



REQUEST FOR QUALIFICATIONS

FOR

PARTNERS IN THE DEVELOPMENT OF AFFORDABLE HOUSING

April 22, 2019

Tahoe Transportation District

P.O. Box 499

Zephyr Cove, NV 89448

INTRODUCTION

The Tahoe Transportation District (TTD) is seeking qualified partners in the development of affordable housing associated with the US 50 / South Shore Community Revitalization Project (Project). TTD is a bi-state, special purpose transportation district that delivers capital projects in the Lake Tahoe basin. Examples of TTD projects include road realignments, bridges, roundabouts, complete streets, parking, shared use paths, and transit facilities. These projects are located in both California and Nevada and require cooperation and involvement from various federal, state and local entities, including the Tahoe Regional Planning Agency (TRPA), federal agencies, state agencies, counties, cities, and other local jurisdictions.

All of TTD's projects serve transportation purposes and help to accomplish regional transportation goals. At the same time, some of TTD's projects also create development opportunities that further other public purposes and goals.

This Request for Qualifications (RFQ) describes the general Scope of Services, necessary RFQ components, consultant selection process, and required format of Statement of Qualification (SOQ), as well as a sample copy of TTD's Standard Professional Services Agreement.

The prime consultant in response to this RFQ shall be a firm, organization or vendor licensed to conduct business in their respective disciplines in the State of California and Nevada.

TTD reserves the right to award any number of contracts it deems necessary. This RFQ does not commit TTD to award a contract. TTD reserves the right to accept or reject any or all proposals. No proposal shall be binding upon TTD until after a contract is executed by duly authorized representatives of TTD and the selected consultant. No minimum amount of work is implied or guaranteed under the contract.

SCOPE OF SERVICES

The Project, which received approval on November 15, 2018, is conditioned to require the construction of 109 Transit Oriented Development (TOD) residential units. Of the 109 units, 102 shall be deed restricted for low income households and seven shall be restricted for moderate income households. The TTD anticipates potentially partnering with multiple affordable housing developers for the creation of the 109 TOD residential units.

Project Overview

The Project encompasses these primary components:

- Reroute an approximate one-mile segment of US 50 within the South Lake Tahoe/Stateline tourist core from Lake Parkway to near the location of the existing intersection of Pioneer Trail and US 50. The alignment will follow the existing right-of-way of Lake Parkway around the south side on the casino corridor and continue into California along new right-of-way to be acquired through the Rocky Point neighborhood. The new right-of-way will displace approximately 76 residential units, which must be replaced as affordable units prior to any project construction.
- Develop the former US 50 right-of-way into a "main street," the goal of which is to integrate land uses into multi-modal, pedestrian oriented streetscape. Thirty-three

affordable residential units must be developed with one-quarter mile of the new main street.

- Creation of a Rocky Point Neighborhood Amenities Plan to address development of a community park and green space, sidewalks, lighting, wayfinding and noise mitigation.

The loss of the approximate 76 residential units shall be mitigated through the development of 109 transit oriented development (TOD) housing units, 76 of which shall be constructed prior to the displacement of any residents.

No less than 33 units shall be constructed before or concurrent with the roadway realignment and shall be constructed within the main street area walkshed (no greater than ¼ mile from the outer boundary of the Main Street Project area). The scattered site development approach stipulated by the project permit conditions will likely result in multiple independent housing developments.

The TTD is seeking experienced affordable housing developers with which to partner to ensure compliance with project conditions. For the purposes of this RFQ, the project will consist of the development of affordable housing and not the overall US 50 realignment.

Project Goals

- Comply with a special conditions related to the development of affordable housing associated with the overall US 50 Project permit.
- Develop high quality affordable housing to meet the needs of displaced residents, as well as future residents of the community.
- Integrate affordable housing within the new “Main Street,” so as to be in close proximity to jobs, services and transit facilities.

Successful Applicant’s Role

- Have in possession and/or have ability to acquire a suitable site or sites for the development of the 76 units prior to project initiation and/or the 33 units to be constructed within ¼ mile of the new “Main Street” concurrently with the project.
- Participate in the successful acquisition of all necessary entitlements from all relative agencies, which is likely to include the City of South Lake Tahoe and the Tahoe Regional Planning Agency.
- Develop a competitive project pro forma outlining total development costs and project financing mechanisms.
- Design a high quality preliminary development proposal indicating number and size of units, site plan, and architectural renderings.
- Play a significant role in the acquisition of all necessary financial capital and underwriting processes.
- Ensure compliance with all necessary state and federal funding regulations.

Required Qualifications

- Significant experience in all facets of land development, including procurement of entitlements and permits and infrastructure development.

- Experience and knowledge of the South Lake Tahoe community and key stakeholder groups.
- Success with using both four percent and nine percent Low Income Housing Tax Credits to develop mixed-income, transit-oriented, multi-family housing developments.
- Demonstrable significant knowledge and experience with alternative funding sources. Specifically those used to serve as gap financing for Low Income Housing Tax Credits.
- Experience with developing and managing a variety of affordable housing developments including: mixed-income, mixed-use, and scattered site developments.
- Experience with public/private partnerships and leveraging limited financial resources.
- Successful management of complete land entitlement and environmental review processes.
- Experience working with local, state, and federal agencies.
- Demonstrable success with public relations, such as conducting public workshops or charrettes.

PROPOSAL REQUIREMENTS

A. Form of Statement of Qualifications (Maximum of 15 pages)

TTD is asking firms to provide proposals that demonstrate the firm's qualifications to develop affordable housing in the region. Proposals shall include, at a minimum, the following information presented in a clear and concise format. Each firm is solely responsible for the accuracy and completeness of its proposal. Proposals that are incomplete may be rejected. TTD will negotiate a scope of work, budget and development agreement with the most qualified firm.

1. Include a cover letter with contact information and a signature by an authorized officer or employee of the firm. Include a statement of acknowledgement of having received all addenda, if any are issued.
2. Describe your unique qualifications and direct experience in the development of affordable housing, specifically in the Lake Tahoe basin. If resumes for project lead and key staff for the project are submitted, they will not be counted towards total page count, however, resumes should be no more than three pages.
3. Include titles of staff proposed for the project.
4. Include an accurate summary detailing all experience associated with all of the required qualifications.
5. Provide three (3) references for current clients from the last two (2) years.
6. Demonstrate knowledge of the project area and understanding of unique processes and considerations associated with development in the Lake Tahoe Basin.
7. The proposer and TTD will enter into a contract in the form attached as Attachment A. The proposal must specifically indicate any provisions in the form of the contract which are not acceptable and propose any alternative language or terms.
8. Provide a signed copy of the Lobbying Certification (Attachment B).
9. Provide a signed copy of the Certification Regarding Debarment, Suspension and other Responsibility Matters (Attachment C).

10. Provide a statement which discloses any past on-going or potential conflicts of interest that the firm may have as a result of performing the work/services.

Proposals should not exceed 15 pages (with the exception of attached materials which shall not be counted for purposes of the page limit). Attachments should be labeled as attachments and included separately with the proposal.

B. Costs of Statement of Qualifications

Issuance of this RFQ does not commit TTD, in any way, to pay any costs incurred in preparing and submitting a proposal. TTD will not reimburse responding firms, including the selected firm, for any expenses incurred in preparing or submitting proposals. All costs related to preparing and submitting a proposal shall be paid by the respondent.

C. Changes, Additions, or Clarifications

Any changes, additions or clarifications to this RFQ will be made by amendments (addenda). Any additional supporting materials and addenda will be posted on TTD's website, <http://tahoetransportation.org/doing-business/rfp-info>.

Requests for clarifications about this RFQ may be submitted at any time prior to 5:00 p.m. on Wednesday, May 1, 2019. Requests should be submitted in writing via e-mail to: Judi Allen, Executive Assistant, jallen@tahoetransportation.org.

Responses will be posted on TTD's website no later than Monday, May 3, 2019.

D. Licenses, Permits, Taxes

The price or prices for the work shall include full compensation for all taxes, permits, etc. that the respondent is or may be required to pay.

E. Disadvantaged Business Enterprise (DBE) Requirements

TTD hereby notifies firms that in regard to any contract entered into pursuant to this RFQ, Disadvantaged Business Enterprises (DBE's) will be afforded equal opportunities to submit proposals and will not be discriminated against on the grounds of race, color, sex, disability, or national origin in consideration of an award.

A DBE is defined as a small business concern which is at least 51% owned and controlled by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals. Socially and economically disadvantaged include Women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans.

F. Equal Employment Opportunity

Each firm must agree that it will not discriminate in hiring, promotion, treatment, or other terms and conditions of employment based on race, sex, national origin, age, disability, or in any way violate Title VII of the 1964 Civil Rights Act and amendments, except as permitted by said laws.

G. Public Record/Confidential Information

All responses become property of TTD. All responses, including the accepted proposal and any subsequent contract, become public records per the requirements of state public records laws. Proprietary material must be clearly marked as such. Pricing and service elements of the successful proposal are not considered proprietary information.

TTD will treat all information submitted in a proposal as available for public inspection once TTD has selected a contractor. If you believe that you have a legally justifiable basis for protecting the confidentiality of any information contained within your proposal, you must identify any such information, together with the legal basis of your claim in your proposal, and present such information separately as part of your response package. This portion of the submittal must be clearly marked "Confidential."

The final determination as to whether TTD will assert your claim of confidentiality on your behalf shall be at the sole discretion of TTD. If TTD makes a determination that your information does not meet the criteria for confidentiality, you will be notified. Any information deemed to be non-confidential shall be considered a public record.

PROCUREMENT PROCESS

A. Delivery of Proposals

Firms may e-mail proposal to jallen@tahoetransportation.org or deliver one (1) electronic version of the proposal on a CD or USB flash drive. Delivery shall be made either (1) in-person or via courier service to the Tahoe Transportation District, Attn: Judi Allen, 128 Market Street, Suite 3F, Stateline, NV 89448 or (2) via postal mail at P.O. Box 499, Zephyr Cove, NV 89448.

Please mark submission as "RFQ for Affordable Housing Development." Proposals must be received no later than 3:00 p.m. on Friday, May 13, 2019 to be considered responsive.

B. Evaluation Process

TTD will review and evaluate the submitted proposals for responsiveness to the RFQ in order to determine whether proposers possess the qualifications necessary to provide the services, using the following criteria:

1. Project team experience with similar projects
2. Project leader and team member qualifications
3. Demonstrated possession or ability to acquire adequate development sites
4. Demonstrated ability to successfully conduct public outreach and public education
5. Demonstrated ability to keep projects on schedule and within budget
6. Demonstrated ability to work with public agencies to acquire all necessary project financing
7. Demonstrated ability to communicate and work effectively with the public, staff, policy and review bodies

Following the evaluation of RFQ's, TTD will check references of the top firm(s) prior to making a selection. Interviews may be conducted May 20 or 21.

TTD may request clarifications of proposals directly from the proposers. TTD reserves the right to waive any minor irregularities, informalities or oversights in the RFQ documents, or any corresponding proposals at its sole discretion.

C. Selection Criteria

TTD staff will select the firm that staff believes will provide the best qualifications. In reviewing the proposals, and negotiating with selected firms, TTD reserves the right to reject all proposals.

D. Negotiation and Award

TTD will work with the selected firm to finalize the scope of work and negotiate a contract between TTD and the selected firm. All costs incurred by the firm in connection with this work and negotiations shall be borne by the firm and the firm shall have no right to reimbursement from TTD. The system and contract that are developed and agreed upon will then be brought back to TTD's Board of Directors with a staff recommendation for contract award.

In the event that TTD and the selected firm fail to finalize the scope of work and cost, or fail to negotiate a contract, TTD will reject the selected firm's proposal. In the event of rejection, the firm shall have no right to reimbursement for costs incurred by the firm in connection with any work and negotiations. TTD will then select another firm that staff believes will provide the best value, qualifications, and work and negotiate with that firm.

Upon approval from TTD's Board of Directors, the agreement will be sent to the firm for signature. No proposal shall be binding upon TTD until after the agreement is executed by duly authorized representatives of the firm and TTD.

E. Timeline

The following is the timeline for the procurement process:

Event/Action	Date(s)
RFQ Release Date	April 22, 2019
Deadline for Submitting Written Questions	May 1, 2019 by 5:00 p.m.
Response to Questions and Addenda Issued (if necessary)	May 3, 2019
Deadline for submitting Proposals	May 13, 2018 by 3:00 p.m.
Interview Finalists (if necessary)	May 20 or 21, 2019
TTD scoring and selection and provides notice of intent to award	May 24, 2019
Finalize Scope of Work, Costs, and Negotiate Contract	May 27-30, 2019
TTD Board Approves Contract	June 14, 2019

**AGREEMENT FOR SERVICES
BETWEEN
TAHOE TRANSPORTATION DISTRICT
AND**

This Agreement for Services (“Agreement”) is entered into as of this ____ day of _____, 20__ by and between Tahoe Transportation District, a bi-state special purpose district created by the Tahoe Regional Planning Compact, (“District”) and _____, a _____ (“Contractor”). District and Contractor are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties.”

RECITALS

- A. District has sought, by request for qualifications the performance of the services defined and described particularly in Section 2 of this Agreement.
- B. Contractor, following submission of a [proposal, quote, bid, etc.] for the performance of the services defined and described particularly in Section 2 of this Agreement, was selected by the District to perform those services.
- C. District has authority to enter into this Agreement and the District’s General Manager has authority to execute this Agreement.
- D. The Parties desire to formalize the selection of Contractor for performance of those services defined and described particularly in Section 2 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained here and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

SECTION 1. TERM OF AGREEMENT.

Subject to the provisions of Section 20 "Termination of Agreement" of this Agreement, the Term of this Agreement is for [INSERT TERM].

SECTION 2. SCOPE OF SERVICES & SCHEDULE OF PERFORMANCE.

(a) Scope of Services. Contractor agrees to perform the services set forth in Exhibit "A" "Scope of Services" (hereinafter, the "Services") and made a part of this Agreement by this reference.

(b) Schedule of Performance. The Services shall be completed pursuant to the schedule specified in Exhibit "A." Should the Services not be completed pursuant to that schedule, the Contractor shall be deemed to be in Default of this Agreement. The District, in its sole discretion, may choose not to enforce the Default provisions of this Agreement and may instead allow Contractor to continue performing the Services.

SECTION 3. ADDITIONAL SERVICES.

Contractor shall not be compensated for any work rendered in connection with its performance of this Agreement that are in addition to or outside of the Services unless such additional services are authorized in advance and in writing in accordance with Section 26 "Administration and Implementation" or Section 27 "Amendment" of this Agreement. If and when such additional work is authorized, such additional work shall be deemed to be part of the Services.

SECTION 4. COMPENSATION AND METHOD OF PAYMENT.

(a) Subject to any limitations set forth in this Agreement, District agrees to pay Contractor the amounts specified in Exhibit "B" "Compensation" and made a part of this Agreement by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed [REDACTED] dollars (\$ [REDACTED]), unless additional compensation is approved in writing in accordance with Section 26 "Administration and Implementation" or Section 27 "Amendment" of this Agreement.

(b) Each month Contractor shall furnish to District an original invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and subcontractor contracts. Subcontractor charges shall be detailed by the following categories: labor, travel, materials, equipment and supplies. If the compensation set forth in subsection (a) and Exhibit "B" include payment of labor on an hourly basis (as opposed to labor and materials being paid as a lump sum), the labor category in each invoice shall include detailed descriptions of task performed and the amount of time incurred for or allocated to that task. District shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. In the event that no charges or expenses are disputed, the invoice shall be approved and paid according to the terms set forth in subsection (c). In the event any charges or expenses are disputed by District, the original invoice shall be returned by District to Contractor for correction and resubmission.

(c) Except as to any charges for work performed or expenses incurred by Contractor which are disputed by District, District will use its best efforts to cause Contractor to be paid within thirty (30) days of receipt of Contractor's correct and undisputed invoice.

(d) Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.

SECTION 5. INSPECTION AND FINAL ACCEPTANCE.

District may inspect and accept or reject any of Contractor's work under this Agreement, either during performance or when completed. District shall reject or finally accept Contractor's work within sixty (60) days after submitted to District. District shall reject work by a timely written explanation, otherwise Contractor's work shall be deemed to have been accepted. District's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any of Contractor's work by District shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Section 16 "Indemnification" and Section 17 "Insurance."

SECTION 6. OWNERSHIP OF DOCUMENTS.

All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by Contractor in the course of providing the Services pursuant to this Agreement shall become the sole property of District and may be used, reused or otherwise disposed of by District without the permission of the Contractor. Upon completion, expiration or termination of this Agreement, Contractor shall turn over to District all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

If and to the extent that District utilizes for any purpose not related to this Agreement any maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents prepared, developed or discovered by Contractor in the course of providing the Services pursuant to this Agreement, Contractor's guarantees and warranties in Section 9 "Standard of Performance" of this Agreement shall not extend to such use of the maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents.

SECTION 7. CONTRACTOR'S BOOKS AND RECORDS.

(a) Contractor shall maintain any and all documents and records demonstrating or relating to Contractor's performance of the Services. Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and

disbursements charged to District pursuant to this Agreement. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Contractor pursuant to this Agreement.

Any and all such documents or records shall be maintained for three (3) years from the date of execution of this Agreement and to the extent required by laws relating to audits of public agencies and their expenditures.

(b) Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, at any time during regular business hours, upon request by District or its designated representative. Copies of such documents or records shall be provided directly to the District for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at Contractor's address indicated for receipt of notices in this Agreement.

(c) Where District has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of Contractor's business, District may, by written request, require that custody of such documents or records be given to the District. Access to such documents and records shall be granted to District, as well as to its successors-in-interest and authorized representatives.

SECTION 8. INDEPENDENT CONTRACTOR.

(a) Contractor is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of District. Contractor shall have no authority to bind District in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against District, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by District.

(b) The personnel performing the Services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither District, nor any elected or appointed boards, officers, officials, employees or agents of District, shall have control over the conduct of Contractor or any of Contractor's officers, employees, or agents except as set forth in this Agreement. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, or agents are in any manner officials, officers, employees or agents of District.

(c) Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to District's employees. Contractor expressly waives any claim Contractor may have to any such rights.

SECTION 9. STANDARD OF PERFORMANCE.

Contractor represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the Services required under this Agreement in a thorough, competent and professional manner. Contractor shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all Services. In meeting its obligations under this Agreement, Contractor shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to the Services required of Contractor under this Agreement. In addition to the general standards of performance set forth this section, additional specific standards of performance and performance criteria may be set forth in Exhibit "A" "Scope of Work" that shall also be applicable to Contractor's work under this Agreement. Where there is a conflict between a general and a specific standard of performance or performance criteria, the specific standard or criteria shall prevail over the general.

SECTION 10. COMPLIANCE WITH APPLICABLE LAWS; PERMITS AND LICENSES.

Contractor shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement. Contractor shall obtain any and all licenses, permits and authorizations necessary to perform the Services set forth in this Agreement. Neither District, nor any elected or appointed boards, officers, officials, employees or agents of District, shall be liable, at law or in equity, as a result of any failure of Contractor to comply with this section.

SECTION 11. PREVAILING WAGE LAWS.

Contractor understands, acknowledges and agrees to comply with any and all applicable state and federal laws requiring payment of prevailing wages for work performed in connection with publicly-funded projects. Contractor and any subcontractors shall comply with all applicable state and federal prevailing wage rates, statutes, rules and regulations then in effect if required by state or federal laws or regulations. In the event of conflict between applicable federal and state provisions, the higher prevailing wage rate will apply.

SECTION 12. NONDISCRIMINATION.

Contractor shall not discriminate, in any way, against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in connection with or related to the performance of this Agreement.

SECTION 13. UNAUTHORIZED ALIENS.

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of the Services, and should the any liability or sanctions be imposed against District for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse District for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by District.

SECTION 14. CONFLICTS OF INTEREST.

(a) Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of District or which would in any way hinder Contractor's performance of the Services. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the General Manager. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of District in the performance of this Agreement.

(b) District understands and acknowledges that Contractor is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Contractor is unaware of any stated position of District relative to such projects. Any future position of District on such projects shall not be considered a conflict of interest for purposes of this section.

(c) District understands and acknowledges that Contractor will perform non-related services for other governmental agencies and private Parties following the completion of the Services under this Agreement. Any such future service shall not be considered a conflict of interest for purposes of this section.

SECTION 15. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.

(a) All information gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information or work product to persons or entities other than District without prior written authorization from the General Manager, except as may be required by law.

(b) Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the General Manager or unless requested by the

District Attorney of District, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives District notice of such court order or subpoena.

(c) If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then District shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Contractor's conduct.

(d) Contractor shall promptly notify District should Contractor, its officers, employees, agents or subcontractors, be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder. District retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with District and to provide District with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by District to control, direct, or rewrite said response.

SECTION 16. INDEMNIFICATION.

(a) Indemnification for Professional Liability. Where the law establishes a professional standard of care for Contractor's services, to the fullest extent permitted by law, Contractor shall indemnify, protect, defend and hold harmless District and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees) arise out of, are a consequence of, or are in any way attributable to, in whole or in part, any negligent or wrongful act, error or omission of Contractor, or by any individual or entity for which Contractor is legally liable, including but not limited to officers, agents, employees or sub-contractors of Contractor, in the performance of professional services under this Agreement.

(b) Indemnification for Other than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Contractor shall indemnify, protect, defend and hold harmless District, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any

way attributable to, in whole or in part, the performance of this Agreement by Contractor, or by any individual or entity for which Contractor is legally liable, including but not limited to officers, agents, employees or sub-contractors of Contractor.

(c) Indemnification from Subcontractors. Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement naming the Indemnified Parties as additional indemnitees. In the event Contractor fails to obtain such indemnity obligations from others as required herein, Contractor agrees to be fully responsible according to the terms of this section. Failure of District to monitor compliance with these requirements imposes no additional obligations on District and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend District as set forth herein is binding on the successors, assigns or heirs of Contractor and shall survive the termination of this Agreement or this section.

(d) Limitation of Indemnification. Notwithstanding any provision of this section to the contrary, in California design professionals are required to defend and indemnify the District only to the extent permitted by California Civil Code Section 2782.8, which limits the liability of a design professional to claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional. The term “design professional,” as defined in Section 2782.8, is limited to licensed architects, licensed landscape architects, registered professional engineers, professional land surveyors, and the business entities that offer such services in accordance with the applicable provisions of the California Business and Professions Code. To the extent that California Civil Code Section 2782.8 applies to this Agreement, the indemnification obligations of Contractor shall be limited in accordance with that section.

(e) District’s Negligence. The provisions of this section do not apply to claims occurring as a result of District’s sole negligence. The provisions of this section shall not release District from liability arising from gross negligence or willful acts or omissions of District or any and all of its officials, employees and agents.

SECTION 17. INSURANCE.

Contractor agrees to obtain and maintain in full force and effect during the term of this Agreement the insurance policies set forth in Exhibit “C” “Insurance” and made a part of this Agreement. All insurance policies shall be subject to approval by District as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the General Manager. Contractor agrees to provide District with copies of required policies upon request.

SECTION 18. ASSIGNMENT.

The expertise and experience of Contractor are material considerations for this Agreement. District has an interest in the qualifications and capability of the persons and entities who will fulfill the duties and obligations imposed upon Contractor under this Agreement. In recognition of that interest, Contractor shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Contractor's duties or obligations under this Agreement without the prior written consent of the District. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement entitling District to any and all remedies at law or in equity, including termination of this Agreement pursuant to Section 20 "Termination of Agreement." District acknowledges, however, that Contractor, in the performance of its duties pursuant to this Agreement, may utilize sub-contractors.

SECTION 19. CONTINUITY OF PERSONNEL.

Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the Services. Contractor shall notify District of any changes in Contractor's staff and subcontractors, if any, assigned to perform the Services prior to and during any such performance.

SECTION 20. TERMINATION OF AGREEMENT.

(a) Termination for Convenience. District may terminate this Agreement, in whole or in part, at any time by giving written notice of termination to Contractor if District determines that termination is in its best interest. In the event such notice is given, Contractor shall cease immediately all work in progress. Contractor shall be paid its costs, including contract close-out costs, on work performed up to the time of termination.

(b) Termination for Cause. If District notifies Contractor of a default under Section 21 "Default" and Contractor fails to cure the default within the time frame provided, District may terminate this Agreement immediately. Contractor will only be paid for Services performed in accordance with the manner of performance set forth in this Agreement.

(c) Property of District. Upon termination of this Agreement by either Contractor or District, all property belonging exclusively to District which is in Contractor's possession shall be returned to District. Contractor shall furnish to District a final invoice for work performed and expenses incurred by Contractor, prepared as set forth in Section 4 "Compensation and Method of Payment" of this Agreement. This final invoice shall be reviewed and paid in the same manner as set forth in Section 4 "Compensation and Method of Payment" of this Agreement.

SECTION 21. DEFAULT.

In the event that Contractor is in default under the terms of this Agreement, the District may give notice to Contractor specifying the nature of the default and providing the Contractor a timeframe to cure the default. The District may hold all invoices until the default is cured. If Contractor does not cure the default to District's satisfaction in the timeframe given, the District may take necessary steps to terminate this Agreement under Section 20 "Termination of Agreement." Any failure on the part of the District to give notice of the Contractor's default shall not be deemed to result in a waiver of the District's legal rights or any rights arising out of any provision of this Agreement.

SECTION 22. EXCUSABLE DELAYS.

Contractor shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of Contractor. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, acts of District, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this Agreement shall be equitably adjusted for any delays due to such causes.

SECTION 23. COOPERATION BY DISTRICT.

All public information, data, reports, records, and maps as are existing and available to District as public records, and which are necessary for carrying out the Services shall be furnished to Contractor in every reasonable way to facilitate, without undue delay, the Services to be performed under this Agreement.

SECTION 24. NOTICES.

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by telecopier or certified mail, postage prepaid and return receipt requested, addressed as follows:

To District: Tahoe Transportation District
Attn: _____

To Contractor: _____

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

SECTION 25. AUTHORITY TO EXECUTE.

The person or persons executing this Agreement on behalf of Contractor represents and warrants that he/she/they has/have the authority to so execute this Agreement and to bind Contractor to the performance of its obligations hereunder.

SECTION 26. ADMINISTRATION AND IMPLEMENTATION.

This Agreement shall be administered and executed by the General Manager or his or her designated representative. The General Manager shall have the authority to issue interpretations and to make amendments to this Agreement, including amendments that commit additional funds, consistent with Section 27 "Amendment" and the General Manager's contracting authority under District's ordinances, rules and regulations.

SECTION 27. AMENDMENT.

No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Contractor and by the District. The General Manager shall have the authority to approve any amendment to this Agreement if the total compensation under this Agreement, as amended, would not exceed the General Manager's contracting authority under the District's ordinances, rules and regulations. All other amendments shall be approved by the District's Board. The Parties agree that the requirement for written modifications cannot be waived and that any attempted waiver shall be void.

By written notice or order, District may, from time to time, order work suspension or make changes to the Services to be provided by Contractor. If any such work suspension or change causes an increase or decrease in the price of this Agreement or in the time required for its performance, or otherwise necessitates an amendment to this Agreement, Contractor shall promptly notify District thereof within ten (10) days after the change or work suspension is ordered, and an amendment to this Agreement shall be negotiated. However, nothing in this clause shall excuse Contractor from complying immediately with the notice or order issued by District.

SECTION 28. BINDING EFFECT.

This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

SECTION 29. FEDERAL PROVISIONS.

District will be using money received from the federal government to pay all or a part of the compensation to Contractor for the Services. The federal government requires certain clauses to be included in contracts where federal money will be used in the contract. Contractor agrees to adhere to the federally-required provisions included in Exhibit "D" hereto and incorporated herein by reference. If there is a conflict between any provision in Exhibit "D" and the body of this Agreement, Exhibit "D" shall control. In addition, the Federal Highway Administration's Required Contract Clauses for Federal Aid Construction Projects (FHWA Form 1273, revised May 1, 2012; <https://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>) is incorporated by reference herein.

SECTION 30. WAIVER.

Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by District of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement.

SECTION 31. LAW TO GOVERN; VENUE.

In the event of litigation between the Parties, venue in state trial courts shall lie exclusively in the County of El Dorado, California where the dispute arises from Services performed in California, or shall lie exclusively in the County of Douglas, Nevada where the dispute arises from Services performed in Nevada. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Eastern District of California for Services performed in California, or in the District of Nevada for Services performed in Nevada.

SECTION 32. ATTORNEYS FEES, COSTS AND EXPENSES.

In the event litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing Party in such litigation or other proceeding shall be entitled to an award of reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled.

SECTION 33. ENTIRE AGREEMENT.

This Agreement, including the attached Exhibits, is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between Contractor and District prior to the execution of this Agreement. No

statements, representations or other agreements, whether oral or written, made by any Party which are not embodied herein shall be valid and binding.

SECTION 34. SEVERABILITY.

If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

SECTION 35. CONFLICTING TERMS.

Except as otherwise stated herein, if the terms of this Agreement conflict with the terms of any Exhibit hereto, or with the terms of any document incorporated by reference into this Agreement, the terms of this Agreement shall control.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date and year first-above written.

TAHOE TRANSPORTATION DISTRICT

Carl Hasty
District Manager

ATTEST:

Judi Allen
Clerk of the Board

APPROVED AS TO FORM

Nira Doherty
Interim General Counsel

By: _____

By: _____

Its: _____

Its: _____

NOTE: CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONTRACTOR'S BUSINESS ENTITY.

EXHIBIT "A"
SCOPE OF SERVICES

[The format of this Exhibit may be modified.]

I. Contractor will perform the following Services:

- A.
- B.
- C.
- D.

II. As part of the Services, Contractor will prepare and deliver the following tangible work products to the District:

- A.
- B.
- C.
- D.

III. During performance of the Services, Contractor will keep the District appraised of the status of performance by delivering the following status reports:

- A.
- B.
- C.
- D.

IV. The tangible work products and status reports will be delivered to the District pursuant to the following schedule:

- A.
- B.

C.

D.

V. Contractor will utilize the following personnel to accomplish the Services:

A.

B.

C.

D.

VI. Contractor will utilize the following subcontractors to accomplish the Services:

A.

B.

C.

D.

**EXHIBIT "B"
COMPENSATION**

[Form and content may be revised as necessary to reflect whether compensation is a fixed lump sum or will be hourly with a NTE amount.]

I. Contractor shall use the following rates of pay in the performance of the Services:

- A. [job] [hourly rate]
- B. [job] [hourly rate]
- C. [job] [hourly rate]
- D. [job] [hourly rate]
- E. [job] [hourly rate]

II. Contractor may utilize sub-contractors as indicated in this Agreement. The hourly rate for any subcontractor is not to exceed \$_____ per hour without written authorization from the General Manager or his or her designee.

**EXHIBIT "C"
INSURANCE**

A. Insurance Coverages. Contractor shall provide and maintain insurance, acceptable to the District, in full force and effect throughout the term of this Agreement, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services by Contractor, its agents, representatives or employees. Contractor shall procure and maintain the following scope and limits of insurance:

Only the following "marked" requirements are applicable:

X **Commercial General Liability (CGL):** Insurance written on an occurrence basis to protect Contractor and District against liability or claims of liability which may arise out of this Agreement in the amount of one million dollars (\$1,000,000) per occurrence and subject to an annual aggregate of two million dollars (\$2,000,000). Coverage shall be at least as broad as Insurance Services Office form Commercial General Liability coverage (Occurrence Form CG 0001). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. additional insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

X **Vehicle Liability Insurance:** Vehicle liability insurance in an amount not less than \$1,000,000 for injuries, including accidental death, to any one person, and subject to the same minimum for each person, in an amount not less than one million dollars (\$1,000,000) for each accident, and property damage insurance in an amount of not less than one million dollars (\$1,000,000). A combined single limit policy with aggregate limits in an amount of not less than \$2,000,000 shall be considered equivalent to the said required minimum limits. Coverage shall be at least as broad as Insurance Services Office form number CA 0001 covering Automobile Liability, including code 1 "any auto" and endorsement CA 0025, or equivalent forms subject to the approval of the District.

X **Workers' Compensation Insurance:** Workers' Compensation insurance as required by the State of California and/or Nevada and a minimum of one million dollars (\$1,000,000) of employers' liability coverage. Contractor shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents and representatives. In the event a claim under the provisions of the California Workers' Compensation Act is filed against District by a bona fide employee of Contractor participating under this Agreement, Contractor is to defend and indemnify the District from such claim.

X Professional Liability Insurance: Professional liability insurance appropriate to the Contractor's profession in an amount not less than one million dollars \$1,000,000 per occurrence. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to Services performed under this Agreement. The insurance must be maintained for at least three (3) consecutive years following the completion of Contractor's services or the termination of this Agreement. During this additional three (3) year period, Contractor shall annually and upon request of the District submit written evidence of this continuous coverage.

B. Other Provisions. Insurance policies required by this Agreement shall contain the following provisions:

1. All Coverages.

a. Each insurance policy required by this Agreement shall be endorsed and state the coverage shall not be suspended, voided, cancelled by the insurer or either Party to this Agreement, reduced in coverage or in limits except after 30 days' prior written notice by certified mail, return receipt requested, has been given to District.

b. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

2. Commercial General Liability and Automobile Liability Coverages.

a. District, and its respective elected and appointed officers, officials, and employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities Contractor performs; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to District, and their respective elected and appointed officers, officials, or employees.

b. Contractor's insurance coverage shall be primary insurance with respect to District, and its respective elected and appointed, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by District, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, Contractor's insurance.

c. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

d. Any failure to comply with the reporting or other provisions of the insurance policies, including breaches of warranties, shall not affect coverage provided to District, and its respective elected and appointed officers, officials, employees or volunteers.

e. The insurer waives all rights of subrogation against the District, its elected or appointed officers, officials, employees or agents.

3. Workers' Compensation Coverage. Unless the District Manager otherwise agrees in writing, the insurer shall agree to waive all rights of subrogation against District, and its respective elected and appointed officers, officials, employees and agents for losses arising from work performed by Contractor.

C. Other Requirements. Contractor agrees to deposit with District, at or before the effective date of this Agreement, certificates of insurance necessary to satisfy District that the insurance provisions of this contract have been complied with. The District may require that Contractor furnish District with copies of original endorsements effecting coverage required by this Exhibit "C". The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. District reserves the right to inspect complete, certified copies of all required insurance policies, at any time.

1. Contractor shall furnish certificates and endorsements from each subcontractor identical to those Contractor provides.

2. Any deductibles or self-insured retentions must be declared to and approved by District. At the option of District, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects District or its respective elected or appointed officers, officials, employees and volunteers, or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.

3. The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement.

EXHIBIT "D"
FEDERAL PROVISIONS

1. Incorporation of FTA Terms - The following provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any District requests which would cause District to be in violation of the FTA terms and conditions.

2. Access to Records. The following access to records requirements apply to this Agreement:
 - a. Where the District is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the District, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
 - b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 - c. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the District, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

3. Civil Rights.
 - a. *Nondiscrimination* - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans

with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

- b. *Equal Employment Opportunity* - The following equal employment opportunity requirements apply to the Agreement:
 - i. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq ., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - ii. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - iii. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- c. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.
4. Disadvantaged Business Enterprises.
- a. This Agreement is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The District's overall goal for DBE participation is 2.1 %. A separate goal has not been established for this procurement.
 - b. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor 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 District deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
 - c. **[If a separate contract goal has been established, use the following.]** Contractor is required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following:
 - i. The names and addresses of DBE firms that will participate in this Agreement;
 - ii. A description of the work each DBE will perform;
 - iii. The dollar amount of the participation of each DBE firm participating;
 - iv. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
 - v. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
 - vi. If the contract goal is not met, evidence of good faith efforts to do so.
 - vii. Contractor must present the information required above prior to the execution of this Agreement. (see 49 CFR 26.53(3)).
 - d. **[If no separate contract goal has been established, use the following.]** Contractor will be required to report its DBE participation obtained through race-neutral means throughout the period of performance of this Agreement.
 - e. Contractor is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than 30

days after the Contractor's receipt of payment for that work from the District. In addition, the Contractor [may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the District and Contractor's receipt of the partial retainage payment related to the subcontractor's work.]

- f. The Contractor must promptly notify District whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of District.
5. Energy Conservation - The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
 6. Federal Changes – Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between District and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this Agreement.
 7. No Obligation By The Federal Government
 - a. The District and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the District, Contractor, or any other party (whether or not a party to that Agreement) pertaining to any matter resulting from the Agreement.
 - b. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.
 8. Program Fraud and False or Fraudulent Statements or Related Acts.
 - a. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part

31, apply to its actions pertaining to this Project. Upon execution of the Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the Agreement or the FTA assisted project for which the Services are being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

- b. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
 - c. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.
9. Veterans Employment. As provided by 49 U.S.C. § 5325(k):
- a. To the extent practicable, Contractor agrees that it:
 - 1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and
 - 2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and
 - b. Contractor also assures that its sub-contractor will:
 - 1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and

2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

10. Suspension and Debarment

- a. This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.
- b. The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.
- c. By signing this Agreement, the Contractor certifies as follows: The certification in this clause is a material representation of fact relied upon by District. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to District, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the term of this Agreement. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

11. Clean Air - The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the District and understands and agrees that the District will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

12. Clean Water - The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the District and understands and agrees that the District will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

13. Lobbying – Contractor shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not

and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any District, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

Certification for Contracts, Grants, Loans, and Cooperative Agreements
(To be submitted with each bid or offer exceeding \$100,000)

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

1. 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 an 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.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to 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 [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]
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 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

Attachment C

Certification regarding Debarment and Suspension

The undersigned bidder or proposer certifies that its principals, affiliates, and subcontractors (if any) are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

1. Debarred from participation in any federally assisted Award;
2. Suspended from participation in any federally assisted Award;
3. Proposed for debarment from participation in any federally assisted Award;
4. Declared ineligible to participate in any federally assisted Award;
5. Voluntarily excluded from participation in any federally assisted Award; or
6. Disqualified from participation in any federally assisted Award.

This certification is a material representation of fact relied upon by TTD. If it is later determined by TTD that the undersigned knowingly rendered an erroneous certification, in addition to remedies available to TTD, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The undersigned agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this bid or offer is valid and throughout the period of any contract that may arise from this bid or offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

_____ Signature of Authorized Official

_____ Name and Title of Authorized Official

_____ Date