



**REGIONAL TRANSPORTATION COMMISSION**

*Public Transportation • Streets and Highways • Planning*

**REQUEST FOR QUALIFICATIONS  
# RTC10-4**

**FOR THE PROVISION OF  
PLANNING/ENGINEERING CONSULTING  
SERVICES**

**VIRGINIA STREET TRANSIT CORRIDOR  
ALTERNATIVES ANALYSIS UPDATE AND  
PROJECT DEVELOPMENT**

RFQ Number: **RTC10-4**

Released on January 18, 2010  
Qualifications due February 15, 2010

**Regional Transportation Commission**  
1105 Terminal Way, Suite 300  
Reno, Nevada 89502

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## LEGAL NOTICE

### NOTICE OF REQUEST FOR QUALIFICATIONS RTC10-4

#### FOR THE PROVISION OF PLANNING/ENGINEERING CONSULTING SERVICES FOR VIRGINIA STREET TRANSIT CORRIDOR ALTERNATIVES ANALYSIS UPDATE AND PROJECT DEVELOPMENT

NOTICE IS HEREBY GIVEN that the Regional Transportation Commission of Washoe County, Nevada (RTC) is issuing a Request for Qualifications (RFQ) for qualified consultants to provide Architectural and Engineering Services for Virginia Street Transit Corridor Alternatives Analysis Update and Project Development.

A copy of the detailed Request for Qualifications, including the necessary submittal requirements, will be available from the RTC January 18, 2010, by contacting Elisa Rizzo, Procurement and Compliance Administrator, by phone at 775.335.1831, by fax at 775.348.3229, by email at [erizzo@rtcwashoe.com](mailto:erizzo@rtcwashoe.com), or by mail at 1105 Terminal Way, Suite 300, Reno, NV 89502. Copies of the Request for Qualifications will also be available at the RTC Finance Department Office at 1105 Terminal Way, Suite 300, Reno, Nevada 89502.

A Pre-Proposal Conference will be held on Monday February 1, 2010 at 1:30 PM (PST) at the RTC Boardroom, 2050 Villanova Drive, Reno, NV 89502. All prospective proposers are strongly encouraged to attend.

Qualifications will be accepted until 3:00 PM (PST), Monday, February 15, 2010, 2010, at the above address. **LATE SUBMISSIONS WILL NOT BE CONSIDERED.**

RTC reserves the right to reject any or all proposals, alternates or options, or any combination thereof, or accept the proposal that is deemed by the RTC to be in the best interest of the RTC. The RTC also reserves the right to waive any irregularities and/or informalities with the proposal submittals.

The RTC, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted Programs of the Department of Transportation Issued Pursuant to Such Act, hereby notifies all proposers that it will affirmatively ensure that in regard to any contact or procurement entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this request and will not be discriminated against on the grounds of race, religion, color, sex, age, disability, or national origin in consideration for an award.

**RFQ-RTC10-4**  
**Request for Qualifications**  
**Planning/Engineering Consulting Services**  
**Virginia Street Transit Corridor Alternatives Analysis Update and Project**  
**Development**

**INTRODUCTION**

The Regional Transportation Commission of Washoe County (RTC) provides public mass transportation and is the Metropolitan Planning Organization (MPO) in Washoe County, Nevada. The RTC operates the RIDE fixed route transit and ACCESS paratransit systems. The RTC is issuing this request for expressions of interest and statements of qualifications for providing professional planning and engineering services to evaluate the feasibility of developing a fixed guideway system to include the use of street car/light rail technology on Virginia Street. The products to be delivered from this work effort will focus on updated ridership estimates, defining conceptual horizontal and vertical profiles for different fixed guideway technologies along Virginia Street, an assessment of corridor land use to identify opportunities to promote Transit Oriented Development (TOD), and preliminary design necessary to amend the Regional Transportation Plan, Transportation Improvement Program (RTIP), and initiate preliminary engineering and environmental studies to meet National Environmental Policy Act (NEPA) requirements. The proposed project is in Reno, Nevada. The corridor is approximately six miles long and generally described as Virginia Street from approximately the University of Nevada Reno to Meadowood Mall.

**BACKGROUND**

Overview of the Regional Transportation Commission

The RTC was created in 1979, combining the responsibilities of the Regional Street and Highway Commission and Regional Transit Commission (NRS 373.030). Legislation was also passed that enabled the Regional Transportation Commission to establish and operate a fixed-route transit system (NRS 373.117). The RTC is the Metropolitan Planning Organization (MPO) and provides both fixed-route (RIDE) and demand-response (ACCESS) transit services within the metropolitan region encompassing the cities of Reno and Sparks and adjacent portions of unincorporated Washoe County. Under federal and state law, the RTC is responsible for developing transportation plans and programs for Washoe County.

Overview of RIDE

Citifare, the predecessor to RTC RIDE, began operating public transit services on September 18, 1978. Passage of a 1/4 percent sales tax referendum by the voters of Washoe County on September 14, 1982, provided the financial resources necessary to expand fixed-route and paratransit service. As federal transit operating funds steadily declined throughout the 1980s, the RTC relied more on the sales tax funding to cover operations costs and provide the match for FTA capital grants. With voter support, along with legislative and county action, RTC received an additional 1/8 percent sales tax to support both road and transit funding which became effective on July 1, 2003.

RTC owns all RIDE facilities and equipment. The RIDE transit system is managed by First Transit Inc., and operated by Transit Management of Washoe, a Nevada shell corporation established by First Transit. The RTC/RIDE administrative complex is located beneath the I-580 viaduct between Plumb Lane and Villanova Drive. RIDE's active fleet consists of 70 coaches, with a peak-hour requirement of 58 coaches. RIDE operates 26 routes with service provided on most routes between 5:30 AM and 8:30 PM, seven days per week. Service on the busy Virginia Street corridor operates 24 hours per day.

RIDE began operating bus rapid transit (BRT) service, the RTC RAPID on October 11, 2009 along South Virginia Street. Traveling between downtown Reno and Meadowood Mall, the service has 6 intermediate RAPID stations and covers 4.7 miles in a one-way trip in 25 minutes. On weekdays, this service operates every 10 minutes from 7:00 AM to 7:00 PM and every 12 minutes on Saturday and Sunday. During the summer of 2010, RTC will receive 8 new 60-foot articulated hybrid diesel/electric buses to operate this service.

In addition to the RTC RAPID, local service is provided on South Virginia Street by the RTC RAPID CONNECT. This 24-hour service supplements the BRT service by serving more stops in addition to the RAPID stations, running every 30 minutes most of the day, dropping to hourly in the late evening. CONNECT operates the same schedule 7 days a week.

### Overview of the proposed Virginia Street Transit Corridor

According to the 2030 Regional Transportation Plan (RTP), Washoe County has seen consistent growth over the last decade in both population and employment. Between 1990 and 1999, the regional population increased from 254,000 to 314,000 – a 2.4% per year increase. During this same time, employment increased from 132,000 to 188,000 – a 4.0% increase annually. As a result of this increase in population and employment, there has been a significant increase in the annual vehicle miles traveled (VMT) throughout Washoe County. Additionally, much of the recent residential development has occurred in the outlying areas. As a result, trip lengths for all trip purposes have increased. Based on the 2030 RTP, annual VMT has nearly doubled from 1980 to 1999 to approximately 3.0 billion.

In addition, population and employment are expected to grow by 1.8% per year and 1.7% per year respectively, over the next 30-year period. The number of dwelling units is projected to increase by 2.0% per year over the same period. With this level of growth also comes the natural increase in both internal and external trips stressing all modes of the transportation network.

To further facilitate the movement of people in and around Washoe County, the RTC operates a number of public transit services in the area. These include a fixed route service (RTC RIDE), a paratransit service (RTC ACCESS), an inter-city commuter service (RTC INTERCITY), a free downtown Reno circulator (Sierra Spirit), and partially funding the Tahoe Area Regional Transit (TART).

The RTP improvements to public transportation call for an increase in the region-wide mode share on the public transportation system from 2.0% to 6.0%. The RTP establishes a Primary Transit Network (PTN) built around a hierarchy of service strategies including Rapid Transit, Primary Locals, Primary Express, Commuter Express, Local Services and Paratransit. For much of Virginia Street, the RTP supports increased density and in-fill development and recommends investment in BRT.

In 2003, RTC completed a Virginia Street Bus Rapid Transit Feasibility Study. The area of this study is Virginia Street from Del Monte Lane to 9<sup>th</sup> Street. Virginia Street is the first corridor considered for BRT in the Truckee Meadows Area because of its unique characteristics and the fact that Route 1 on Virginia Street carries the highest number of transit riders within the region. At the time, Route 1's average daily ridership was 4,274, which is 20% of RTC RIDE's (formerly Citifare) system average daily ridership. The Executive Summary of the Virginia Street BRT Feasibility Study can be viewed at: <http://www.rtcwashoe.com/planning/transit/brt/study>.

In July 2009, the Truckee Meadows Regional Planning Agency (TMRPA) adopted the Transit Oriented Development in the Truckee Meadows: Bridging the Gap between Planning and Implementation. The plan is part of a continuing effort to encourage higher density mixed use developments, multi-modal street design practices that are pedestrian friendly, and the development of flexible funding for transit. The report details transit centers and transit corridors throughout the region and evaluates their land use and demographic characteristics. The work to be conducted in this effort should closely follow the assumptions and findings of this effort.

In 2009, the RTC began a phased implementation of BRT service on Virginia Street. Branded as RTC RAPID, the service will use advanced design vehicles, new themed stations, and off-vehicle fare collection to offer a higher level and quality of service between downtown Reno and Meadowood Mall. Early ridership indications show that the increased level of service has directly contributed to an increase in daily ridership.

## **PURPOSE & GENERAL SCOPE OF ANTICIPATED SERVICES**

The RTC's purpose in issuing this request for expressions of interest and statements of qualifications is to create a "short list" of consultants interested in providing professional planning and engineering services for scoping/alternatives analysis to develop a design concept and scope for inclusion in the Regional Transportation Plan and Regional Transportation Improvement Program as well as advance a project into the Federal Transit Administration (FTA) Small Starts Process as well as the National Environmental Policy Act (NEPA). Specific areas to be addressed include:

- 1) Review the Virginia Street Corridor and Identify Transportation Issues** – The consultant will review previous studies and update existing and future conditions. The travel demand forecasts developed for the Virginia Street BRT Feasibility Study will be updated to include changes in policy that have occurred since its completion. The Transit Oriented Development in the Truckee Meadows: Bridging the Gap Between Planning and Implementation report will serve as a baseline data set for the consultant to prepare travel forecasts that represent short term and long term land use characteristics that support public transit. The consultant will also work with the City of Reno Department of Redevelopment and Department of Community Development throughout the review.
- 2) Develop Project Goals, Objectives and Purpose and Need** – Using data and resources collected for the Virginia Street Corridor and identified transportation issues, the consultant will develop a Purpose and Need Statement and related goals and objectives.
- 3) Identify Alternatives to Address Transportation Corridor Needs** – The consultant will update the range of concepts and strategies studied in the Virginia Street BRT Study. The current plans for RAPID service will serve as the baseline. Other options to be

considered include a transportation system management option, street and highway improvements in the corridor and a street car/light rail/fixed guideway option.

- 4) **Screening and Definition of Project Alternatives** – Screening of promising alternatives will be undertaken to determine and define in more detail those that are most feasible and best support project goals and the purpose and need statement. The Consultant will work with the study management team to develop the evaluation methodology to be used in the screening process to analyze and compare the baseline, TSM alternative, and two or three promising transit alternatives. Public involvement will be an important component of the evaluation. The goal will be to compare these alternatives (including a fixed guideway alternative) using conceptual details on alignments, stops, transit centers ridership, economic development potential.
- 5) **Development of the Preferred Alternative** – The goal of the final evaluation process is to define in more detail a locally preferred alternative for inclusion in the Regional Transportation Plan and the Transportation Improvement Program. The consultant will apply the evaluation methodology with the provision for community involvement and participation. Project justification, economic development possibilities, and local financial conditions will also be considered. Special attention will be focused on developing sound and reliable operating costs and capital costs for the preferred alternative. Special attention will be focused on developing sound and reliable operating costs and capital costs for the preferred alternative.
- 6) **Financial Analysis** – The consultant will identify sources of funding including sources used by other street car/light rail/fixed guideway projects in the United States. A listing of sources of funding, both capital and operating, will be accompanied by an assessment of revenue potential. The role of federal funds, including Congestion Mitigation Air Quality funds, Surface Transportation program funds, and Federal Transit Administration Small Start funds shall be included.
- 7) **Conceptual Operations and Maintenance Plan** – The consultant will prepare a conceptual operations and maintenance plan. The plan will identify the operating and maintenance factors that influence fleet size, headways, maintenance facility requirements (including site selection factors) and staffing levels. Included in this task should be a detailed accountability of projected operating costs.
- 8) **Identify Range of Vehicle and System Infrastructure** – Provide a review of available fixed guideway vehicles (including street car technologies) and infrastructure requirements.
- 9) **Public Involvement and Education Efforts** – The consultant will prepare a public involvement plan under the direction of the RTC Marketing Department. The consultant team will track issues, organize meetings, prepare graphics, and meeting materials for three public meetings to be conducted in open house format.
- 10) **NEPA Compliance** – It is anticipated that the preparation of a comprehensive NEPA document (e.g. CE, EA, or EIS) will occur in a subsequent project phase. However, the planning work in this study is to be conducted with consideration of NEPA requirements. The consultant will prepare an environmental scan to identify potentially significant

impacts as well as impacts to properties protected by Section 4 (f) of the DOT Act or Section 106 of the National Historic Preservation Act.

- 11) Federal Transit Administration Submissions** – The consultant will assist the technical team with FTA coordination and may assist with submission of documents to the FTA for project evaluation and rating including information on the proposed project’s land use, supportive development policies, and financial options.

## **CONTENT OF RESPONSES**

**To be considered, responses must effectively address all the elements in this section and be organized in order in which they are listed.** As a minimum, responses to this request shall contain the following in ***original and seven (7) copies***:

- 1) A description of the overall qualifications of the consultant, and overall capabilities of the firm relevant to the proposed project. Provide general information and background about the consultant including: size of the firm, number of years in business, and number of staff by discipline, and total personnel.
- 2) Provide an organization chart showing the staff assigned to the project including the project manager, task leaders and technical specialists.
- 3) A summary of recently completed or ongoing projects accomplished by the consultant similar to those sought by the RTC. As a minimum, the project summaries shall contain:
  - a. A brief description of project scope and the services provided by the consultant.
  - b. NEPA Class Action accomplished during project.
  - c. The original and actual project completion dates of services provided.
  - d. Share breakout of total project funding by source.
  - e. The name and telephone number of a contact person, employed by the project owner, familiar with the consultant’s work. (These may be contacted for further information and reference.)
  - f. The original dollar amount and final dollar amount of each assignment
  - g. The original performance period and final performance period of each assignment.
- 4) The geographic location of the principal office of the consultant (address), and the office (if different), which would be responsible for providing services to the RTC.
- 5) A list of staff personnel in the office(s) that would be providing services to the RTC indicating name and title, years of experience, education, experience and qualifications relevant to the proposed project. Provide resumes for key project team members. Identify the amount of work presently underway for the key project team members.
- 6) Include the name, title, address, telephone and fax numbers, and email address of the consultant’s contact person during the review and evaluation process.
- 7) A list of sub-consultants that may be engaged by the consultant to provide specialized services. For each sub-consultant, provide the same information as required in items 1 – 6 above. Describe past experience working with each sub-consultant. Indicate if a sub-consultant is a DBE.



- 8) A statement acknowledging by name the receipt of all addendum and clarifications.
- 9) Provide a 3-5 page narrative outlining your understanding of the project scope.

## **EVALUATION PROCESS**

Responses will be reviewed, evaluated and ranked by a Selection Team in accordance with the criteria and procedures described in this section. Responses will not be publicly opened. All responses, evaluations, and the names of Selection Team members are confidential information, and will not be released for any reason unless the RTC is compelled to do so by judicial review. The RTC reserves the right to request consultants to provide missing information, make corrections, or provide additional information. The Selection team will be composed of RTC staff members and may include representatives from other agencies. Responses will be evaluated and ranked by the following criteria, listed by relative degree of importance:

- Qualifications and experience – Competence to perform the services as reflected by technical training and education; experience in providing the required services for similar projects, particularly FTA New Start and/or FTA Small Start projects; the qualifications and competence of persons who would be assigned to perform the services.
- Approach to project – Demonstrated ability to understand the issues, identify solutions and show proofs with respect to the tasks outlined in this solicitation.
- Demonstrated capacity and availability of resources – Ability to perform the services as reflected by workload and the availability of adequate personnel, equipment, and facilities to perform the services expeditiously.
- Past performance and references – Past performance as reflected by evaluations of private persons and officials of other governmental entities that have retained the services of the consultant with respect to factors such as control of costs, quality of work, and an ability to meet deadlines.

## **SUBMISSIONS**

Sealed responses to this Request for Qualifications shall be prepared and submitted in accordance with the requirements of this Request no later than 3:00 PM, PST, Monday, February 15, 2010 to:

Elisa Rizzo, Procurement and Compliance Administrator  
Regional Transportation Commission of Washoe County  
1105 Terminal Way, Suite 300  
Reno, Nevada 89502

The outside of the envelope shall be plainly marked “**Response to Virginia Street Transit Corridor Alternative Analysis Update and Project Development RFQ**”. No late Qualification submissions will be accepted.

## **GENERAL INFORMATION**

### **A/E Procurement Process**

Given the project funding, the A/E procurement is subject to local, state and federal procurement requirements. The FTA requires the procurement of A/E services in accordance with the “qualifications based procurement methods” of the Brooks Act (Public Law 92-582, October 27, 1972). The procurement process for this project is also in accordance with the Nevada Revised Statutes (NRS) and RTC policy, and consists of two steps. The first step involves the preparation, submission, review, evaluation and ranking of responses to this request for expressions of interest and statements of qualifications by the Selection Team, resulting in a “short list” of consultants. The Regional Transportation Commission is responsible to approve the most qualified consultant from which a cost proposal will be requested from the top scoring firm for the purpose of negotiations. The ultimate decision will be the responsibility of the Commission. If an agreement cannot be reached with the selected firm, staff may obtain a proposal and negotiate with the next highest ranked firm.

### **Solicitation Schedule** (subject to change)

<b>Activity</b>	<b>Date</b>
Request for Qualifications (RFQ) issued	January 18, 2010
Advertisement in media	January 18, 2010
Proposer Questions Submittal Due Date	February 1, 2010
Pre-Proposal Conference (Non-Mandatory)	February 1, 2010
RTC’s Response to Proposer Questions	February 8, 2010
RFQ due date	February 15, 2010
Interviews with Short Listed Firms	March 3, 2010 (tentative)
Proposal Due Date from High Scoring Firm	March 25, 2010
Recommendation to Award by RTC Board	April 16, 2010
Award of Contract	May 3, 2010
Notice to Proceed and Begin Work	May 3, 2010
Contract Completion	August 3, 2010

**Pre-Proposal Conference** A Non-Mandatory Pre-Proposal Conference will be held on **February 1, 2010 @ 1:30 PM (PST)** at the RTC Boardroom, 2050 Villanova Drive, Reno, NV 89502.

**Addenda/Clarifications** All questions regarding the RFQ must be submitted in writing and shall be received by the RTC no later than 4:00 PM, February 1, 2010. Correspondence shall be addressed to: Elisa Rizzo, Procurement and Compliance Administrator; 1105 Terminal Way, Suite

300; Reno, Nevada 89502. Responses from the RTC will be communicated in writing to all recipients of this RFQ. Inquiries received after the date and time stated in the Solicitation Schedule above will not be accepted and will be returned to the sender without a response.

### Interview of Proposers

At its sole discretion, the Selection Team reserves the right to conduct oral interviews with none, some or all of the Proposers. If the Selection Team determines interviews are needed, they will be held at the RTC offices, at the time and date specified by the RTC. Interviews would consist of presentations and associated Q/A session and must be conducted by the project manager and key team members. In part, this requirement is intended to facilitate evaluation of how key team members would perform in future project presentations and meetings. The results of those interviews will be considered in the evaluation of proposals. Proposers will not be compensated for costs to prepare for or attend the interview. Proposers agree to be sequestered during the interviews of other firms. The RTC reserves the right to award a contract without holding oral interviews.

### Award

An award, if made, will be made using competitive proposal procedures based on the Brooks Act described in the "A/E Procurement Process" section of the RFQ. RTC staff will request board action to approve the most qualified proposer(s) and authorize staff to negotiate a contract(s) with the most qualified proposer(s) whose cost is considered to be fair and reasonable, is in the best interest of the RTC, and does not render this procurement financially infeasible. No Contract shall be considered effective until all parties have properly executed it. The RTC will negotiate the contract cost with Proposer(s), unless otherwise agreed, the RTC's standard professional services agreement attached to this RFP (Exhibit H).

The RTC is under no obligation to award any contract for these services. Issuance of the RFQ, and receipt of submittals, does not commit the RTC to award a contract and it reserves the right to reject any and all RFQ submittals received. The RTC reserves the right to postpone opening submittals for its own convenience, or to cancel all or part this RFQ.

### Designated Representative and Communications

The designated RTC representative for questions and communications pertaining to this procurement is identified below. Communications shall be in writing and may be delivered personally; by facsimile; via email; air express or by regular, registered, overnight or certified mail addressed to the person identified in this section. All written communications with the RTC regarding this procurement shall be marked "**RFQ, Proposed Virginia Street Transit Corridor Alternative Analysis Update and Project Development**". Telephone calls may be used to expedite communications, but shall not be considered official communications unless confirmed in writing. Communications shall be considered received at the time actually received by the designated representative. This will ensure that all issues are appropriately coordinated between prospective consultants and the designated RTC contact only. All communications with the RTC must be addressed to:

**Designated Representative**

Elisa Rizzo  
Procurement and Compliance Administrator  
Finance Department  
Direct phone: 775.335.1831  
Facsimile: 775.348.3229  
Email: ERizzo@rtcwashoe.com

**Physical and Mailing Address**

Regional Transportation Commission  
1105 Terminal Way, Suite 300  
Reno, Nevada 89502

**Qualifications of Consultants**

A qualified prospective consultant shall have Nevada professional licenses for the types of services for which licenses are required.

**Disadvantaged Business Enterprise (DBE) Obligation**

The Regional Transportation Commission in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all bidders and proposers that it will affirmatively ensure that in regard to any contract or procurement entered into, Disadvantaged Business Enterprises will be afforded full opportunity to submit bids and proposals in response to our invitation and will not be discriminated against on the grounds of race, color, sex, age, disability, or national origin in consideration for an award.

**Addenda and/or Clarifications**

Any addenda issued before the response due date shall become part of the solicitation. Signed copies of all addenda and/or clarifications issued to prospective consultants shall be enclosed with their response. Failure to acknowledge and enclose said addenda and/or clarifications may be considered grounds for rejection of a consultant's response. A consultant shall not rely on any oral interpretations, clarifications, or changes made in these solicitation documents by the RTC's employees.

**Protest Procedures**

A Consultant may discuss the Contract documents and specifications with the RTC. Such discussions do not, however, relieve Consultants from the responsibility of submitting written, documented requests as required by these procedures.

Consultants on the RTC's competitive procurements may submit protests to the RTC involving proposal specifications or proposal award. Protests must be submitted in writing and must include the following information:

- Name, address, and telephone number of protestor.
- Identification of the proposal solicitation or contract.
- A detailed statement of the legal and factual grounds for the protest including all relevant documentation.
- A statement as to what relief is requested.

Protests must be filed with the RTC in accordance with the procedures and time requirements stated below.

### **Protests of Specifications or Proposal Procedures**

Protests involving specifications or proposal procedures must be submitted in writing at least five (5) working days prior to the date and time fixed for submittal of proposals. If a written protest is not received by the time specified, award may be made in the normal manner. Protests not submitted in writing will be disregarded.

All protests must be fully supported with technical data, test results, or other pertinent information as evidence that the proposal process, requirements, or specifications are anti-competitive, exclusionary, or otherwise not in compliance with RTC policies and procedures or with applicable state and/or federal regulations. Notice of a protest and the basis, therefore, will be given to all other prospective consultants. If award of proposal is withheld pending disposition of the protest, the other consultants will be requested, before the expiration of the time for acceptance of proposals stated in the proposal documents, to extend the time for acceptance.

### **Protests of Proposal Award**

RTC staff will recommend a proposal award at least ten (10) working days prior to official award by the RTC. Protests of proposal award must be submitted at least five (5) working days prior to official award of the contract. If a written protest is not received by the time specified, award may be made in the normal manner. Protests not submitted in writing will be disregarded.

All protests must be fully supported with documentation as evidence that the proposal award is not in compliance with RTC policies and procedures or with applicable state and/or federal regulations. Notice of a protest and the basis, therefore, will be given to all other consultants. If award of proposal is withheld pending disposition of the protest, the other consultants will be requested, before the expiration of the time for acceptance of proposals stated in the proposal documents, to extend the time for acceptance.

### **Protest Investigation**

All protests will be investigated by the Procuring Officer, who will make a determination on the validity of the protest. If the Procuring Officer determines that the protest has sufficient merit, an informal hearing with the protestor will be scheduled with the protesting Consultant, Procuring Officer, and RTC legal counsel. At this hearing, all parties will discuss the basis for the protest and attempt to resolve the dispute based on the legal and factual issues involved. If the Procuring Officer determines that remedial action is required, such action will be taken.

## **Appeals**

If the protesting party is not in agreement with the determination of the Procuring Officer, an appeal may be sent to the Contracting Officer within five (5) working days after receipt of the determination by the Procuring Officer. The Contracting Officer will issue a decision on the appeal within ten (10) working days after receipt.

## **Protests to FTA**

Under certain limited circumstances, an interested party may request a review of a protest by the Federal Transit Administration (FTA) if the award of a proposal is pursuant to a FTA grant. FTA's review of any protest will be limited to:

- Alleged failure of the RTC to have written protest procedures or alleged failure to follow such procedure.
- Alleged violations of a specific federal requirement that provides an applicable protest procedure (e.g. Buy America or Disadvantaged Business Enterprise regulations).

## **Time for Filing**

Protesters may file a protest with FTA not later than five (5) working days after a final decision is rendered by the Contracting Officer. In instances where the protestor alleges that the RTC failed to make a final determination of the protest, protestors shall file a protest with FTA not later than five (5) working days after the protestor knew of RTC's failure to render a final determination on the protest. The RTC will not award a contract for five (5) working days following its decision on a proposal protest. After five (5) working days, the RTC will confirm with FTA that FTA has not received a protest on the contract in question.

## **Submission of Protest to FTA**

Protests should be filed with the appropriate FTA Regional Office with a concurrent copy to the RTC. The protest filed with FTA shall:

- Include the name and address of the protestor.
- Identify the RTC, the project number and the number of the solicitation.
- Contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to follow protest procedures or the alleged failure to have written procedures and be fully supported to the extent possible.
- Include a copy of the protest filed with the RTC and a copy of the RTC's decision, if any.

## **Procuring Agency Response**

FTA shall notify the RTC in a timely manner of the receipt of a protest. FTA shall instruct the RTC to notify the Contractor of the protest if award has been made or, if no award has been made, to notify all interested parties. The RTC will instruct all who receive such notice that they may communicate further directly with FTA.

The RTC will submit to FTA the following information not later than ten (10) working days after receipt of notification by FTA of the protest:

- A copy of the RTC protest procedure.
- A description of the process followed concerning the protestor's protest.
- Any supporting documentation.

The RTC will provide the protestor with a copy of the above submission.

### RTC Reservations

The RTC expressly reserves the right to:

- 1) Withdraw this request anytime without prior notice.
- 2) Postpone the response due date for its own convenience.
- 3) Reject any or all responses without indicating any reasons for such rejection.
- 4) Accept the responses deemed by the RTC to be in the best interest of the RTC and the general public.
- 5) Waive any irregularity and/or informality in the responses received.
- 6) Not award a contract.

Also, the RTC assumes no financial liability for any costs incurred by consultants preparing or submitting responses to this request. RTC reserves the right to not award a contract.

# **EXHIBITS**



**EXHIBIT A**

**AFFIDAVIT OF  
NON-COLLUSION**

**AFFIDAVIT OF NON-COLLUSION**

I hereby swear (or affirm) under the penalty for perjury:

1. That I am the Consultant (if the Consultant is an individual, a partner in the Proposal (of the Consultant is a partnership) or an officer or employee of the proposing corporation having authority to sign on its behalf (if the Consultant is a corporation);
2. That the attached Proposal or Proposals has been arrived at by the Consultant independently and have submitted without collusion and without any agreement, understanding or planned common course of action with any other vendor of materials, supplies, equipment or service described in the Request for Proposal, designed to limit independent Proposals or competition;
3. That the contents of the Proposal or Proposals has not been communicated by the Consultant or its employees or agents to any person not an employee or agent of the Consultant or its surety on any bond furnished with the Proposal or Proposals and shall not be communicated to any such person prior to the official opening of the Proposal or Proposals; and
4. That I have fully informed myself regarding the accuracy of the statements made in the affidavit.

SIGNED \_\_\_\_\_

FIRM NAME \_\_\_\_\_

STATE OF) SS:  
COUNTY OF)

This instrument was acknowledged before me on \_\_\_\_\_(Date)  
by \_\_\_\_\_(Name(s) of persons)\_\_\_\_\_  
as \_\_\_\_\_(Type of authority, e.g., Officer, trustee, etc.)\_\_\_\_\_  
of \_\_\_\_\_(Name of party on behalf of whom instrument was  
executed).

(Seal, if any)

\_\_\_\_\_  
(Signature of Notary Officer)

\_\_\_\_\_  
(Title and rank (optional))  
(My commission expires (optional):)\_\_\_\_\_

**EXHIBIT B**

**DISADVANTAGED  
BUSINESS ENTERPRISE  
CERTIFICATIONS  
AND FORMS**

**DBE Form**

**CONSULTANTS LIST INFORMATION FORM (49 CFR PART 26.45)**

In accordance with 49 CFR Part 26, the Regional Transportation Commission (RTC) must create consultants' list of all DBEs and non-DBEs that propose or quote on DOT-assisted contracts. The purpose of this requirement is to collect information to assist in the calculation of the RTC's annual overall goal. Please complete the information below on all firms that provide you proposals or quotes, even if you do not use their proposal.

Firm Name	Address	Phone	DBE	Non-DBE	Age of Firm	Annual Receipts/ Type of Work
			(Check One)			

**EXHIBIT C**

**DEBARMENT  
CERTIFICATION**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION**

The Contractor/Primary Participant \_\_\_\_\_ certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not, within a three-year period preceding this Proposal, been convicted of or had a civil judgment rendered against them for commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction (federal, state or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not, within a three-year period preceding this Proposal. had one or more public transactions (federal, state, or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such Contractor shall attach an explanation to this Proposal.

**I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE ABOVE FIRM, TO MAKE THIS AFFIDAVIT.**

\_\_\_\_\_  
(Affiant) \_\_\_\_\_ (Date)

STATE OF \_\_\_\_\_ ) SS:  
COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_(Date) \_\_\_\_\_  
by \_\_\_\_\_(Name(s) of persons) \_\_\_\_\_  
as \_\_\_\_\_(Type of authority, e.g., Officer, trustee, etc.) \_\_\_\_\_  
of \_\_\_\_\_(Name of party on behalf of whom instrument was  
executed).

(Seal, if any)

\_\_\_\_\_  
(Signature of Notary Officer)

\_\_\_\_\_  
(Title and rank (optional))

(My commission expires (optional):) \_\_\_\_\_

**EXHIBIT D**

**LOBBYING**

**CERTIFICATION**

**EXHIBIT D**  
**LOBBYING CERTIFICATION**

(To be submitted with a proposal or offer exceeding \$100,000)

The Consultant certifies, to the best of its knowledge and belief, that:

1. No federal appropriated funds have been paid or shall be paid, by or on behalf of the Consultant, 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 any cooperative agreement, and the extension, continuation, renewal, amendment, or modification thereof.
2. If any funds other than Federal appropriated funds have been paid or shall 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).
3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients 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, USC §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.

THE CONSULTANT OR OFFEROR, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND DISCLOSURE, IF ANY. IN ADDITION, THE CONSULTANT OR OFFEROR UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31, USC §§ 3801 ET SEQ. APPLY TO THIS CERTIFICATION AND DISCLOSURE, IF ANY.

Signature of Consultant or

Offeror's Authorized Official \_\_\_\_\_

Name and Title of Consultant

or Offeror's Authorized Official \_\_\_\_\_

Date \_\_\_\_\_

(Note: Consultants are required, pursuant to federal law, to include the above language in subcontracts over \$100,000 and to obtain this lobbying certificate from each subcontractor being paid \$100,000 or more under this contract.)



**EXHIBIT E**

**LIST OF**

**SUBCONSULTANTS**

**EXHIBIT E  
LIST OF SUBCONSULTANTS**

	Name of Subcontractor	Type of Work/Services	DBE Yes/No
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

**EXHIBIT F**

**GENERAL  
PROVISIONS**

**EXHIBIT F**  
**GENERAL PROVISIONS**

**1. Not Used**

**2. Exclusive Agreement**

There are no verbal agreements, representations or understandings affecting this Agreement, and all negotiations, representations and undertakings are set forth herein with the understanding that this Agreement constitutes the entire understanding by and between parties.

**3. Amendments**

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

**4. Not Used**

**5. Regulatory Compliance**

Consultant shall comply with all applicable federal, state and local government laws, regulations and ordinances.

**6. Time is of the Essence**

It is understood and agreed that all times stated and referred to herein are of the essence. The times stated and referred to may be extended by the RTC Engineering Director for such additional periods as the RTC Engineering Director may approve. No extension of time shall be valid unless reduced to writing and signed by the Engineering Director.

**7. Not Used**

**8. Unavoidable Delays**

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

**9. Notification of Delay**

Consultant shall notify the RTC as soon as Consultant has, or should have, knowledge that an event has occurred that will delay contract completion. Within five (5) calendar days, Consultant shall confirm such notice to the RTC in writing, furnishing as much detail as is available.

## **10. Request for Extension**

Any request for an extension of time to complete the contract shall be made in writing to the RTC's representative(s) identified in the Solicitation documents. Consultant shall supply to the RTC, upon request, documentation to substantiate the justification for additional time needed for Project completion. The RTC shall provide Consultant with notice of its decision within five (5) working days.

## **11. Not Used**

## **12. Compliance with Laws/Permits and Licenses**

Consultants shall comply with all applicable federal, state, county and local laws, ordinances, rules, regulations, standards and orders of public authority. If the contract documents are at variance the above, appropriate modification shall be made by the RTC. Omission of any applicable laws, ordinances, rules, regulations, standards or orders by the RTC in the contract documents shall be construed as an oversight and shall not relieve the Consultant from his or her obligations to meet such fully and completely. Upon request, the Contractor shall furnish to the RTC certificates of compliance with all such laws, orders and regulations. The Contractor shall be responsible for obtaining all necessary permits and licenses required for performance under the contract.

Applicable provisions of all federal, state, county, and local laws, and of all ordinances, rules, and regulations shall govern any and all claims and disputes which may arise between persons(s) submitting a Proposal response hereto and the RTC by and through its officers, employees, and authorized representatives, and lack of knowledge by any Contractor shall not be a defense.

## **13. Not Used**

## **14. Not Used**

## **15. Hold Harmless**

The Contractor agrees to save and hold harmless and fully indemnify the RTC and all its employees or agents from and against all damages, costs or expenses in law or equity that may at any time arise, or be set up, by any person or persons as a consequence of the use by the RTC or by any of its employees or agents of articles supplied under this Contract to the extent such damages, costs or expenses are caused by defects in the design, marketing or manufacturing of the articles, or by the Contractor's negligence. The Contractor further agrees to save, hold harmless, and fully indemnify the RTC from and against all suits, claims, and demands, including attorney's fees, based upon any alleged damage to property or any alleged injury to persons (including death) which may occur or be alleged to have occurred by or on account of any negligent act or omission on the part of the said Contractor, its subcontractors, or any of their servants, employees, or agents. The Contractor, at its own option and expense, will be associated with the RTC in the settlement or defense

of any claims or litigation arising out of the performance of this Contract. Further, the Contractor shall defend all suits or claims for infringement of any patent rights and shall save and hold the RTC, its agents, and assigns harmless from loss on account thereof resulting from the use by the RTC or any of its employees or agents of articles supplied under this Contract. This patent infringement provision shall not apply to any infringement or alleged infringement which is the result of or arises out of the RTC, its employees or agents modifying or altering any part or component, alone or in combination with any other part or component, except as consented to by the Contractor.

**NOTE: IF THIS CONTRACT IS FTA FUNDED, THE CONTRACTOR SHALL ALSO DEFEND THE FEDERAL GOVERNMENT.**

### **16. Written Change Orders**

Oral change orders are not permitted. No change in this Contract shall be made unless the Contracting Officer gives prior written approval therefore. The Contractor shall be liable for all costs resulting from, and/or for satisfactorily correcting, any specification change not properly ordered by written modification to the Contract and signed by the Contracting Officer.

The Contracting Officer may at any time, by written change order, (oral change orders are not permitted) and without notice to the sureties, if any, make changes within the general scope of this contract.

If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a Proposal submitted before final payment of the contract.

Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

The Contractor shall be liable for all costs resulting from, and/or for satisfactorily correcting any specification change not properly ordered by written modification to the Contract and signed by the RTC.

### **17. Single Proposal Response**

A detailed cost proposal will be requested of the selected consultant(s). A cost analysis and evaluation and/or audit will be performed in order to determine if the cost is fair and reasonable.

### **18. Not Used**

## **19. Not Used**

### **20. Design Within Funding Limitations**

(a) The Consultant shall accomplish the design services required under this contract so as to permit the award of a contract, using standard RTC and FTA procedures for the construction of the project designed at a price that does not exceed the estimated construction contract price as set forth in paragraph (c) below. When bids or proposals for the construction contract are received that exceed the estimated price, the Consultant shall perform such redesign and other services as are necessary to permit contract award within the funding limitation. These additional services shall be performed at no increase in the price of this contract. However, the Consultant shall not be required to perform such additional services at no cost to the RTC if the unfavorable bids or proposals are the result of conditions beyond its reasonable control.

(b) The Consultant will promptly advise the Contracting Officer if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these limitations and it is unable to design a usable facility within these limitations. Upon receipt of such information, the Contracting Officer will review the Consultant's revised estimate of construction cost. The RTC may, if it determines that the estimated construction contract price set forth in this contract in this contract is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth in paragraph (c) below, or the RTC may adjust such estimated construction contract price. When bids or proposals are not solicited or are unreasonably delayed, the RTC shall prepare an estimate of constructing the design submitted and such estimate shall be used in lieu of bids or proposals to determine compliance with the funding limitation.

### **21. Responsibility of the Architect-Engineer Contractor**

(a) The Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Consultant under this contract. The Consultant shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.

(b) Neither the RTC's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract and the Consultant shall be and remain liable to the RTC in accordance with applicable law for all damages to the RTC caused by the Consultant's negligent performance of any of the services furnished under this contract.

(c) The rights and remedies of the RTC provided for under this contract are in addition to any other rights and remedies by law.

(d) If the Consultant is comprised of more than legal entity, each such entity shall be jointly and severally liable hereunder.

**22. Work Oversight in Architect- Engineer Contracts**

The extent and character of the work to be done by the Consultant shall be subject to the general oversight, supervision, direction, control, and approval of the Contracting Officer.

**23. Requirements for Registration of Designers**

The design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work shall be accomplished or reviewed and approved by architects or engineers registered to practice in the particular professional field involved in the State of Nevada.



# **EXHIBIT G**

**FEDERAL TRANSIT ADMINISTRATION**

**ASSISTED REQUIRED CLAUSES**

## **EXHIBIT G**

### **FTA ASSISTED REQUIRED CLAUSES**

#### **FOR CAPITAL AND PROFESSIONAL SERVICE PROCUREMENTS**

It is a requirement of the Federal Government that activities financed, in part, with Federal funds and performed by a third party contractor and its subcontractors on behalf of a Federal grantee must be carried out in accordance with Federal requirements. Activities performed resulting from the original contract to this and any other prior or subsequent contract amendments thereto are financed, in part, by a grant from the United States Department of Transportation (DOT), Federal Transit Administration (FTA), and are therefore subject to the applicable grant terms, conditions, and regulations. Accordingly, any contractor and its subcontractors performing activities under this contract must adhere to the Federal regulations stated herein as a condition of satisfactory performance. All subcontracts and subcontractors employed as a result of this contract are subject to the same conditions and regulations as set forth herein unless specifically exempted. The prime contractor shall ensure that its subcontractors at all tiers are made aware of and comply with these Federal regulations. The prime contractor will be held liable for compliance failures by its subcontractors. Failure to comply will render the prime contractor responsible for damages and/or contract termination.

#### **1. Not Used**

#### **2. Non-Collusion**

The Consultant guarantees that the Proposal submitted is not a product of collusion with any other Consultant and that it has not been communicated by the Consultant to anyone not an employee or agent or surety of the Consultant. Consultants are required to furnish a Federal Non-collusion Affidavit (attached). Failure to submit the signed affidavit at the time of proposal opening shall be grounds for disqualification of the Proposal.

#### **3. Incorporation of FTA Terms**

General Contract Provisions, includes, in part, certain standard terms and conditions required by DOT, whether or not expressly set forth in the Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D, as amended, 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 RTC requests that would cause the RTC to be in Violation of the FTA terms and conditions.

#### **4. Fly America**

The Recipient understands and agrees that the Federal Government will not participate in the costs on international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by U.S. flag air carriers

to the extent service by U.S. flag air carriers is available, consistent with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. 40118, and U.S. General Services Administration (U.S. GSA) regulations "Use of United States Flag Air Carriers", 41 CFR. 301.131 through 301.143.

#### **5. Nondiscrimination Assurance**

The Contractor, subrecipients or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the RTC deems appropriate as specified in the contract.

#### **6. Prompt Payment Provision**

The prime contractor must pay subcontractor for satisfactory performance of their contracts no later than 10 days from the receipt of payment made to the prime by the RTC. Prompt return of retainage payments, if any, from the prime contractor to the subcontractor will be made within 15 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment among the parties may take place only for good cause and with the RTC's prior written approval. If the prime contractor determines the work of the subcontractor to be unsatisfactory, it must notify the RTC's project manager and DBE Liaison Officer immediately in writing and state the reasons. Failure by the prime contractor to comply with this requirement will be construed to be a breach of contract and may be subject to sanctions as specified in the contract or any other options listed in 49 CFR Section 26.29.

#### **7. Prohibitions against exclusionary or discriminatory specifications**

Apart from inconsistent requirements imposed by Federal statute or regulations, the Recipient agrees that it will comply with the requirements of 49 U.S.C. 5323(h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

#### **8. Not Used**

#### **9. Nondiscrimination**

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

A. Compliance with Regulations Contractor shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT"), Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

B. Nondiscrimination Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of age, race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate, either directly or indirectly, in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

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

D. Information and Reports Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the RTC to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information is required, or such information is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to the RTC, and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance In the event of Contractor's noncompliance with the nondiscrimination provisions of this contract, the RTC shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:

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

#### **10. Incorporation of Provisions**

Contractor shall include the provisions of Paragraphs A) through E) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. Contractor shall take such action with respect to any subcontract or procurement as the RTC may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Contractor may request the RTC to enter into such litigation to protect the interests of the RTC.

#### **Affirmative Action in Employment**

Contractor shall comply with the provisions of Section 503 of the Rehabilitation Act of 1973.

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

(B) Contractor agrees to comply with the rules, regulations, and relevant orders of the secretary of labor pursuant to the act.

(C) In the event of Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the secretary of labor pursuant to the act.

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

(E) Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally disabled individuals.

Contractor will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as the director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance (41 CFR 60-741.4.4).

### **11. Third Party Rights**

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

### **12. Interest of members of Congress**

No member of or delegate to the Congress of the United States may be admitted to any share or part of this agreement or to any benefit arising therefrom.

### **13. Interest of public officials**

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

#### **14. Federal changes**

Contractor shall at all time comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between Purchaser 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 contract.

#### **15. Not Used**

#### **16. Civil rights**

The following requirements apply to the underlying contract:

(A) Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132, and Federal transit law at 49 U.S.C. 5532, 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 underlying contract:

(1) Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. 2000e, and Federal transit laws at 49 U.S.C. 5332, 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.

(2) Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 623 and Federal transit law at 49 U.S.C. 5332, 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.

(3) 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.

#### **17. Covenants Against Gratuities**

The Contractor shall not offer or provide gifts, favors, entertainment, or any other gratuities of monetary value to any official, employee, or agent of the RTC during the period of this contract or for a period of one year thereafter.

#### **18. Ineligible Contractors**

In the event the Contractor is on the comptroller General's List of Ineligible Contractors for federally financed or assisted projects, this contract may be canceled, terminated, or suspended by the RTC.

#### **19. Provisions for Resolution of Disputes or Breaches**

The Recipient agrees that FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly: 1) The Recipient agrees to notify FTA of any current or prospective major dispute, breach, default, or litigation pertaining to the Project. If the Recipient seeks to name the Federal Government as a party to litigation for any reason, in any forum, the Recipient agrees in informing the FTA before doing so. 2) The Federal Government retains the right to a proportionate share, based on the percentage of the Federal share committed to the Project, of any proceeds derived from any third party recovery, except that liquidated damages recovered may be returned to the Project Account in lieu of returning the Federal Share to the Federal Government. 3) The Recipient agrees to pursue all legal rights available under any third party contract. 4) FTA reserves the right to concur in any compromise or settlement of any claim involving Project and the Recipient. 5) FTA encourages the Recipient to use alternative dispute resolution procedures, as may be appropriate.

#### **20. Access Requirements for Persons with Disabilities ADA**

The contractor agrees to comply with the requirements of 49 U.S.C. 5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that

special efforts shall be made in planning and designing those services and facilities to implement those policies. The contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. 12101 et seq., which requires the provision of accessible facilities and services, and with the following Federal regulations, including any amendments thereto:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)", 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance", 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board/ U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles", 36 C.F.R. Part 1192 and 49 C.F.R. part 38;
- (4) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services", 28 C.F.R. Part 35;
- (5) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities", 28 C.F.R. Part 36;
- (6) U.S. GSA regulations, "Accommodations for Physically Handicapped", 41 C.F.R. subpart 101-19;
- (7) 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;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- (9) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (10) Any implementing requirements FTA may issue.

## **21. Notice of Federal Requirements**

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



## **22. Records Retention/Audit and Inspection of Records**

- (A) The Contractor shall permit the authorized representatives of the RTC, the U.S. Department of Transportation and the Comptroller General of the United States to inspect and audit all data and records of the Contractor relating to its performance under the contract until the expiration of three years after final payment under this contract.
- (B) The Contractor further agrees to include in all subcontracts hereunder a provision to the effect that the subcontractor agrees that the RTC, the U.S. Department of Transportation and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any books, documents, papers, and records of the subcontractor directly pertinent to this contract. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding \$10,000 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.
- (C) The periods of access and examination described above, for records which relate to (1) appeals under the dispute clause of this contract, (2) litigation or the settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this contract to which an exception has been taken by the U.S. Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims or exceptions have been disposed of.

## **23. No Federal Government obligations to third parties by use of a disclaimer**

The recipient agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipients, any third party contractor, or any other person not a party to the Grant Agreement or Cooperative Agreement in connection with the performance of the Project. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, subagreement, or third party contract, the Federal Government continues to have no obligations or liabilities to any party, including the subrecipients and third party contractor.

## **24. Program fraud and false or fraudulent statements and related acts**

The Recipient acknowledges and agrees as follows:

- (A) The Recipient acknowledges that the requirements 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 the Project. Accordingly, by signing the Grant Agreement or Cooperative Agreement, the Recipient certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the covered by the Grant Agreement or Cooperative Agreement. In addition to other penalties that may be applicable, the Recipient also acknowledges that if it makes 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, as amended, on the Recipient to the extent the Federal Government deems appropriate.

- (B) The Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized by 49 U.S.C. § 5307, the Government reserves the right to impose on the Recipient the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate.

## **25. Prohibitions**

- (A) Section 1352 of title 31, United States Code, among other things. Prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or, the modification of any Federal contract, grant loan, or cooperative agreement.
- (B) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.
- (C) The prohibitions of the Act do not apply under the following conditions:  
Agency and legislative liaison by own employees. The prohibition on the use of appropriated funds, in subparagraph B.1 of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

## **26. Not Used**

## **27. Equal Employment Opportunity**

In connection with the execution of this Contract, the Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, or national origin. The Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during their employment without regard to race, religion, color, sex, disability, or national origin. Such actions

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. The Consultant shall also insert a similar provision in all subcontracts except subcontracts for standard commercial supplies or raw materials.

## **28. Clean Water**

- (A) 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 Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (B) 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.

## **29. Clean Air**

- (A) 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 Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (B) 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.

## **30. Patent Rights**

If any invention, improvement, or discovery of the RTC or any contractor or subcontractor is conceived or first actually reduced to practice in the course of or under this Contract or Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, and the RTC and the contractor or any subcontractor shall notify the FTA immediately and provide a detailed report. The rights and responsibilities of the RTC, the contractor or subcontractor of any tier, and the Government with respect to such invention, improvement, or discovery will be determined in accordance with applicable federal laws, regulations, policies, and any waiver thereof.

## **31. Rights in Data & Copyrights**

The contractor selected as a result of this solicitation agrees that, as applicable, the use of any data produced or delivered under the terms of said contract, including, but not limited to engineering drawings and associated lists, specifications, process sheets, and technical reports, shall be governed by provisions of 49 C.F.R. 18.34. In addition, the

contractor agrees that it will not publish such data without the written consent of the RTC, and, if appropriate, the Federal Government.

### **32. Environmental Requirements**

The contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 et seq. Consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality", 42 U.S.C. 4321 note; FTA statutory requirements on environmental matters at 49 U.S.C. 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy of 1969, as amended, 40 C.F.R. Part 1500 et seq.; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures", 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

### **33. Energy Conservation**

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency that is contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

### **34. Certification of Contractor Regarding Debarment, Suspension, Other Ineligibility and Voluntary Exclusion**

Title 49 CFR Part 29 and Executive Order 12549 establish regulations pertaining to DOT and other federal contractors at any tier, and procedures applicable to their debarment, suspension, ineligibility or exclusion from participation in any DOT or other federal contracts.

Consultants are required to review the above regulations and to complete and submit a Certification Regarding Debarment, Suspension, Other Ineligibility and Voluntary Exclusion (Section 1.4.15), or furnish an explanation as to why the Certification cannot be provided.

The Consultant agrees by submitting this Proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower-tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the RTC.

The Consultant further agrees by submitting this Proposal that it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transaction", in all lower-tier covered transactions over \$25,000 and in all solicitations for lower tier contracts.

### **35. Restrictions on Lobbying**

Section 1352 of Title 31, United States Code, provides in part that no appropriated funds may be expended by the recipient of a federal contract, grant, loan, or cooperative agreement to pay any person by influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the

following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement.

Each Consultant is required to review the above referenced Regulations and complete and submit a Certification of Compliance with Federal Lobbying Regulations (Section 1.4.16). Pursuant to federal regulations, the Consultant is required to have all subcontractors (at any tier) providing more than \$100,000 towards the contract also complete with this Certification, to be included with the Consultant's Proposal.

### **36. Contract Termination for Default**

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the RTC may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

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

### **37. Contract Termination for Convenience**

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

### **38. Breaches and Dispute Resolution**

#### **Disputes**

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the RTC's Contracting Officer. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Contracting Officer. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Contracting Officer shall be binding upon the Contractor and the Contractor shall abide by the decision.

### Performance During Dispute

Unless otherwise directed by the RTC, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

### Remedies

Unless this contract provides otherwise, all claims, counterclaims, Disputes and other matters in question between the RTC and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the RTC is located.

### Rights and Remedies

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the RTC, or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

### **39. Notification of Federal Participation**

In the announcement of any third party contract award for goods for services (including construction services) having an aggregate value of \$500,000 or more, the RTC agrees to specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express the amount of that Federal assistance as a percentage of the total cost of that third party contract.

### **40. Not Used**

### **41. Disadvantaged Business Enterprise (DBE) Utilization**

**Goal** The Regional Transportation Commission set an annual overall DBE goal of 1.7 percent for work and goods under RTC contracts. While the race neutral expected percentage of DBE participation may vary from contract to contract due to availability of DBE's, the RTC believes the race neutral goals to be realistically obtainable over the year. The RTC encourages DBE participation.

**EXHIBIT H**

**SAMPLE  
PROFESSIONAL SERVICES  
AGREEMENT**

**EXHIBIT H**  
**AGREEMENT**  
**BETWEEN**  
**REGIONAL TRANSPORTATION COMMISSION OF WASHOE COUNTY**  
**AND**  
**\*\*\***  
**FOR**  
**PROFESSIONAL SERVICES**

THIS AGREEMENT, made this \_\_\_ day of \*\*\* 2010\*, by and between the Regional Transportation Commission of Washoe County, hereinafter called the RTC, and \*\*\*, having offices at \*\*\*\*, hereinafter called the CONSULTANT.

WITNESSETH:

WHEREAS, CONSULTANT has represented that it has the expertise and staff necessary to perform certain investigation and design services in a competent and professional manner; and

WHEREAS, RTC wishes to retain CONSULTANT to perform those services in conjunction with the \* Project;

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

ARTICLE 1 - ENGAGEMENT OF THE CONSULTANT

1.1 The RTC hereby engages the CONSULTANT and the CONSULTANT hereby accepts the engagement to perform certain architectural engineering services in connection with the \*\*\* project.

1.2 PROJECT DESCRIPTION

ARTICLE 2 - SERVICES OF THE CONSULTANT

2.1 SCOPE OF SERVICES

CONSULTANT shall perform and accomplish in a manner satisfactory to the RTC those tasks described in Exhibit "A", "Scope of Services", attached hereto and incorporated herein by this reference as if set forth in full.

2.2. OPTIONAL TASKS

The RTC shall have the right to exercise its option(s) for any optional tasks or subtasks identified herein for a period of two (2) years from the effective date of



this Agreement. This period may be extended by mutual consent of both parties. CONSULTANT shall be informed of tasks in writing. CONSULTANT will prepare and submit a detailed scope of services reflecting the specific optional services requested. RTC will review and approve the scope of services and RTC and CONSULTANT will agree upon compensation. CONSULTANT shall undertake no work on any optional task without written notice to proceed with the performance of said task.

### 2.3. ADDITIONAL SERVICES

When authorized in writing by the RTC, the CONSULTANT will furnish or obtain from other CONSULTANTs additional services of the following types:

2.3.A. All other services in connection with the project not specifically defined herein and authorized by the RTC.

## ARTICLE 3 — RESPONSIBILITIES OF THE RTC

### 3.1. The RTC will:

3.1.A. Upon request and without cost to the CONSULTANT, provide all information that is reasonably available to RTC and pertinent to the Project including surveys, reports and any other data relative to design and construction of the Project.

3.1.B. Provide access to and make all provisions for the CONSULTANT to enter upon RTC facilities and public lands, as required for the CONSULTANT to perform its work under this Agreement.

3.1.C. Vest the RTC Engineering Director with authority to act as the RTC's representative with respect to the work to be performed under this Agreement. He shall have complete authority to transmit instructions, receive information, interpret and define the RTC's policies and decisions with respect to materials, equipment elements and systems pertinent to the work covered by this Agreement.

## ARTICLE 4 — PERIOD OF SERVICES

4.1. The CONSULTANT will proceed with the services under this Agreement promptly and will diligently and faithfully prosecute the work to completion in accordance with applicable engineering, architectural, or other professional standards subject to any delays due to strikes, acts of God, act of any government, civil disturbances, or any other cause beyond the reasonable control of the CONSULTANT. The CONSULTANT will complete the services enumerated in Exhibit "A", "Scope of Services" above within XX (##) calendar days following execution of the design services agreement by the RTC, and in accordance with the schedule provided in Exhibit "C", "Schedule", attached

hereto and incorporated herein by this reference as if set forth in full. Bidding services and optional tasks, if any, shall commence at a date to be determined by the RTC.

#### ARTICLE 5 — PAYMENTS TO THE CONSULTANT

- 5.1. CONSULTANT'S fee for the work described in Exhibit "A", "Scope of Services", will be based upon actual time and effort for the completion of each separate task at the hourly and testing rates listed in Exhibit "B", "Cost of Services", attached hereto and incorporated herein by this reference as if set forth in full, but shall in no case exceed the not-to-exceed amounts specified in Exhibit "B".
- 5.2. The RTC and CONSULTANT shall review the Optional Construction Services tasks following the completion of final design to determine their appropriateness to the project. Should there be a change in the scope of Optional Construction Services, the fee for such services will be adjusted as appropriate.
- 5.3. Payment for work accomplished for each major task may be invoiced monthly. Simple interest will be paid at the rate of 1% per month on all unpaid balances not paid within thirty (30) days. The RTC will pay approved invoices within thirty (30) days of the date of invoice.
- 5.4. The RTC shall notify the CONSULTANT of any disagreement with any submitted invoice for consulting services within thirty (30) days of receipt of an invoice. In the event there is a dispute as to the amount owed and the matter cannot be informally resolved within a reasonable period, either party may invoke remedies allowed by Article 11 of this Agreement. Any amounts not in dispute shall be promptly paid as provided in Section 5.3.
- 5.5. For the work described under Article 2.3. "Additional Services", the CONSULTANT's fee will be in accordance with Sections 5.6 and 5.7 below.
- 5.6. The standard hourly rates to be used for this project for additional work will be in accordance with Exhibit "B", "Cost of Services".

(A written request must be submitted to the RTC for approval to adjust the hourly rates. Hourly rates may be adjusted annually on the anniversary date of this Agreement at a rate not-to-exceed the percent increase in the Bureau of Labor Statistics (BLS) Western Region "core rate" CPI. This rate can be obtained by contacting the BLS at <http://stats.bls.gov/ro9home.htm> and accessing the "Regional News Releases" - Western Region (Monthly). A copy of the news release available at the time of request shall be attached to the request. If approved, rate adjustments shall be applied to all work performed subsequent to the date of the written request, but in no case prior to the anniversary date.)

- 5.7. Additional services authorized under Section 2.3 of this Agreement, when performed by persons that are not employees of CONSULTANT, will be billed at

outside services rates indicated on the CONSULTANT's fee schedule, but not more than 110% the amounts billed to the CONSULTANT for such services.

- 5.8. Any reimbursable services authorized in writing by RTC will be billed at rates indicated on the CONSULTANT's fee schedule, but not more than 110% the amounts billed to the CONSULTANT for such services.

#### ARTICLE 6 — LITIGATION

- 6.1. Except as required by Article 9, CONSULTANT shall receive compensation for preparing for and/or appearing in any litigation at the request of RTC. Compensation for litigation services shall be paid at a mutually agreed upon rate and/or at a reasonable rate for such services.

#### ARTICLE 7 — TERMINATION

- 7.1. This Agreement may be terminated by either party upon seven days written notice, should the other party fail substantially to perform in accordance with its terms through no fault of the terminating party. In the event of termination, the CONSULTANT shall be paid at the rates specified in Article 5 for all services performed to the satisfaction of the RTC until the day termination is effective, including all reimbursements then due.

#### ARTICLE 8 — INSURANCE

- 8.1. The CONSULTANT shall not commence any work or permit any employee/agent to commence any work until satisfactory proof has been submitted to RTC that all insurance requirements have been met.
- 8.2. In conjunction with the performance of the services/work required by the terms of this Agreement, CONSULTANT shall obtain, unless executed in writing by the Engineering Director, all types and amounts of insurance set forth in Attachment A, "Insurance Requirements for Professional Service Agreements", attached hereto and incorporated herein by reference, and shall comply with all of its terms.

#### ARTICLE 9 — SAVE HARMLESS

- 9.1. The CONSULTANT for itself, its successors and assigns, agrees to save RTC and the Federal Government harmless from any expense and to defend RTC and the Federal Government against all claims, demands, actions or causes of action which may be made against RTC, where said demand, action or cause of action, loss, expense or other detriment arises out of or in connection with the CONSULTANT's negligence, errors, or omissions in the performance of all services performed pursuant to this Agreement, including but not limited to liens and loss or damage to property of the RTC and/or any third persons.

## ARTICLE 10 — EQUAL EMPLOYMENT OPPORTUNITY

- 10.1. During the performance of this Agreement, the CONSULTANT agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, disability, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the RTC setting forth the provisions of this nondiscrimination clause.
- 10.2. The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that well qualified applicants will receive consideration of employment without regard to race, color, religion, sex, age, disability, or national origin.
- 10.3. The CONSULTANT will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each contractor.

## ARTICLE 11 — ARBITRATION

- 11.1. In the event any dispute arises as to the rights or obligations of either party which cannot be resolved informally, the parties agree that said dispute will be submitted to the American Arbitration Association for resolution in accordance with the current provisions of the Construction Industry Arbitration Rules. Any award will be subject to confirmation, modification, vacation or appeal pursuant to the applicable provisions of N.R.S. 38.015 to 38.205, inclusive.
- 11.2. All demands for arbitration and all answering statements thereto which include any monetary claim must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than the total value of the services rendered (exclusive of interest and costs). The arbitrators will not have jurisdiction, power or authority to consider, or make findings (except in denial of their own jurisdiction) concerning, any claim, counterclaim, dispute or other matter in question where the amount in controversy thereof is more than the value of the services rendered (exclusive of interest and costs) or to render a monetary award in response thereto against any part which totals more than value of the services rendered (exclusive of interest and costs).

- 11.3. No arbitration arising out of, or relating to, this Agreement may include, by consolidation, joinder or in any other manner, any person or entity who is not a party to this agreement.
- 11.4 This section has no application to CONSULTANT's obligation as set forth in Section 9.1.

#### ARTICLE 12 — SUCCESSORS AND ASSIGNS

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

#### ARTICLE 13 — NOTICE

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

RTC:                               Regional Transportation Commission  
  1105 Terminal Way, Suite 108  
  Reno, Nevada 89502

CONSULTANT:                \*

#### ARTICLE 14 — ATTORNEY'S FEES

- 14.1. In the event of a dispute between the parties results in any arbitration or a proceeding in any Court of Nevada having jurisdiction, the prevailing party shall be entitled to an award of costs and a reasonable attorney's fee.

#### ARTICLE 15 — APPLICABLE LAW

- 15.1. Venue for the enforcement of this Agreement and any amendments shall be Washoe County, Nevada and all proceedings shall be governed by and construed in accord with the laws of the State of Nevada.

## ARTICLE 16 — SEVERABILITY

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

## ARTICLE 17 – FEDERAL FORMS AND CLAUSES

- 17.1 As a condition precedent to the performer of any services/work required under the terms of this agreement, Consultant must provide to RTC the “Affidavit of Non-Collusion” and “Debarment Certification” duly executed by a properly authorized officer of Consultant. Those documents are attached hereto as Exhibit “B1” and Exhibit “B2”, respectively, and incorporated herein by reference as if set forth in full.
- 17.2 In conjunction with the performance of the services/work required by the terms of this agreement, Consultant agrees to comply with the federal transit administration requirements set forth in Exhibit “B3”, attached hereto and incorporated herein by reference as if set forth in full.



**EXHIBIT I**

**INSURANCE REQUIREMENTS FOR**

**PROFESSIONAL SERVICE AGREEMENTS**



## EXHIBIT I

### **INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICE AGREEMENTS**

IF CONSULTANT AGREES TO RESPOND TO THE "REQUEST FOR QUALIFICATIONS/PROPOSALS", THE CONSULTANT MUST BE WILLING TO COMPLY WITH THE INSURANCE REQUIREMENTS LISTED BELOW AND HAVE THEM INCLUDED IN ANY NEGOTIATED AGREEMENT. IT IS HIGHLY RECOMMENDED THAT CONSULTANTS CONFER WITH THEIR INSURANCE CARRIERS OR BROKERS TO DETERMINE IN ADVANCE OF PROPOSAL SUBMISSION THE AVAILABILITY OF INSURANCE CERTIFICATES AND ENDORSEMENTS AS PRESCRIBED AND PROVIDED HEREIN. IF THERE ARE ANY QUESTIONS REGARDING THESE INSURANCE REQUIREMENTS, IT IS RECOMMENDED THAT THE AGENT/BROKER CONTACT THE RTC ENGINEER DIRECTLY AT (775) 348-0171.

#### **INDEMNIFICATION**

##### Professional Liability

As respects acts, errors or omissions in the performance of professional services, CONSULTANT agrees to indemnify and hold harmless RTC, its officers, agents, employees, and volunteers from and against any and all claims, demands, defense costs, liability or consequential damages of any kind or nature arising directly out of CONSULTANT'S negligent acts, errors or omissions in the performance of its professional services under the terms of this Agreement.

CONSULTANT further agrees to defend RTC and assume all costs, expenses and liabilities of any nature to which RTC may be subjected as a result of any claim, demand, action or cause of action arising out of the negligent acts, errors or omissions of CONSULTANT or its Sub-consultant in the performance of their professional services under the Agreement.

##### General Liability

As respects all acts or omissions which do not arise directly out of the performance of professional services, including but not limited to those acts or omissions normally covered by general or automobile liability insurance, CONSULTANT agrees to indemnify, defend (at RTC's option), and hold harmless RTC, its officers, agents, employees, and volunteers from and against any and all claims, demands, defense costs, liability, or consequential damages of any kind or nature arising out of or in connection with CONSULTANT'S (or Sub-consultant, if any) negligent performance or failure to perform, under the terms of this agreement; excepting those which arise out of the negligence of the RTC.

Upon determination that the work performed by CONSULTANT was in any manner negligent or that CONSULTANT failed to perform any duty set forth in this Agreement, CONSULTANT must either defend RTC or pay RTC'S cost of defense for any claim, demand, action or cause of action.

If RTC'S personnel (attorneys, engineers, or other professionals) are involved in defending such legal actions, CONSULTANT shall also reimburse RTC for the time spent by such personnel at the rate charged for such services by private professionals.

In determining the nature of the claim against RTC, the incident underlying the claim shall determine the nature of the claim, notwithstanding the form of the allegations against RTC.

## **GENERAL REQUIREMENTS**

RTC requires that CONSULTANT purchase Industrial Insurance, General, Auto Liability, and CONSULTANT'S Errors and Omissions Liability Insurance as described below against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by CONSULTANT, its agents, representatives, employees or Sub-consultants. The cost of all such insurance shall be borne by CONSULTANT.

## **INDUSTRIAL INSURANCE**

It is understood and agreed that there shall be no Industrial Insurance coverage provided for CONSULTANT or any Sub-consultant by RTC. CONSULTANT agrees, as a precondition to the performance of any work under this Agreement and a precondition to any obligation of the RTC to make any payment under this Agreement, to provide RTC with certificates issued by an insurer or the Employers Insurance Company of Nevada (formerly SIIS) which shows compliance with NRS 616B.627 and NRS 617.210, respectively.

Upon completion of the project, CONSULTANT shall provide RTC with a Final Certificate for itself and each Sub-consultant which is prepared by the State of Nevada Industrial Insurance System. If CONSULTANT or Sub-consultant is unlicensed and is a sole proprietor, coverage for the sole proprietor must be purchased and evidence of coverage must appear on the Certificate of Insurance and Final Certificate.

Should CONSULTANT be self-funded for Industrial Insurance, CONSULTANT shall so notify RTC in writing prior to the signing of any agreement. RTC reserves the right to approve said retentions and may request additional documentation, financial or otherwise, for review prior to the signing of any agreement.

## **MINIMUM SCOPE OF LIABILITY INSURANCE**

Coverage shall be at least as broad as: \*

1. Insurance Services Office Commercial General Liability Coverage "occurrence" form CG0001 11/88 or Insurance Service Office Comprehensive General Liability form GL0002 Ed 01/73 with the Broad Form Comprehensive General Liability Endorsement GL0404.

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\* Coverages may be excluded only with prior approval of the RTC's Engineering Director.

2. Insurance Services Office Business Auto Coverage form CA00 01 12/90 covering Automobile Liability code 1 any "auto" with changes in Business Auto and Trucker's Coverage forms - Insured Contract Endorsement form CA00 29 12/88.
3. Professional Errors and Omissions Liability applying to all activities performed under this Agreement in a form acceptable to RTC. CONSULTANT shall not require this insurance for non-design sub-consultants. CONSULTANT will maintain professional liability insurance during the term of this Agreement and for a period of three (3) years from the date of substantial completion of the project if available and affordable. The unavailability and/or unaffordability of coverage must be demonstrated by CONSULTANT to RTC. In the event that CONSULTANT goes out of business during the term of this Agreement or the three (3) year period described above, CONSULTANT shall purchase at the request and expense of RTC, if available, Extended Reporting Coverage for claims arising out of CONSULTANT'S negligent acts, errors and omissions committed during the term of the Professional Liability Policy.

## **MINIMUM LIMITS OF INSURANCE**

CONSULTANT shall maintain limits no less than:

1. General Liability: \$3,000,000 minimum or the amount customarily carried by the Consultant, whichever is greater, combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, the general aggregate limit shall be increased to equal twice the required occurrence limit or revised to apply separately to this project or location.
2. Automobile Liability: \$3,000,000 minimum or the amount customarily carried by the Consultant, whichever is greater, combined single limit per accident for bodily injury and property damage including non-owned and hired auto liability. No aggregate limit may apply.
3. Professional Errors and Omissions Liability: \$5,000,000 per occurrence and as an annual aggregate. Premium costs incurred to increase CONSULTANT'S insurance levels to meet minimum contract limits shall be borne by the CONSULTANT at no cost to the RTC.

Should RTC and CONSULTANT agree that higher limits are needed and warrant a project policy, project coverage shall be purchased and the difference in cost shall be borne by RTC. RTC retains the option to purchase project insurance through CONSULTANT'S insurer or its own source.

## **DEDUCTIBLES AND SELF-INSURED RETENTIONS**

Any deductibles or self-insured retentions must be declared to and approved by the RTC Engineering Director prior to the start of work under this Agreement. RTC reserves the right to request additional documentation, financial or otherwise prior to giving its approval of the deductibles and self-insured retention and prior to executing

the underlying agreement. Any changes to the deductibles or self-insured retentions made during the term of this Agreement or during the term of any policy must be approved by the RTC Engineering Director prior to the change taking effect.

## **OTHER INSURANCE PROVISIONS**

The policies are to contain, or be endorsed to contain, the following provisions:

### 1. General Liability Coverages

- a. RTC, its officers, agents, employees and volunteers are to be covered as insureds as respects liability: 1) arising out of activities performed by or on behalf of CONSULTANT, including any obligation of RTC for general supervision of CONSULTANT; 2) for products and completed operations of CONSULTANT; and 3) for premises owned or controlled by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to RTC, its officers, agents, employees or volunteers.
- b. CONSULTANT'S insurance coverage shall be primary insurance as respects RTC, its offices, agents, employees and volunteers. Any insurance or self-insurance maintained by RTC, its officers, agents, employees or volunteers shall be excess of CONSULTANT'S insurance and shall not contribute with it in any way.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to RTC, its officers, agents, employees or volunteers.
- d. CONSULTANT'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.
- e. CONSULTANT'S insurance coverage shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to RTC.

## **ACCEPTABILITY OF INSURERS**

Insurance is to be placed with insurers with a Best's rating of no less than A-: VII. RTC may accept coverage with carriers having lower Best's ratings upon review of financial information concerning CONSULTANT and insurance carrier. RTC reserves the right to require that the CONSULTANT'S insurer be a licensed and admitted insurer in the State of Nevada, or on the Insurance Commissioner's approved but not admitted list.

## **VERIFICATION OF COVERAGE**

CONSULTANT shall furnish RTC with certificates of insurance and with original endorsements affecting coverage required by this exhibit. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms acceptable to the RTC. All certificates and endorsements are to be addressed to the engineering department and be received and approved by RTC before work commences. RTC reserves the right to require complete, certified copies of all required insurance policies, at any time.

## **SUB-CONSULTANTS**

CONSULTANT shall include all Sub-consultants as insureds under its policies or shall require and maintain separate certificates and endorsements for each Sub-consultant. All coverages for Sub-consultants shall be subject to all of the requirements stated herein.

## **MISCELLANEOUS CONDITIONS**

1. CONSULTANT shall be responsible for and remedy all damage or loss to any property, including the property of RTC, and any injury or death proximately caused in whole or in part by the negligent or intentional acts or omissions of CONSULTANT, any Sub-consultant, or anyone employed, directed or supervised by CONSULTANT.
2. In addition to any other remedies RTC may have if CONSULTANT fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, RTC may, at its sole option:
  - a. Order CONSULTANT to stop work under this Agreement and/or withhold any payments which become due CONSULTANT hereunder until CONSULTANT demonstrates compliance with the requirements hereof;
  - b. Purchase such insurance to cover any risk for which RTC may be liable through the operations of CONSULTANT under this Agreement if CONSULTANT is unable to comply with the insurance requirements, and deduct or retain the amount of the premiums for such insurance from any sums due under the Agreement;
  - c. Terminate the Agreement.

# **EXHIBIT J**

## **SAMPLE COST SUMMARY**

**(only applicable to successful proposer)**

**EXHIBIT J**  
**SAMPLE COST SUMMARY**  
 (only applicable to successful proposer)

**CONTENTS**

The cost section will include all cost breakdowns associated with the proposal. This portion of the proposal should be itemized as much as practical and organized in a clear and concise manner so that the Evaluation Team can effectively and efficiently evaluate the proposal.

**LABOR EXPENSE**

The *Labor Expense Form* at the bottom of this page is for itemizing labor expenses associated with this proposal. For each task identified in the proposer's Scope of Work, please identify the personnel required to implement the task, the number of hours assigned to the task, cost per hour, and total cost per task. This information should be provided on the Labor Expense Form or in a similar format.

**PROPOSAL EXPENSE SUMMARY**

On the following page is a *Proposal Expense Summary Form* for summarizing all expenses associated with this proposal. This information should be provided on the Proposal Expense Summary Form or in a similar format.

HOURS												Total Hours	Cost/ Hour	Total Cost	
PERSONNEL	TASKS														
	1	2	3	4	5	6	7	8	9	10	11				
<b>PROJECT TOTAL:</b>															

