



Tahoe Transportation
DISTRICT

REQUEST FOR PROPOSALS
FOR
BULK AUTOMOTIVE FLUIDS

July 14, 2020

Tahoe Transportation District

P.O. Box 499

Zephyr Cove, NV 89448

Notice Inviting Proposals
for
Bulk Automotive Fluids Delivery
Tahoe Transportation District

The Tahoe Transportation District (TTD) is seeking a vendor to deliver bulk automotive fluids necessary for preventative maintenance on a mixed fleet of transit vehicles that currently includes twenty-one (21) diesel buses, two (2) unleaded gasoline buses, two (2) diesel non-revenue vehicles, and three (3) unleaded gasoline non-revenue vehicles.

This contract shall include the furnishing of all services/products as set forth in the Scope of Work section of this Request for Proposal (RFP).

Please carefully read the instructions in this RFP. Proposals are due to TTD on or before 3:00 p.m. local time, Friday, July 31, 2020 at 128 Market St., Suite 3F, Stateline, NV 89449 or PO Box 499, Zephyr Cove, NV 89448. Proposals received after said time will not be considered.

It is the intent of awarding the contract according to the process and procedures described in the RFP. TTD intends to procure the highest quality service possible for the best value possible.

TTD reserves the right to negotiate with bidders on all aspects of the proposed work or to reject all proposals and reissue the RFP. TTD is an equal opportunity employer and women and minority owned businesses (DBEs) are encouraged to apply.

I. INTRODUCTION

A. Background

The Tahoe Transportation District (TTD) is a special purpose district created by Article IX of the 1980 Tahoe Regional Planning Compact with authority to own and operate a regional public transportation system for the Tahoe Region. Approximately two-thirds of the Tahoe Region is located in California and one-third is located in Nevada. The Tahoe Region contains an area of about 501 square miles, of which Lake Tahoe is approximately 191 square miles. Overlapping jurisdictions in California include the City of South Lake Tahoe, El Dorado County and Placer County. Overlapping jurisdictions in Nevada include Washoe County, Douglas County and Carson City. Tourism is the economic heartbeat of the region and visitors to the area far outnumber the year-round resident population.

TTD is currently governed by a fourteen-member Board of Directors made up of local jurisdictions, private transportation management associations, both state's governor's and TRPA's appointees, an at-large member, and two state DOT agencies. TTD's mission is to implement transportation infrastructure and services. This includes bicycle, roadway, pedestrian, waterborne and public transit. To that end, TTD is eligible to apply for and receive state and federal grants. TTD also has the authority to levy specific taxes to support transit and infrastructure improvements, but that authority has so far not been exercised.

TTD provides both intra- and interregional connectivity that is vital to the region. TTD operates a coordinated transit system for the South Shore of Lake Tahoe and connects to other areas in the region. South Shore area services include local fixed-route serving South Lake Tahoe, California, and Stateline, Nevada, along with commuter service which connects South Lake Tahoe, California, to Carson City, Nevada via the rural Nevada communities of Minden and Gardnerville. TTD provides supplemental summer service within the region known as the East Shore Express, a transit link between Incline Village and Sand Harbor State Park.

II. NATURE OF SERVICES REQUIRED

A. Scope of the Work to be Performed

Term

TTD is seeking an agreement for a three (3) year period, with two (2) one-year options that could be exercised at the discretion of TTD. The initial three (3) year period will span from September 1, 2020 through August 30, 2023, with the two one-year option periods ending on August 30, 2024 and August 30, 2025, respectively.

Pricing

TTD shall pay proposer a quoted fixed amount based on the proposal provided by the proposer. The quoted fixed amount shall be the firm fixed price for the initial term of the contract, and separate pricing for each additional option years (e.g., 3 years @ \$x, Option year 1 @ \$y, Option year 2 @ \$z). The total price is to include all delivery, handling, or other related charges, but is not to include government surcharges or taxes. The price proposal form is attached as Exhibit A.

Delivery

Proposer must be able to provide timely delivery of proposed fluids to TTD's Corp Yard at 1669 Shop Street, South Lake Tahoe, CA 96150. Delivery charge is to be included in the proposed

price provided in Exhibit A. Off-loading/bulk pumping must be included as a part of delivery and is the responsibility of the proposer.

Communication

Proposers must have a point of contact that will be available via e-mail or telephone during reasonable business hours.

Invoicing

Proposer shall invoice TTD in a timely manner after delivery of requested bulk fluids.

Insurance and Indemnification

Proposers must satisfy the insurance and indemnification requirements identified in Exhibit C of the form agreement (Exhibit B of this RFP) and provide a copy of the required policies.

Licenses and Permits

Proposers must have all federal, state and local licenses and permits necessary to provide the goods and services required in this RFP.

Experience

TTD would prefer proposers have a minimum of five (5) years recent experience providing automotive bulk fluid delivery to entities operating in and around the Lake Tahoe region.

Additional Contract Provisions

The agreement will be funded with federal funding from the Federal Transit Administration (FTA) and the proposer must agree to an agreement that contains all applicable FTA required contract clauses and provisions, in the form attached as Exhibit B.

III. PROCUREMENT PROCESS

A. RFP Schedule

Date:	Activity:
July 14, 2020	Request for Proposal Issued
July 24, 2020 by 3:00 p.m.	Deadline for Submitting Questions
July 28, 2020	Response to Questions Posted
July 31, 2020 by 3:00 p.m.	Deadline for Submittals
August 4, 2020	Evaluations Completed
August 14, 2020	TTD Board Approval
September 1, 2020	Implementation of Contract

B. Addenda and Clarifications

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

Requests for clarifications about this RFP may be submitted at any time prior to 3:00 p.m. on July 24, 2020. Requests should be submitted in writing via e-mail to: Judi Allen, Executive Assistant, jallen@tahoetransportation.org.

Responses will be posted on the TTD website, <http://tahoetransportation.org/doing-business/rfp-info>, no later than July 28, 2020.

C. Delivery of Proposals

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

Please mark the envelope as “Bulk Automotive Fluid Delivery.” Proposals must be received no later than 3:00 p.m. on July 31, 2020 to be considered responsive.

Proposals shall be submitted no later than the deadline time and date specified above. A responding firm’s failure to submit proposals as required before the deadline shall cause the submittal to be disqualified.

Responding firms assume the risk of the method of dispatch chosen. TTD assumes no responsibility for delays caused by any delivery service. Postmarking by the due date shall not substitute for actual receipt of the submittal by TTD. Late submittals shall not be accepted nor shall additional time be granted to any responding firm.

D. Evaluation Process

The submitted proposals will be reviewed and evaluated for responsiveness to the RFP in order to determine whether proposers possess the qualifications necessary to provide the goods and/or services.

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

IV. PROPOSAL REQUIREMENTS

A. Form of Proposals

1. Cover Letter to include:

- a. Name, address and telephone number of the firm's contact person; and signed by the chief executive officer, owner, or chair of the firm
- b. A summary of the proposal
- c. Briefly state the firm's understanding of the work to be done and the commitment to **deliver bulk automotive fluids** necessary to operate the transit system within the proposed timeframe
- d. Statement of acknowledgement of having received all addenda, if any are issued
- e. Whether or not the firm is a certified DBE or Small Business Enterprise
- f. Age of the firm
- g. If the annual gross receipts of the firm is less than \$1 million, less than \$5 million, less than \$10 million, or less than \$15 million.

2. **Detailed Proposal** following the order set forth in Section B below.

B. Contents of the Proposal

The purpose of the proposal is to demonstrate the qualifications and capacity of the firm seeking to deliver bulk automotive fluids to TTD in conformity with the requirements of this RFP. The proposal should demonstrate the qualifications of the firm.

The proposal should address all points outlined in the RFP.

The proposal should be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to satisfy the requirements of this RFP.

Proposals should not exceed 10 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.

V. EVALUATION PROCESS

A. Review of Proposals

In reviewing the proposals, TTD will consider the following evaluation criteria:

- Responsiveness to RFP
- Experience
- Current client list
- Customer service
- Project understanding
- Price quote

TTD shall award a contract to the responsible proposer whose proposal is most advantageous to TTD, i.e. the "best value." TTD reserves its right to award to other than the low bidder.

B. Final Selection

All evaluators may use the information submitted in the firm's proposal to arrive at the final ranking and selection of a firm.

It is anticipated that the contract for the selected firm will be presented to TTD's Board of Directors at the August 14, 2020 Board meeting. Final award of the contract to the selected firm will be contingent upon approval by the Board of Directors.

VI. CONTRACT AWARD

A. Notification

Upon completion of the evaluation process and selection of firm, TTD will issue a "Notice of Intent to Award Contract" notification to all proposers. This notification shall contain the name and contract amount of the intended recipient of award. An agreement shall then be negotiated with the selected firm. If an acceptable agreement cannot be reached with the initial firm selected, the TTD shall proceed to negotiate with the next most qualified firm or consider reposting the RFP, if necessary.

If the selected proposer fails to provide all required information, documents, etc. in a timely manner or otherwise declines to perform, TTD may terminate negotiations and offer award to the next highest ranked proposer.

B. Rejection of Proposals

TTD reserves the right to reject any or all proposals, to make any awards or any rejections in what it alone considers to be in the best interest of TTD, and to waive any informalities or irregularities in the proposals.

If there is a reason to believe that collusion exists among any of the proposers, none of the proposals of the participants in the collusion will be considered.

TTD reserves the right to reject a proposal:

- a. that is incomplete, obscure, or irregular
- b. that is from a proposer who has previously failed to perform properly or to complete contracts of any nature on time
- c. that contains unauthorized conditions, exceptions, limitations, or provisos
- d. that contain erasures or irregularities of any kind, without initialing
- e. that does not include properly completed and signed forms

C. Protest Procedures

Protest procedures will apply to all procurement actions whether by sealed bid, request for proposal or sole source and regardless of the stage of the procurement process at which the protest is filed. All protest procedures can be found on TTD's website:

<http://tahoetransportation.org/doing-business/rfp-info>

VII. TERMS, CONDITIONS, AND EXCEPTIONS

A. Required Review and Waiver of Objections by Responding Firms

Responding firms should carefully review this RFP and all attachments, including but not limited to the form agreement (Exhibit B), for comments, questions, defects, objections, or any other matter requiring clarification or correction (collectively called "comments"). Comments concerning RFP objections must be made in writing and received by TTD no later than the date specified above.

B. Submittal Preparation, Interview and Negotiation Costs

TTD shall not be responsible for and/or shall not pay any costs associated with the preparation, submittal, or presentation of any proposals, and costs incurred by the responding firms during the interview and negotiations phase of the solicitation process.

TTD will not be liable for Federal, State, or local excise taxes.

TTD reserves the right to negotiate final contract terms with any firm selected. The contract between the parties will consist of the final executed contract, the RFP together with any modifications thereto, and the awarded firm's proposal, together with any modifications and clarifications thereto that are incorporated at the request of the TTD during the evaluation and negotiation process. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: the final executed contract, addenda to the RFP, the RFP, any modifications and clarifications to the awarded Proposer's proposal, and the awarded Proposer's proposal. Specific exceptions to this general rule may be noted in the final executed contract.

No announcement concerning the award of a contract as a result of this RFP can be made without the prior written approval of TTD.

C. Request for Proposal Withdrawal

To withdraw a proposal, the responding firm must submit a written request, signed by an authorized representative. After withdrawing a previously submitted proposal, the Responding Firm may submit another proposal at any time up to the deadline for submitting proposals.

D. Request for Proposal Amendment

TTD shall not accept any amendments, revisions, or alterations to proposals after the deadline for proposal submittal unless such is formally requested, in writing, by TTD.

E. Request for Proposal Errors

Responding firms are liable for all errors or omissions contained in their proposals. Responding firms shall not be allowed to alter proposal documents after the deadline for submitting a proposal.

F. Incorrect Request for Proposal Information

If TTD determines that a responding firm has provided, for consideration in the evaluation process or contract negotiations, incorrect information which the responding firm knew or should have known was materially incorrect, that submittal shall be determined non-responsive, and the proposal shall be rejected.

Any irregularities or lack of clarity in the RFP must be brought to TTD's attention as soon as possible so that corrective addenda may be furnished to all proposers.

Alterations, modifications or variations to a proposal may not be considered unless authorized by the RFP or by an addendum or an amendment to the RFP.

Proposals which appear unrealistic in the terms of technical commitments, lack of technical competence, or are indicative of failure to comprehend the complexity and risk of this contract, may be rejected.

Proposer understands and acknowledges that the representations above are material and important, and will be relied on by the TTD in its evaluation of a proposal. Any misrepresentation by a proposer shall be treated as fraudulent concealment from the TTD of the true facts relating to the proposal.

G. Assignment and Subcontracting

The Proposer and proposed Subcontractor(s) may not subcontract, transfer, or assign any portion of the contract without prior, written approval from TTD. Each subcontractor / subconsultant must be approved in writing by TTD. The substitution of one subcontractor / subconsultant for another may be made only at the discretion of TTD and with prior written approval from TTD.

Notwithstanding the use of approved subcontractor/subconsultant, the Selected Firm(s), if awarded a contract under this RFP, shall be the prime contractor and shall be responsible for all work performed.

A proposal submitted in response to this RFP must identify any subconsultants, and outline the contractual relationship between the awarded proposer and each such subconsultant. The awarded proposer will be the sole point of contract responsibility. TTD will look solely to the awarded proposer for the performance of all contractual obligations which may result from an award based on this RFP, and the awarded proposer shall not be relieved for the non-performance of any or all of its subconsultants.

H. Proposal of Additional Services

If a responding firm indicates the capability and offers services in addition to those required by and described in this RFP, these additional services may be added to the contract before contract execution at the sole discretion of the TTD. The cost for any such additional services shall be mutually agreed upon by the selected firm(s) and TTD, and incorporated into the contract before contract signing.

I. Licensure

Before a contract pursuant to this RFP is signed, the selected firm(s) must hold all necessary, applicable business and professional licenses. TTD will require any or all responding firms to submit evidence of proper licensure.

J. Disclosure of Submittal Contents

All proposals and other materials submitted in response to this RFP procurement process become the property of TTD and will not be returned. Selection or rejection of a submittal does not affect this right. All proposal information, including any detailed price and cost information, shall be held in confidence during the evaluation and selection process. Upon the completion of the evaluation and selection process, indicated by approval of a contract for services emanating from this RFP by the TTD Board, the proposals and associated materials shall be open for review by the public to the extent allowed by the Nevada Public Records Act. By submitting a proposal, the responding firm acknowledges and accepts that the contents of the submittal and associated documents shall become open to public inspection.

K. Proprietary Information

The master copy of each proposal shall be retained for official files and will become public record after the award of a contract unless the proposal or specific parts of the proposal can be shown to be exempt by law. Each responding firm will clearly label part of a submittal as "CONFIDENTIAL" if the responding firm thereby agrees to indemnify and defend TTD for honoring such a designation. The failure to so label any information that is released by TTD shall constitute a complete waiver of all claims for damages caused by any release of the information. If a public records request for labeled information is received by TTD, TTD will notify the responding firm of the request and delay access to the material until seven (7) working days after notification to the responding firm. Within that time delay, it will be the duty of the responding firm to act in protection of its labeled information. Failure to so act shall constitute a complete waiver.

EXHIBITS

A. PRICE PROPOSAL FORM

B. FORM AGREEMENT WITH FTA FEDERAL PROVISIONS

EXHIBIT A

PRICE PROPOSAL FORM

We have carefully examined the Request for Proposals and intend to furnish products and/or services in full accordance with the terms and conditions specified therein (unless specifically specified otherwise in our response). We hereby offer to provide TTD with the specified fluid types at the following fixed amount; price includes cost of delivery. All SDS sheets for the proposed products are furnished with this exhibit and all product quantities not available are noted with "N/A".

Initial 3 Year Period

Engine Oil 15w40

Equivalent to Delo 400 LE

Brand:

Package Qty	Price
Bulk Fill per/gal	_____
55gal drum	_____
1gal Bottle	_____

Coolant

Equivalent to Mobil Delvac

Extended Life

PreDiluted 50/50 mix

Brand:

Bulk Fill per/gal	_____
55gal drum	_____
1gal bottle	_____

Synthetic ATF

Equivalent to Mobil Delvac 1

Brand:

Bulk Fill per/gal	_____
55gal drum	_____
1gal bottle	_____

Synthetic Gear Oil 80w90

Equivalent to Mobile Delvac

Brand:

55gal drum	_____
1gal bottle	_____

Diesel Exhaust Fluid

Equivalent to Peak Blue DEF

Brand:

55gal drum
2.5gal bottle

Windshield Wash/De-Ice -20*

Brand:

55gal drum
1gal bottle

Synthetic Engine Oil

Equivalent to Royal Purple/Mobile1

Brand:

0w20 gallon bottle
0w20 quart bottle

5w20 gallon bottle
5w20 quart bottle

5w30 gallon bottle
5w30 quart bottle

15w40 gallon bottle
15w40 quart bottle

Option Year 1

Engine Oil 15w40

Equivalent to Delo 400 LE

Brand:

Package Qty	Price
Bulk Fill per/gal	_____
55gal drum	_____
1gal Bottle	_____

Coolant

Equivalent to Mobil Delvac

Extended Life

PreDiluted 50/50 mix

Brand:

Bulk Fill per/gal	_____
55gal drum	_____
1gal bottle	_____

Synthetic ATF

Equivalent to Mobil Delvac 1

Brand:

Bulk Fill per/gal	_____
55gal drum	_____
1gal bottle	_____

Synthetic Gear Oil 80w90

Equivalent to Mobile Delvac

Brand:

55gal drum	_____
1gal bottle	_____

Diesel Exhaust Fluid

Equivalent to Peak Blue DEF

Brand:

55gal drum	_____
2.5gal bottle	_____

Windshield Wash/De-Ice -20*

Brand:

55gal drum

1gal bottle

Synthetic Engine Oil

Equivalent to Royal Purple/Mobile1

Brand:

0w20 gallon bottle

0w20 quart bottle

5w20 gallon bottle

5w20 quart bottle

5w30 gallon bottle

5w30 quart bottle

15w40 gallon bottle

15w40 quart bottle

Option Year 2

Engine Oil 15w40

Equivalent to Delo 400 LE

Brand:

Package Qty	Price
Bulk Fill per/gal	_____
55gal drum	_____
1gal Bottle	_____

Coolant

Equivalent to Mobil Delvac

Extended Life

PreDiluted 50/50 mix

Brand:

Bulk Fill per/gal	_____
55gal drum	_____
1gal bottle	_____

Synthetic ATF

Equivalent to Mobil Delvac 1

Brand:

Bulk Fill per/gal	_____
55gal drum	_____
1gal bottle	_____

Synthetic Gear Oil 80w90

Equivalent to Mobile Delvac

Brand:

55gal drum	_____
1gal bottle	_____

Diesel Exhaust Fluid

Equivalent to Peak Blue DEF

Brand:

55gal drum	_____
2.5gal bottle	_____

Windshield Wash/De-Ice -20*

Brand:

55gal drum

1gal bottle

Synthetic Engine Oil

Equivalent to Royal Purple/Mobile1

Brand:

0w20 gallon bottle

0w20 quart bottle

5w20 gallon bottle

5w20 quart bottle

5w30 gallon bottle

5w30 quart bottle

15w40 gallon bottle

15w40 quart bottle

EXHIBIT B
AGREEMENT FOR GOODS AND SERVICES
BETWEEN
TAHOE TRANSPORTATION DISTRICT
AND

This Agreement ("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 Proposals the performance of the services and goods defined and described particularly in Section 2 of this Agreement.
- B. Contractor, following submission of a proposal for the performance of the services and goods defined and described particularly in Section 2 of this Agreement, was selected by the District to perform those services and supply the goods.
- 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 and goods 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 and provide fuel as 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 and provision of fuel 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 fluids used during the preceding month. The invoice shall detail charges by the following categories: fluid type, container amount, and total sales. 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 forty-five (45) 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 on 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

EXHIBIT "B"
COMPENSATION

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)).
 - i.
- c. Contractor will be required to report its DBE participation obtained through race-neutral means throughout the period of performance of this Agreement.
- d. 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 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.
- e. 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. Fly America - The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the

requirements of this section in all subcontracts that may involve international air transportation.

11. 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.

12. 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.

13. 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.

14. 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.

15. Recovered Materials - The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.