reasonable attorney's fees, that are caused by the negligence, errors, omissions, reckless, or intentional misconduct of the SERVICE PROVIDER or the employees or agents of the SERVICE PROVIDER in the performance of this Agreement. **USE ONLY WITH ENGINEERING FIRMS**

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

26. The SERVICE PROVIDER warrants that all deliverables and work produced under this Agreement shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry.

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

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

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

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

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

30. This Agreement and the rights and obligations of the Parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. The Parties consent to the exclusive jurisdiction of the Nevada state district courts for enforcement of this Agreement.

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

32. Neither Party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder for any reason beyond its control, including, without limitation, strikes, inmate disturbances, acts of God, civil or military authority, act of public enemy, or accidents, fires, explosions, earthquakes, floods, winds, failure of public transportation, or any other similar serious cause beyond the reasonable control of either Party. In such an event the intervening cause must not be through the fault of the Party asserting such an excuse, and the excused Party is obligated promptly to perform in accordance with the terms of the Agreement after the intervening cause ceases.

33. 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.

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

35. The SERVICE PROVIDER shall provide a minimum of fifty-one percent (51%) of the combined value of all items of work covered by this Agreement. The SERVICE PROVIDER shall not assign or subcontract any of the work performed under this Agreement without the prior written approval of the DEPARTMENT. The SERVICE PROVIDER shall, prior to obtaining written approval from the DEPARTMENT, provide the DEPARTMENT with a copy of the subcontract or

subagreement for said work. Any assignment of rights or delegation of duties under this Agreement, without the prior written consent of the DEPARTMENT, shall be void.

36. 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.

37. 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.

38. It is specifically agreed between the Parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof a third party beneficiary status hereunder, or to authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or property damage, or pursuant to the terms or provisions of this Agreement.

39. 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.

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

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

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

SERVICE PROVIDER:

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

Director

Name and Title (Print)

Approved as to Legality and Form:

DRAFT

Attachment X
AFFIDAVIT REQUIRED UNDER SECTION 112(c)
of Title 23 United States Code, Act of August 27, 1958
and
Part 29 of Title 49, Code of Federal Regulations,
November 17, 1987.

I, _____ (Name of party signing affidavit and 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

Date

Attachment X

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

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

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

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

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

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

Name (please type or print)

Signature

Title

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

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

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

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

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

**Attachment X
Service Providers Cost
Certification of Final Indirect Costs**

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

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

Firm Name: _____

Signature of Certifying Official*: _____

Name of Certifying Official*: _____

Title: _____

Date of Execution: _____

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

ONLY USE IF SERVICE PROVIDER IS A SOLE PROPRIETOR
Attachment X

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

I, _____ (Name of sole proprietor signing 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 supersede 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

Date

ONLY USE IF APPLICABLE
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.

CONTRACT FORM

CONTRACT # _____

This Contract, made and entered into this _____ day of _____, 20____, by and between the State of Nevada Department of Transportation, hereinafter called the Department, and (Contractor Name and Address), hereinafter called the Contractor.

Witnesseth: The Contractor agrees with the Department that, for the consideration and agreements hereinafter mentioned and contained to be made and performed by the Department, and under the conditions expressed in a bond bearing even date with these presents, and hereunto annexed, that the Contractor shall and will at its own proper cost and expense, do all the work and furnish all the materials necessary for the substantial construction and completion, and to the satisfaction of the Department, of a portion of the highway system of the State of Nevada, being in the County of _____, on (Location), Route Section _____, Mileposts _____, (Description), hereinafter called the Project, in strict conformity, in every part and particular, with the Department's Standard Specifications for Road and Bridge Construction 2001, Project Plans, Project Special Provisions, and Project Invitation to Bid which are made a part hereof, and in full compliance with the terms of this Contract.

And the Contractor hereby further agrees to receive and accept the prices set forth in the Proposal – Contract # _____, Total Proposal Amount: _____ (\$ _____), hereto annexed and thereby made a part of this Contract, as full compensation for furnishing all materials and labor, and the doing of all work, in strict accordance with the plans, special provisions and specifications hereinbefore mentioned, to the satisfaction of the Resident Engineer and in the manner and under the conditions hereinbefore specified.

The Department hereby promises and agrees with the Contractor, to employ, and does hereby employ, the Contractor to provide the materials and do the work according to the terms and conditions herein contained and referred to, for the prices aforesaid, and hereby contracts to pay the same at the time, in the manner, and upon the conditions set forth herein; and the parties themselves, their heirs, executors, administrators, successors, and assigns, do hereby agree to the full performance of the covenants herein contained. The Contractor further agrees that no moneys payable under this Contract shall be assigned by power of attorney, or otherwise, except upon the written consent of the Department.

In the event that a Bidder's Preference was applied to the Contractor's Proposal according to NRS 338.1389, NRS 338.147, NRS 338.1693, NRS 338.1727 or NRS 408.3886, and the Bidder's Preference contributed to the Contractor being awarded the Contract, the Contractor will meet the following requirements for the entire duration of the Project:

- (a) At least 50 percent of all workers employed on the Project, including, without limitation, any employees of the Contractor and of any subcontractor engaged on the Project, will hold a valid driver's license or identification card issued by the Nevada Department of Motor Vehicles;
- (b) All vehicles used primarily for the Project will be:
 - (1) Registered and partially apportioned to Nevada pursuant to the International Registration Plan, as adopted by the Nevada Department of Motor Vehicles pursuant to NRS 706.826; or
 - (2) Registered in this State;
- (c) At least 50 percent of the design professionals working on the Project, including, without limitation, any employees of the Contractor and of any subcontractor engaged on the public work, will have a valid driver's license or identification card issued by the Nevada Department of Motor Vehicles;
- (d) At least 25 percent of the suppliers of the materials used for the Project will be located in this State unless the Department requires the acquisition of materials or equipment that cannot be obtained from a supplier located in this State; and
- (e) The Contractor and any subcontractor engaged on the Project will maintain and make available for inspection within this State its records concerning payroll relating to the Project.

Contractor agrees that failure to comply with any requirement of paragraphs (a) to (e), inclusive, above at any time during the entire duration of the Project is a material breach of this Contract and entitles the Department to liquidated damages against the party responsible for a failure to comply with a requirement of paragraphs (a) to (e), inclusive above. If a party to the Contract causes a material breach of contract between the Contractor and the Department as a result of a failure to comply with paragraphs (a) to (e), inclusive, above, the party is liable to the Department for liquidated damages in the amount of one percent (1%) of the cost of the largest contract to which he or she is a party. The Department may recover this amount directly against the party that causes the material breach, and no other party is liable to the Department for liquidated damages. These damages are not intended as a penalty. Damages are difficult to ascertain and the Parties agree that this amount is a reasonable estimate of presumed actual damages. Contractor must provide in any contract between Contractor and any subcontractor for the apportionment of liquidated damages assessed pursuant to this section if a person other than Contractor was responsible for the breach of this Contract for the Project caused by a failure to comply with a requirement of paragraphs (a) to (e), inclusive, above. The apportionment of liquidated damages must be in proportion to the responsibility of each party for the breach.

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

- (1) **Compliance with Regulations:** The Contractor shall comply with the Regulation relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age, disability/handicap, and low income status in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, disability/handicap, and low income status.
- (4) **Information and Reports:** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Nevada Department of Transportation (hereinafter, "NDOT") or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information the Contractor shall so certify to the NDOT, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the NDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. withholding of payments to the Contractor under the contract until the Contractor complies, and/or
 - b. cancellation, termination or suspension of the contract, in whole or in part.

(6) **Incorporation of Provisions:** The Contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

It is further agreed, by and between the parties hereto, that should there be any conflict between the terms of this Contract and the Proposal of the Contractor, then this Contract shall control, and nothing herein shall be considered an acceptance of the terms of such Proposal conflicting therewith.

And the Contractor hereby further agrees that the payment of the final amount due under this Contract shall release the State of Nevada and the Department of Transportation from any and all claims or liability on account of work performed under this Contract other than such claims, if any, as may be specifically excepted by the Contractor in writing at the time final payment is made.

[Signatures on next page]

DRAFT

CONTRACT

In Witness Whereof, The parties to these presents have hereunto set their hands and seals the year and date first above written.

Attested:

STATE OF NEVADA
Through the Department of Transportation

Director, Department of Transportation

Dated: _____, 20____

Approved as to Form & Legality:

(Chairman, Board of Directors, Department of Transportation)

Deputy Attorney General, Chief Counsel

(Contractor)

BY _____

CONTRACTOR'S ACKNOWLEDGMENT [use (a) or (b)] (a) Contractor's Acknowledgment (if an Individual or Partnership)

STATE OF _____ }
COUNTY OF _____ } SS

On this _____ day of _____, A.D. _____, personally appeared before me,
a _____, in and for _____ County, State of _____,
(Notary Public, Judge or other officer)
_____, known (or proved) to me
(Name)

to be the person(s) described in and executed the foregoing instrument, who acknowledged to me that he (they) executed the same freely and voluntarily and for the uses and purposes therein mentioned.

(SEAL)

(Notary Public, Judge or other officer)

(b) Contractor's Acknowledgment (if a Corporation)

STATE OF _____ }
COUNTY OF _____ } SS

On this _____ day of _____, A.D. _____, personally appeared before me,
a _____, in and for _____ County, State of _____,
(Notary Public, Judge or other officer)
_____, known (or proved) to me to be the _____
(Name) (President, Vice President or Secretary)

of the corporation that executed the foregoing instrument, and, upon oath, did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily for the uses and purposes therein mentioned.

(SEAL)

(Notary Public, Judge or other officer)

PERFORMANCE BOND

Whereas, the Nevada Department of Transportation, hereinafter designated as "NDOT", has awarded to (Contractor Name and Address), hereinafter designated "PRINCIPAL", a Contract dated (Award Date) for the following work: Construction of a portion of the (Highway Type) Highway System in _____ County, (Location and Description); and

Whereas, PRINCIPAL is required under the terms of said Contract and by law to furnish a Bond for the performance of said Contract;

Now therefore, we PRINCIPAL, and

(Name and Address of Bonding Company Main Office)

hereinafter designated "SURETY", are held and firmly bound unto NDOT, in the sum of _____ (\$_____), lawful money of the United States, being not less than one hundred percent (100%) of the estimated contract cost of the work, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above-bounden PRINCIPAL's heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and faithfully perform the covenants, conditions, and agreements in the Contract and any alterations made as therein provided, on PRINCIPAL's part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning; and shall indemnify and save harmless NDOT, its officers and agents, as therein stipulated; then this obligation shall become null and void. Otherwise, it shall be and remain in full force and virtue.

SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of Contract, or to the work to be performed thereunder, shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work.

And SURETY, for value received, hereby stipulates and agrees, if requested to do so by NDOT, to perform and fully complete the work mentioned and described in said Contract, pursuant to the terms, conditions and covenants thereof, if for any cause, said Principal fails or neglects to so perform and fully complete said work; the said SURETY further agrees to commence said work to full completion within twenty (20) days after notice thereof from NDOT, and to fully complete the same with all due diligence and in accordance with the plans and specifications.

And SURETY, for value received, further stipulates and agrees that should NDOT incur attorney's fees or other expenses for the enforcement of the Contract or this Bond, the same shall be paid by SURETY to NDOT.

(Authorized Agent)

(Contractor)

(Bonding Company Name)

By: _____

(Address of Authorized Agent)

(Name of Bonding Company)

By: _____
Attorney in Fact

NOTE TO SURETY ON BOND: Certificates of authority for Attorneys in Fact must be on file with the Department of Transportation and the Insurance Commissioner of the State of Nevada.

ACKNOWLEDGMENTS FOR SIGNER OF BOND [Use (a) or (b) and (c)]

(a) Contractor's Acknowledgment (if an Individual or Partnership)

STATE OF _____ }
COUNTY OF _____ } SS

On this _____ day of _____, A.D. _____, personally appeared before me,
a _____, in and for _____ County, State of _____,
(Notary Public, Judge or other officer)
_____, known (or proved) to me
(Name)

to be the person(s) described in and executed the foregoing instrument, who acknowledged to me that he (they) executed the same freely and voluntarily and for the uses and purposes therein mentioned.

(SEAL)

(Notary Public, Judge or other officer)

(b) Contractor's Acknowledgment (if a Corporation)

STATE OF _____ }
COUNTY OF _____ } SS

On this _____ day of _____, A.D. _____, personally appeared before me,
a _____, in and for _____ County, State of _____,
(Notary Public, Judge or other officer)
_____, known (or proved) to me to be the _____
(Name) (President, Vice President or Secretary)

of the corporation that executed the foregoing instrument, and, upon oath, did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily for the uses and purposes therein mentioned.

(SEAL)

(Notary Public, Judge or other officer)

(C) Acknowledgment for Bonding Company

STATE OF _____ }
COUNTY OF _____ } SS

On this _____ day of _____, A.D. _____, personally appeared before me,
a _____, in and for _____ County, State of _____,
(Notary Public, Judge or other officer)
_____, known (or proved) to me to be the _____
(Name) (Attorney in fact or other officer)

of the corporation that executed the foregoing instrument, and, upon oath, did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily for the uses and purposes therein mentioned.

(SEAL)

(Notary Public, Judge or other officer)

Approval of Bond

Approved _____, 20 _____

Deputy Attorney General of the State of Nevada

LABOR AND MATERIAL BOND

Whereas, the Nevada Department of Transportation, hereinafter designated as "NDOT", has awarded to (Contractor Name and Address), hereinafter designated "PRINCIPAL", a Contract dated (Award Date) for the following work: Construction of a portion of the (Highway Type) Highway System in _____ County, (Location and Description); and

Whereas, PRINCIPAL is required under the terms of said Contract and by law to furnish a Bond for labor and materials used in said Contract;

Now therefore, we PRINCIPAL, and

(Name and Address of Bonding Company Main Office)

hereinafter designated "SURETY", are held and firmly bound unto NDOT, in the sum of _____ (\$_____), lawful money of the United States, being not less than one hundred percent (100%) of the estimated contract cost of the work, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above-bounden PRINCIPAL=s heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provision, supplies, implements or machinery used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, together with interest at the rate of twelve percent per annum, or for amounts due under the Unemployment Compensation Law with respect to such work or labor, as required by the provisions of NRS 612, and provided that the claimant shall have complied with the provisions of NRS 408.363, SURETY hereon will pay the same within thirty (30) calendar days an amount not exceeding the sum specified in this Bond, and the above obligation shall then be null and void. Otherwise, it shall remain in full force and virtue.

SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of Contract, or to the work to be performed thereunder, shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work.

This Bond shall inure to the benefit of any person who provides materials, provisions, supplies, trucks, other means of transportation, work or labor to complete the work called for in the contract, as to give a right of action to such persons or their assigns in any suit brought upon this Bond.

And SURETY, for value received, further stipulates and agrees that should NDOT or other obligees, incur attorney=s fees or other expenses for the enforcement of the Contract or this Bond, the same shall be paid by SURETY to NDOT, subcontractors, workmen, laborers, mechanics, and furnishers of the materials as their interests may appear.

(Authorized Agent)

(Bonding Company Name)

(Address of Authorized Agent)

(Contractor)

By: _____

(Name of Bonding Company)

By: _____
Attorney in Fact

NOTE TO SURETY ON BOND: Certificates of authority for Attorneys in Fact must be on file with the Department of Transportation and the Insurance Commissioner of the State of Nevada.

ACKNOWLEDGMENTS FOR SIGNER OF BOND [Use (a) or (b) and (c)]

(a) Contractor's Acknowledgment (if an Individual or Partnership)

STATE OF _____ }
COUNTY OF _____ } SS

On this _____ day of _____, A.D. _____, personally appeared before me,
a _____, in and for _____ County, State of _____,
(Notary Public, Judge or other officer)
_____, known (or proved) to me
(Name)

to be the person(s) described in and executed the foregoing instrument, who acknowledged to me that he (they) executed the same freely and voluntarily and for the uses and purposes therein mentioned.

(SEAL)

(Notary Public, Judge or other officer)

(b) Contractor's Acknowledgment (if a Corporation)

STATE OF _____ }
COUNTY OF _____ } SS

On this _____ day of _____, A.D. _____, personally appeared before me,
a _____, in and for _____ County, State of _____,
(Notary Public, Judge or other officer)
_____, known (or proved) to me to be the _____
(Name) (President, Vice President or Secretary)

of the corporation that executed the foregoing instrument, and, upon oath, did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily for the uses and purposes therein mentioned.

(SEAL)

(Notary Public, Judge or other officer)

(C) Acknowledgment for Bonding Company

STATE OF _____ }
COUNTY OF _____ } SS

On this _____ day of _____, A.D. _____, personally appeared before me,
a _____, in and for _____ County, State of _____,
(Notary Public, Judge or other officer)
_____, known (or proved) to me to be the _____
(Name) (Attorney in fact or other officer)

of the corporation that executed the foregoing instrument, and, upon oath, did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily for the uses and purposes therein mentioned.

(SEAL)

(Notary Public, Judge or other officer)

Approval of Bond

Approved _____, 20 _____

Deputy Attorney General of the State of Nevada

RIDER TO CONTRACTOR'S BOND FOR PERFORMANCE BOND IN FAVOR OF
U.S. SECRETARY OF INTERIOR

Know All Men By These Presents, That We (Contractor Name and Address), as Principal, and

Name and Address of Main Bonding Company

as surety are held and firmly bound unto the U. S. Secretary of Interior in the sum of Two Thousand and 00/100 dollars (\$2,000), to be paid to the said U. S. Secretary of Interior for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors or assigns, jointly and severally, firmly by these presents: That, said bond is conditioned upon the faithful compliance with applicable regulations, the terms and conditions of the permit, lease, or contract, and the exploration or mining plan as approved, amended or supplemented.

The Conditions of This Obligation is such, That Whereas, the above principal did on the ____ day of _____, 20__, enter into a contract with the Department of Transportation of the State of Nevada, for the performance of the following specific work: Construction of a portion of the (Highway Type) Highway System in _____ County, (Location and Description).

Now, if the said (Contractor Name), heirs, executors, administrators, successors and assigns, shall well and truly perform their part of said contract, and if such work under the contract shall be performed in accordance with the plans and specifications, and in strict conformity with the terms of said contract, and every covenant and agreement therein contained, and further, if the said (Contractor Name) shall indemnify and save harmless the U. S. Secretary of Interior from and against all damages which it may sustain by reason of liens for labor and materials furnished for said work, and if the said (Contractor Name) shall pay all laborers, mechanics and material men and persons who may have supplied provisions, supplies, trucks, and other means of transportation used in, or about, or upon the said work, all just debts due to such persons, or to any person to whom any part of such work was given, and in addition all bills for labor, materials, sustenance, provisions, or supplies used or consumed by subcontractors or otherwise in the performance of the work contracted to be done, together with interest at the rate of twelve percent per annum, then this obligation shall be void; otherwise to remain in full force and effect.

And the said surety hereby stipulates and agrees that no change, extension, alteration or addition to the terms of the contract or specifications shall in any wise affect its obligation of this Bond.

(Authorized Agent)

(Bonding Company Name)

(Address of Authorized Agent)

(Contractor)

By: _____

(Name of Bonding Company)

By: _____

Attorney in Fact

NOTE TO SURETY ON BOND: Certificates of authority for Attorneys in Fact must be on file with the Department of Transportation and the Insurance Commissioner of the State of Nevada.

ACKNOWLEDGMENTS FOR SIGNER OF BOND [Use (a) or (b) and (c)]

(a) Contractor's Acknowledgment (if an Individual or Partnership)

STATE OF _____ }
COUNTY OF _____ } SS

On this _____ day of _____, A.D. _____, personally appeared before me,
a _____, in and for _____ County, State of _____,
(Notary Public, Judge or other officer)
_____, known (or proved) to me
(Name)

to be the person(s) described in and executed the foregoing instrument, who acknowledged to me that he (they) executed the same freely and voluntarily and for the uses and purposes therein mentioned.

(SEAL)

(Notary Public, Judge or other officer)

(b) Contractor's Acknowledgment (if a Corporation)

STATE OF _____ }
COUNTY OF _____ } SS

On this _____ day of _____, A.D. _____, personally appeared before me,
a _____, in and for _____ County, State of _____,
(Notary Public, Judge or other officer)
_____, known (or proved) to me to be the _____
(Name) (President, Vice President or Secretary)

of the corporation that executed the foregoing instrument, and, upon oath, did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily for the uses and purposes therein mentioned.

(SEAL)

(Notary Public, Judge or other officer)

(C) Acknowledgment for Bonding Company

STATE OF _____ }
COUNTY OF _____ } SS

On this _____ day of _____, A.D. _____, personally appeared before me,
a _____, in and for _____ County, State of _____,
(Notary Public, Judge or other officer)
_____, known (or proved) to me to be the _____
(Name) (Attorney in fact or other officer)

of the corporation that executed the foregoing instrument, and, upon oath, did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily for the uses and purposes therein mentioned.

(SEAL)

(Notary Public, Judge or other officer)

Approval of Bond

Approved _____, 20 _____

Deputy Attorney General of the State of Nevada

CONTRACT FORM

CONTRACT # _____

This Contract, made and entered into this _____ day of _____, 20____, by and between the State of Nevada Department of Transportation, hereinafter called the Department, and (Contractor Name and Address), hereinafter called the Contractor.

Witnesseth: The Contractor agrees with the Department that, for the consideration and agreements hereinafter mentioned and contained to be made and performed by the Department, and under the conditions expressed in a bond bearing even date with these presents, and hereunto annexed, that the Contractor shall and will at its own proper cost and expense, do all the work and furnish all the materials necessary for the substantial construction and completion, and to the satisfaction of the Department, of a portion of the highway system of the State of Nevada, being in the County of _____, on (Location), Route Section _____, Mileposts _____, (Description), hereinafter called the Project, in strict conformity, in every part and particular, with the Department's Standard Specifications for Road and Bridge Construction 2001, Project Plans, and Project Special Provisions, and Project Invitation to Bid, which are made a part hereof, and in full compliance with the terms of this Contract.

And the Contractor hereby further agrees to receive and accept the prices set forth in the Proposal – Contract # _____, Total Proposal Amount: _____ (\$ _____), hereto annexed and thereby made a part of this Contract, as full compensation for furnishing all materials and labor, and the doing of all work, in strict accordance with the plans, special provisions and specifications hereinbefore mentioned, to the satisfaction of the Resident Engineer and in the manner and under the conditions hereinbefore specified.

The Department hereby promises and agrees with the Contractor, to employ, and does hereby employ, the Contractor to provide the materials and do the work according to the terms and conditions herein contained and referred to, for the prices aforesaid, and hereby contracts to pay the same at the time, in the manner, and upon the conditions set forth herein; and the parties themselves, their heirs, executors, administrators, successors, and assigns, do hereby agree to the full performance of the covenants herein contained. The Contractor further agrees that no moneys payable under this Contract shall be assigned by power of attorney, or otherwise, except upon the written consent of the Department.

It is further agreed, by and between the parties hereto, that should there be any conflict between the terms of this Contract and the Proposal of the Contractor, then this Contract shall control, and nothing herein shall be considered an acceptance of the terms of such Proposal conflicting therewith.

And the Contractor hereby further agrees that the payment of the final amount due under this Contract shall release the State of Nevada and the Department of Transportation from any and all claims or liability on account of work performed under this Contract other than such claims, if any, as may be specifically excepted by the Contractor in writing at the time final payment is made.

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

- (1) **Compliance with Regulations:** The Contractor shall comply with the Regulation relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age, disability/handicap, and low income status in the selection and retention of subcontractors, including procurements of

materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, disability/handicap, and low income status.
- (4) **Information and Reports:** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Nevada Department of Transportation (hereinafter, "NDOT") or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information the Contractor shall so certify to the NDOT, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the NDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. withholding of payments to the Contractor under the contract until the Contractor complies, and/or
 - b. cancellation, termination or suspension of the contract, in whole or in part.
- (6) **Incorporation of Provisions:** The Contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The Contractor shall take such action with respect to any subcontract. or procurement as the NDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the NDOT to enter into such litigation to protect the interests of the NDOT, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS
FHWA-1273 -- Revised May 1, 2012

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Government wide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.
4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as

modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

- a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.
 - b. The contractor will accept as its operating policy the following statement:
"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training."
2. **EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.
 3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:
 - a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
 - b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
 - c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.
 - d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
 - e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
 4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.
 - a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.
 - b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

- c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.
5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:
 - a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
 - b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
 - c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
 - d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

- a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.
 - b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).
 - c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
 - d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.
7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:
 - a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.
 - b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
 - c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

- d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.
8. **Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.
9. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.
 - a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.
 - b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.
10. **Assurance Required by 49 CFR 26.13(b):**
 - a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.
 - b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.
11. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.
 - a. The records kept by the contractor shall document the following:
 - (1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
 - (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
 - (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;
 - b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

- a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (ii) The classification is utilized in the area by the construction industry; and
 - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their

representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

- c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

- a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the

information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
- (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

- c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

- a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work

actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
6. **Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
7. **Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
8. **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
9. **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
10. **Certification of eligibility.**
 - a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.
3. **Withholding for unpaid wages and liquidated damages.** The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or

subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).
 - a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:
 - (i) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
 - (ii) the prime contractor remains responsible for the quality of the work of the leased employees;
 - (iii) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
 - (iv) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.
 - b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.
2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.
4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.
5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).
3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII.FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.
- i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the

prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

- j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

- a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:
 - (i) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
 - (ii) 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;
 - (iii) 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 (a)(2) of this certification; and
 - (iv) 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.
- b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person

who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
 - a. No Federal appropriated 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 Federal 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 contract, the making of any Federal grant, the making 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.
 - b. 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 Federal 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.

2. 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 31 U.S.C. 1352. 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.
3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

[Signatures on next page]

CONTRACT

In Witness Whereof, The parties to these presents have hereunto set their hands and seals the year and date first above written.

Attested:

STATE OF NEVADA
Through the Department of Transportation

Director, Department of Transportation

Dated: _____, 20____

Approved as to Form & Legality:

(Chairman, Board of Directors, Department of Transportation)

Deputy Attorney General, Chief Counsel

(Contractor)

BY _____

CONTRACTOR'S ACKNOWLEDGMENT [use (a) or (b)] (a) Contractor's Acknowledgment (if an Individual or Partnership)

STATE OF _____ }
COUNTY OF _____ } SS

On this _____ day of _____, A.D. _____, personally appeared before me,
a _____, in and for _____ County, State of _____,
(Notary Public, Judge or other officer)
_____, known (or proved) to me
(Name)

to be the person(s) described in and executed the foregoing instrument, who acknowledged to me that he (they) executed the same freely and voluntarily and for the uses and purposes therein mentioned.

(SEAL)

(Notary Public, Judge or other officer)

(b) Contractor's Acknowledgment (if a Corporation)

STATE OF _____ }
COUNTY OF _____ } SS

On this _____ day of _____, A.D. _____, personally appeared before me,
a _____, in and for _____ County, State of _____,
(Notary Public, Judge or other officer)
_____, known (or proved) to me to be the _____
(Name) (President, Vice President or Secretary)

of the corporation that executed the foregoing instrument, and, upon oath, did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily for the uses and purposes therein mentioned.

(SEAL)

(Notary Public, Judge or other officer)

PERFORMANCE BOND

Whereas, the Nevada Department of Transportation, hereinafter designated as "NDOT", has awarded to (Contractor Name and Address), hereinafter designated "PRINCIPAL", a Contract dated _____ for the following work: Construction of a portion of the (Highway Type) Highway System in _____ County, (Location and Description); and

Whereas, PRINCIPAL is required under the terms of said Contract and by law to furnish a Bond for the performance of said Contract;

Now therefore, we PRINCIPAL, and

(Name and Address of Bonding Company Main Office)

hereinafter designated "SURETY", are held and firmly bound unto NDOT, in the sum of _____ (\$_____), lawful money of the United States, being not less than one hundred percent (100%) of the estimated contract cost of the work, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above-bounden PRINCIPAL's heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and faithfully perform the covenants, conditions, and agreements in the Contract and any alterations made as therein provided, on PRINCIPAL's part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning; and shall indemnify and save harmless NDOT, its officers and agents, as therein stipulated; then this obligation shall become null and void. Otherwise, it shall be and remain in full force and virtue.

SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of Contract, or to the work to be performed there under, shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work.

And SURETY, for value received, hereby stipulates and agrees, if requested to do so by NDOT, to perform and fully complete the work mentioned and described in said Contract, pursuant to the terms, conditions and covenants thereof, if for any cause, said Principal fails or neglects to so perform and fully complete said work; the said SURETY further agrees to commence said work to full completion within twenty (20) days after notice thereof from NDOT, and to fully complete the same with all due diligence and in accordance with the plans and specifications.

And SURETY, for value received, further stipulates and agrees that should NDOT incur attorney's fees or other expenses for the enforcement of the Contract or this Bond, the same shall be paid by SURETY to NDOT.

(Authorized Agent)

(Contractor)

(Bonding Company Name)

By: _____

(Address of Authorized Agent)

(Name of Bonding Company)

By: _____
Attorney in Fact

NOTE TO SURETY ON BOND: Certificates of authority for Attorneys in Fact must be on file with the Department of Transportation and the Insurance Commissioner of the State of Nevada.

ACKNOWLEDGMENTS FOR SIGNER OF BOND [Use (a) or (b) and (c)]

(a) Contractor's Acknowledgment (if an Individual or Partnership)

STATE OF _____ }
COUNTY OF _____ } SS

On this _____ day of _____, A.D. _____, personally appeared before me,
a _____, in and for _____ County, State of _____,
(Notary Public, Judge or other officer)
_____, known (or proved) to me
(Name)

to be the person(s) described in and executed the foregoing instrument, who acknowledged to me that he (they) executed the same freely and voluntarily and for the uses and purposes therein mentioned.

(SEAL)

(Notary Public, Judge or other officer)

(b) Contractor's Acknowledgment (if a Corporation)

STATE OF _____ }
COUNTY OF _____ } SS

On this _____ day of _____, A.D. _____, personally appeared before me,
a _____, in and for _____ County, State of _____,
(Notary Public, Judge or other officer)
_____, known (or proved) to me to be the _____
(Name) (President, Vice President or Secretary)

of the corporation that executed the foregoing instrument, and, upon oath, did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily for the uses and purposes therein mentioned.

(SEAL)

(Notary Public, Judge or other officer)

(C) Acknowledgment for Bonding Company

STATE OF _____ }
COUNTY OF _____ } SS

On this _____ day of _____, A.D. _____, personally appeared before me,
a _____, in and for _____ County, State of _____,
(Notary Public, Judge or other officer)
_____, known (or proved) to me to be the _____
(Name) (Attorney in fact or other officer)

of the corporation that executed the foregoing instrument, and, upon oath, did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily for the uses and purposes therein mentioned.

(SEAL)

(Notary Public, Judge or other officer)

Approval of Bond

Approved _____, 20 _____

Deputy Attorney General of the State of Nevada

LABOR AND MATERIAL BOND

Whereas, the Nevada Department of Transportation, hereinafter designated as "NDOT", has awarded to (Contractor Name and Address), hereinafter designated "PRINCIPAL", a Contract dated _____ for the following work: Construction of a portion of the (Highway Type) Highway System in _____ County, (Location and Description); and

Whereas, PRINCIPAL is required under the terms of said Contract and by law to furnish a Bond for labor and materials used in said Contract;

Now therefore, we PRINCIPAL, and

(Name and Address of Bonding Company Main Office)

hereinafter designated "SURETY", are held and firmly bound unto NDOT, in the sum of _____ (\$ _____), lawful money of the United States, being not less than one hundred percent (100%) of the estimated contract cost of the work, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above-bounden PRINCIPAL=s heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provision, supplies, implements or machinery used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, together with interest at the rate of twelve percent per annum, or for amounts due under the Unemployment Compensation Law with respect to such work or labor, as required by the provisions of NRS 612, and provided that the claimant shall have complied with the provisions of NRS 408.363, SURETY hereon will pay the same within thirty (30) calendar days an amount not exceeding the sum specified in this Bond, and the above obligation shall then be null and void. Otherwise, it shall remain in full force and virtue.

SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of Contract, or to the work to be performed there under, shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work.

This Bond shall inure to the benefit of any person who provides materials, provisions, supplies, trucks, other means of transportation, work or labor to complete the work called for in the contract, as to give a right of action to such persons or their assigns in any suit brought upon this Bond.

And SURETY, for value received, further stipulates and agrees that should NDOT or other obligees, incur attorney=s fees or other expenses for the enforcement of the Contract or this Bond, the same shall be paid by SURETY to NDOT, subcontractors, workmen, laborers, mechanics, and furnishers of the materials as their interests may appear.

(Authorized Agent)

(Contractor)

(Bonding Company Name)

By: _____

(Address of Authorized Agent)

(Name of Bonding Company)

By: _____
Attorney in Fact

NOTE TO SURETY ON BOND: Certificates of authority for Attorneys in Fact must be on file with the Department of Transportation and the Insurance Commissioner of the State of Nevada.

ACKNOWLEDGMENTS FOR SIGNER OF BOND [Use (a) or (b) and (c)]

(a) Contractor's Acknowledgment (if an Individual or Partnership)

STATE OF _____ }
COUNTY OF _____ } SS

On this _____ day of _____, A.D. _____, personally appeared before me,
a _____, in and for _____ County, State of _____,
(Notary Public, Judge or other officer)
_____, known (or proved) to me
(Name)

to be the person(s) described in and executed the foregoing instrument, who acknowledged to me that he (they) executed the same freely and voluntarily and for the uses and purposes therein mentioned.

(SEAL) _____
(Notary Public, Judge or other officer)

(b) Contractor's Acknowledgment (if a Corporation)

STATE OF _____ }
COUNTY OF _____ } SS

On this _____ day of _____, A.D. _____, personally appeared before me,
a _____, in and for _____ County, State of _____,
(Notary Public, Judge or other officer)
_____, known (or proved) to me to be the _____
(Name) (President, Vice President or Secretary)

of the corporation that executed the foregoing instrument, and, upon oath, did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily for the uses and purposes therein mentioned.

(SEAL) _____
(Notary Public, Judge or other officer)

(C) Acknowledgment for Bonding Company

STATE OF _____ }
COUNTY OF _____ } SS

On this _____ day of _____, A.D. _____, personally appeared before me,
a _____, in and for _____ County, State of _____,
(Notary Public, Judge or other officer)
_____, known (or proved) to me to be the _____
(Name) (Attorney in fact or other officer)

of the corporation that executed the foregoing instrument, and, upon oath, did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily for the uses and purposes therein mentioned.

(SEAL) _____
(Notary Public, Judge or other officer)

Approval of Bond

Approved _____, 20 _____

Deputy Attorney General of the State of Nevada

RIDER TO CONTRACTOR'S BOND FOR PERFORMANCE BOND IN FAVOR OF
U.S. SECRETARY OF INTERIOR

Know All Men By These Presents, That We (Contractor Name and Address), as Principal, and

Name and Address of Main Bonding Company

as surety are held and firmly bound unto the U. S. Secretary of Interior in the sum of Two Thousand and 00/100 dollars (\$2,000), to be paid to the said U. S. Secretary of Interior for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors or assigns, jointly and severally, firmly by these presents: That, said bond is conditioned upon the faithful compliance with applicable regulations, the terms and conditions of the permit, lease, or contract, and the exploration or mining plan as approved, amended or supplemented.

The Conditions of This Obligation is such, That Whereas, the above principal did on the ____ day of _____, 20__, enter into a contract with the Department of Transportation of the State of Nevada, for the performance of the following specific work: Construction of a portion of the (Highway Type) Highway System in _____ County, (Location and Description)..

Now, if the said (Contractor Name), heirs, executors, administrators, successors and assigns, shall well and truly perform their part of said contract, and if such work under the contract shall be performed in accordance with the plans and specifications, and in strict conformity with the terms of said contract, and every covenant and agreement therein contained, and further, if the said (Contractor Name) shall indemnify and save harmless the U. S. Secretary of Interior from and against all damages which it may sustain by reason of liens for labor and materials furnished for said work, and if the said (Contractor Name) shall pay all laborers, mechanics and material men and persons who may have supplied provisions, supplies, trucks, and other means of transportation used in, or about, or upon the said work, all just debts due to such persons, or to any person to whom any part of such work was given, and in addition all bills for labor, materials, sustenance, provisions, or supplies used or consumed by subcontractors or otherwise in the performance of the work contracted to be done, together with interest at the rate of twelve percent per annum, then this obligation shall be void; otherwise to remain in full force and effect.

And the said surety hereby stipulates and agrees that no change, extension, alteration or addition to the terms of the contract or specifications shall in any wise affect its obligation of this Bond.

(Authorized Agent)

(Contractor)

(Bonding Company Name)

By: _____

(Address of Authorized Agent)

(Name of Bonding Company)

By: _____

Attorney in Fact

NOTE TO SURETY ON BOND: Certificates of authority for Attorneys in Fact must be on file with the Department of Transportation and the Insurance Commissioner of the State of Nevada.

ACKNOWLEDGMENTS FOR SIGNER OF BOND [Use (a) or (b) and (c)]

(a) Contractor's Acknowledgment (if an Individual or Partnership)

STATE OF _____ }
COUNTY OF _____ } SS

On this _____ day of _____, A.D. _____, personally appeared before me,
a _____, in and for _____ County, State of _____,
(Notary Public, Judge or other officer)
_____, known (or proved) to me
(Name)

to be the person(s) described in and executed the foregoing instrument, who acknowledged to me that he (they) executed the same freely and voluntarily and for the uses and purposes therein mentioned.

(SEAL)

(Notary Public, Judge or other officer)

(b) Contractor's Acknowledgment (if a Corporation)

STATE OF _____ }
COUNTY OF _____ } SS

On this _____ day of _____, A.D. _____, personally appeared before me,
a _____, in and for _____ County, State of _____,
(Notary Public, Judge or other officer)
_____, known (or proved) to me to be the _____
(Name) (President, Vice President or Secretary)

of the corporation that executed the foregoing instrument, and, upon oath, did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily for the uses and purposes therein mentioned.

(SEAL)

(Notary Public, Judge or other officer)

(C) Acknowledgment for Bonding Company

STATE OF _____ }
COUNTY OF _____ } SS

On this _____ day of _____, A.D. _____, personally appeared before me,
a _____, in and for _____ County, State of _____,
(Notary Public, Judge or other officer)
_____, known (or proved) to me to be the _____
(Name) (Attorney in fact or other officer)

of the corporation that executed the foregoing instrument, and, upon oath, did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily for the uses and purposes therein mentioned.

(SEAL)

(Notary Public, Judge or other officer)

Approval of Bond

Approved _____, 20 _____

Deputy Attorney General of the State of Nevada