

PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE
NEVADA COUNTY TRANSPORTATION COMMISSION
AND

TO DEVELOP

This Agreement by and between the Nevada County Transportation Commission (hereinafter referred to as "NCTC") and _____, (hereinafter referred to as "Consultant"), in consideration of the mutual promises, covenants, and conditions hereinafter set forth, the parties do hereby agree as follows:

1. **Purpose and Scope:** The purpose of this Agreement is to provide a contract for professional services to complete _____.

Consultant will provide services as set forth in Exhibit "A" NCTC's "Request for Proposal" (name of it) and Exhibit "B," Consultant's proposal entitled, "_____". In the event of a conflict between Exhibit "A" and Exhibit "B," Exhibit "A" shall control.

2. **Engagement of Consultant:** NCTC hereby agrees to engage Consultant, and Consultant hereby agrees to perform the services required to complete the project. The services of Consultant are described in Exhibit "A" and Exhibit "B," which are herein incorporated as part of the Agreement.

3. **Scope of Services:** Consultant shall do, perform, and carry out the services as set forth in Exhibit "A" and Exhibit "B" in accordance with this Agreement. No changes to Exhibit "A" and Exhibit "B" or to this Agreement shall be made without the written agreement of NCTC and Consultant. In the event of a conflict between Exhibit "A" and Exhibit "B," Exhibit "A" shall control.

Consultant must provide to NCTC _____ () bound copies and a reproducible original on CD-ROM of the draft report. Format for reproducible originals on CD-ROM will be in Microsoft Word 2010, Excel 2010, and PDF.

Consultant shall deliver _____ () bound copies, one reproducible unbound original copy, and the final on CD-ROM to NCTC.

4. **Data to be Furnished to Consultant:** All information, data, reports, records and maps as are existing, available, and necessary for the carrying out of the project shall be furnished to Consultant without charge by NCTC, and NCTC shall cooperate with Consultant in every way possible during all phases of the project. All data, including survey documents, prepared or developed or assembled under this Agreement shall be the property of NCTC.

5. **Personnel:** Consultant represents that it has, or will obtain at its own expense, all personnel and/or subcontractors required in performing the services under this Agreement. Such personnel shall not be employees of NCTC.

6. **Standard of Quality:** All work performed by Consultant under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.
7. **Project Representative:** Consultant and NCTC shall each designate a project representative who shall be responsible for coordinating the efforts of the respective party with regard to the performance of the work as set forth under this Agreement. The project representative for NCTC shall be _____. The project representative for Consultant shall be _____. The project representative may be changed upon mutual agreement by NCTC and Consultant.
8. **Subcontracting:** Consultant shall be as fully responsible to NCTC for the acts and omissions of subcontractors and of persons either directly or indirectly employed by them, as Consultant is for the acts and omissions of persons directly employed.

All of the services required hereunder shall be performed by Consultant and its subcontractors as set forth in Exhibit "A," Exhibit "B," and any amendment thereto. All personnel engaged in the project shall be fully qualified and shall be authorized under state and local law to perform such services. None of the work or services covered by this Agreement shall be subcontracted, except as proposed in Exhibit "A," Exhibit "B," and any amendments thereto without the prior written approval of NCTC prior to the performance of any work.

Consultant shall supervise all personnel or subcontractors selected for this project. Should the services of any personnel or subcontractors be unsatisfactory to NCTC, such personnel or subcontractor shall be removed from the project immediately upon receipt of written notice from NCTC.

9. **Time of Performance:** The services of Consultant are to commence as soon as practical after the execution of this Agreement and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purpose of this contract. All specified elements of the contract and the exhibits attached hereto shall be completed in accordance with the schedule agreed upon by NCTC and Consultant at the time of contract execution.

In the event a delay is incurred through no fault on the part of Consultant, Consultant shall present to NCTC a written request for an extension of time and/or change(s) in the Work Program necessary for the performance of this Agreement. Approval of such time and/or Work Program change(s) shall not be unreasonably withheld and such additional time as NCTC approves shall be added to the time otherwise specified in this Agreement for completion of this project and made a part of this Agreement by written amendment.

Consultant shall not be responsible for damages or be in default by reason of delays in performance caused by NCTC, governmental acts or failure to act, labor disputes, accidents, acts of God and other delays unavoidable or beyond Consultant's control or due to errors or omissions contained in material, data, or information supplied by NCTC. Within ten (10) business days of experiencing a delay as a result of one of the factors listed in this paragraph, Consultant shall provide a written notice to NCTC of the nature of the delay and specific

facts which caused the delay. NCTC reserves the right to terminate the contract in accordance with Section 12 in the event of unavoidable delays.

10. **Compensation:** NCTC shall pay Consultant as compensation in full for all services performed by Consultant pursuant to this Agreement, a total sum not to exceed _____. (Bold) (spell out the amount). Consultant will not perform work, nor be required to perform work, outside those services specified in this Agreement which would result in billings in excess of _____ without the prior written agreement of both parties. This amount includes all compensation including fees, expenses, travel, and all other costs incurred.
- a. Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., (any subcontractors and subrecipients shall refer to the *Office of Management and Budget Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments*) shall be used to determine the allowability of individual items of cost.
 - b. Consultant also agrees to comply with Federal procedures in accordance with 49 CFR, Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."
 - c. Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq.; *Office of Management and Budget Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments*; or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, are subject to repayment by Consultant to NCTC. Disallowed costs must be reimbursed to NCTC within sixty (60) days unless NCTC approves in writing an alternative repayment plan.
 - d. Consultant and subcontractors shall establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) which segregates and accumulates the costs of work elements by line item and produces quarterly reports which clearly identify reimbursable costs and other expenditures.
 - e. Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of Sections 10 (a) through (c) above.
11. **Method of Payment:** Consultant shall bill NCTC for time and materials. Man hours by task and all other costs will be itemized in the invoice. Consultant may bill for services performed under this contract on a monthly basis. Payment by NCTC to Consultant shall be made within 30 days after receipt of Consultant's invoice and acceptance of the work to date. However, NCTC, at its own discretion, may withhold up to ten percent (10%) of each invoice until the successful completion of the scope of work and the delivery and acceptance by NCTC of all final products.

NCTC shall hold retainage from Consultant and shall make prompt and regular incremental acceptances of portions, as determined by NCTC of the contract work and pay retainage to Consultant based on these acceptances. Consultant or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of

the contract work by NCTC. Any delay or postponement of payment may take place only for good cause and with NCTC's prior written approval. Any violation of these provisions shall subject the violating Consultant to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to Consultant or subcontractor in the event of: a dispute involving late payment or nonpayment by Consultant; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

12. **Termination of Agreement:** Upon failure of performance by the other party, or at NCTC's convenience, either party may terminate this Agreement upon ten (10) days written notice to the other party. If the Agreement is to be terminated, Consultant shall be paid the amount due for work properly completed and approved by NCTC, up to the date of the notice of termination, based on the actual costs to Consultant attributable to the project, less any compensation to NCTC for damages suffered as a result of Consultant's failure to comply with the terms of this Agreement. If this Agreement is terminated because the work of Consultant does not meet the terms or standards specified in this Agreement, then NCTC shall be obligated to compensate Consultant only for that portion of Consultant's services which is of benefit to NCTC.

Upon receipt of written notice from NCTC that this Agreement is terminated, Consultant will submit an invoice to NCTC for an amount which represents the total cost of services actually and properly performed that are attributable to the project to the date of said notice, for which Consultant has not previously been compensated. Upon approval of this invoice by NCTC, Consultant shall be paid the sum found due, and NCTC shall be under no further obligation to Consultant, monetary or otherwise.

Termination and payment pursuant to this Section shall not waive, limit or otherwise affect any cause of action for breach of contract, which NCTC may possess.

In the event of termination by either party, all data shall become the property of NCTC subject to the provisions of Section 32.

13. **Interest of Members of NCTC and Others:** No officer, member, or employee of NCTC and no member of the governing body, and no other public official of the governing body of the locality or localities in which the project is situated or being carried out who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Agreement which affects his or her personal interest or have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof. In addition, Consultant shall notify NCTC of any such direct or indirect personal or pecuniary interest prior to entering into this Agreement, or if discovered after execution of the Agreement, immediately upon learning of such interest.
14. **Assignability:** Consultant shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of NCTC thereto; provided, however, that claims for money due or to become due to Consultant from NCTC under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval provided there is no

dispute as to the amount of funds due to Consultant. Notice of any such assignment or transfer shall be furnished promptly to NCTC.

15. **Covenant Against Contingent Fees:** Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement; and that it has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this Agreement. For breach or violation of this warranty, NCTC shall have the right to annul this Agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
16. **Findings Confidential:** Any reports, information, data, etc. given to, prepared by, or assembled by Consultant shall be held as confidential, and shall not be made available to any individual or organization by Consultant without the prior written approval of NCTC.
17. **Copyright:** No reports, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of Consultant.
18. **Availability of Records:** Consultant shall document the results of the work to the satisfaction of NCTC, and if applicable, the State and U.S. Department of Transportation (DOT). Such documentation may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of contract objectives.

Consultant and its subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred, and make such materials available at their respective offices at all reasonable times during the contract period and for four (4) years from the date of final payment to Consultant, or four (4) years from the conclusion or resolution of any and all audits or litigation relevant to this Agreement, whichever is later. Such materials shall be available for inspection by authorized representatives of NCTC, or the copies thereof shall be furnished if requested. Consultant agrees to provide any requested information and shall permit NCTC or its designees access to its premises, upon reasonable notice, during normal business hours, for the purpose of interviewing employees and inspecting or copying such materials. The U.S. DOT, Caltrans, the Comptroller General of the United States, or any authorized representatives of these agencies, shall have access to any books, documents, papers and records of Consultant which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and/or transcriptions.

19. **Applicable Laws:** Consultant agrees to conduct and execute the project in compliance with all applicable local, state and federal laws, codes, ordinances, regulations, orders, and decrees. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code, Section 1775. Consultant shall keep itself fully informed of and shall observe and comply with and shall cause any and all persons, firms, or corporations employed by it or under it to observe and comply with all state and national laws and county and municipal ordinances, regulations, orders and decrees which in any manner affect those engaged or employed in the services described by this Agreement or the material used or which in any way affect the conduct of the work.

Consultant warrants and represents to NCTC that Consultant shall, at its own cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals that are legally required for Consultant to practice its profession or are necessary and incident to the performance of the services and work Consultant performs under this Agreement. Consultant shall provide written proof of such licenses, permits, insurance and approvals upon request by NCTC. NCTC is not responsible or liable for Consultant's failure to comply with any or all of the requirements contained in this paragraph.

20. **Insurance:** Consultant shall maintain, at Consultant's own expense during the term hereof, insurance with respect to Consultant's business, the premises and all activities or services in the performance of this Agreement, of the types and in the minimum amounts described generally as follows:
- a. Full Worker's Compensation covering all employees of Consultant as required by law in the State of California, and Employers' Liability Coverage of \$1,000,000. Consultant acknowledges that it is aware of the provisions of the Labor Code of the State of California which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code and it certifies that it will comply with such provisions before commencing the performance of the work of this contract. A copy of the certificates evidencing such insurance shall be provided to NCTC prior to commencement of work.
 - b. Comprehensive Public Liability Insurance or Comprehensive Liability Insurance (Bodily Injury and Property Damage) of \$1,000,000.00 combined single limit per occurrence, including, but not limited to, endorsements for the following coverages: personal injury, premises-operations, products and completed operations, blanket contractual, and independent contractor's liability. If Comprehensive Liability Insurance or other form has a general aggregate limit, such limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
 - c. Comprehensive Automobile Liability Insurance (Bodily Injury and Property Damages) on owned, leased, and non-owned vehicles used in connection with Consultant's business of \$1,000,000.00 combined single limit per occurrence.
 - d. Throughout the duration of the project, Consultant shall carry professional liability insurance in a standard form, including Errors and Omission coverage, with a company approved by NCTC. Said insurance shall be written with limits of \$500,000 for each incident and \$1,000,000 in the aggregate. NCTC may waive this Section "d" at its discretion, in the event such insurance is not available for the type of service being provided by Consultant.
 - e. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions in excess of \$5,000 must be declared to and approved by NCTC.
 - f. Required Provisions: The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
 - (1) For any claims related to this Agreement, Consultant's insurance coverage shall be primary insurance as respects NCTC, its directors, officers,

employees and agents. Any insurance or self-insurance maintained by NCTC, its directors, officers, employees or agents shall be in excess of Consultant's insurance and shall not contribute to it.

- (2) Any failure by Consultant to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to NCTC, its directors, officers, employees or agents.
 - (3) 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.
 - g. Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise approved by NCTC.
 - h. Certificate of Insurance and Additional Insured Requirement: Consultant shall furnish to NCTC an original Certificate of Insurance on a standard ACORD form, or other form acceptable to NCTC, substantiating the required coverages and limits set forth above and also containing the following statement with respect to the General Liability policy: "Nevada County Transportation Commission and its directors, officers, employees and agents, are made additional insureds, but only insofar as the operations under this Agreement are concerned."
 - i. Certified Copies of Policies: Upon request by NCTC, Consultant shall immediately furnish a complete copy of any policy required hereunder, including all endorsements, with said copy certified by the insurance company to be a true and correct copy of the original policy.
 - j. Consultant's Responsibility: Nothing herein shall be construed as limiting in any way the extent to which Consultant may be held responsible for damages resulting from Consultant's operations, acts, omissions, or negligence. Insurance coverage obtained in the minimum amounts specified above shall not relieve Consultant of liability in excess of such minimum coverage, nor shall it preclude NCTC from taking other actions available to it under this Agreement or by law, including but not limited to, actions pursuant to Consultant's indemnity obligations.
 - k. Notice: Consultant agrees that none of the required coverages set forth in this Section 20 shall be suspended, voided, canceled, terminated, or reduced in coverage or limits, without thirty (30) days' prior written notice to NCTC by certified mail, return receipt requested.
21. **Indemnification:** Consultant agrees to indemnify, defend, and hold harmless, NCTC, its directors, officers, agents, and employees (the "Indemnitees") from and against any and all actions, suits, claims, demands, liabilities, damages, costs and expenses, including reasonable attorneys' fees and costs, arising out of, pertaining to, relating to, or are in any way connected with the performance of this Agreement, however caused, regardless of any negligent act of an Indemnitee, whether active or passive, excepting only such claims as may be caused by the sole active negligence or willful misconduct of an Indemnitee. Consultant shall pay all costs that may be incurred by NCTC in enforcing this indemnity, including reasonable attorneys' fees. The provisions of this Section shall survive the expiration, termination or assignment of this Agreement.

[For contracts with "Design Professionals," including architects, landscape architects, professional engineers, or land surveyors, the following language will be used]:

Indemnification: Consultant agrees to indemnify, defend, and hold harmless, NCTC, its directors, officers, agents, and employees (the "Indemnitees") from and against any and all actions, suits, claims, demands, liabilities, damages, costs and expenses, including reasonable attorneys' fees and costs, arising out of, pertaining to, relating to, or in any way connected with the negligence, recklessness, or willful misconduct of Consultant. The parties agree that Consultant's obligation to defend NCTC is limited to reimbursing NCTC for its cost for defending a claim, as those costs are incurred by NCTC. The parties further agree that NCTC will reimburse Consultant for that portion of the reasonable costs incurred by Consultant in the defense of NCTC which is attributable to NCTC's active negligence, recklessness, or willful misconduct, as determined through settlement, arbitration, or litigation. Consultant shall pay all costs that may be incurred by NCTC in enforcing this indemnity, including reasonable attorneys' fees. The provisions of this Section shall survive the expiration, termination or assignment of this Agreement.]

22. **Governing Law and Choice of Forum:** This Agreement shall be administered and interpreted under California law as if written by both parties. Any litigation arising from this Agreement shall be brought in the Superior Court of Nevada County.
23. **Prevailing Party:** Should any dispute arise hereunder, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs.
24. **Conflict of Interest:** No consultant, subcontractor, or member of any firm proposed to be employed in the preparation of this project has a past, ongoing, or potential involvement which could be deemed a conflict of interest under the Fair Political Practices Act or other law. During the term of this Agreement, Consultant shall not accept any employment or engage in any consulting work that would create a conflict of interest with NCTC or in any way compromise the services to be performed under this Agreement. Consultant shall immediately notify NCTC of any and all potential violations of this paragraph upon becoming aware of the potential violation.
25. **Political Reform Act Compliance:** Consultant is aware and acknowledges that certain contractors that perform work for governmental agencies are "consultants" under the Political Reform Act (the "Act") (Government Code § 81000, et seq.) and its implementing regulations (2 California Code of Regulations § 18110, et seq.). Consultant agrees that any of its officers or employees deemed to be "consultants" under the Act by NCTC, as provided for in the Conflict of Interest Code for NCTC, shall promptly file economic disclosure statements for the disclosure categories determined by NCTC, to be relevant to the work to be performed under this Agreement and shall comply with the disclosure and disqualification requirements of the Act, as required by law.
26. **Independent Contractor:** In performing services under this Agreement, Consultant is and shall act as an independent contractor and not an employee, representative, or agent of NCTC. Consultant shall have control of its work and the manner in which it is performed. Consultant expressly warrants that neither Consultant nor any of Consultant's employees or agents shall represent themselves to be employees or agents of NCTC.
27. **National Labor Relations Board Certification:** Consultant, by signing this Agreement, does swear under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the

immediately preceding two-year period because of Consultant's failure to comply with an order of a federal court which orders Consultant to comply with an order of the National Labor Relations Board (Public Contract Code § 10296).

28. **Americans with Disabilities Act (ADA) of 1990:** By signing this Agreement, Consultant assures NCTC that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. § 12101, et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.
29. **Equal Employment Opportunity/Title VI Compliance:** Consultant shall comply with Title VI of the Civil Rights Act of 1964, as amended, and with the provisions contained in 49 CFR Part 21 through Appendix C and 23 CFR 710.405 (b).
 - a. During the performance of this Agreement, Consultant and its subcontractors shall not unlawfully discriminate, harass, or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religion, national origin, physical disability, mental disability, medical condition, age or marital status.
 - b. Consultant and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
 - c. Consultant shall comply with Executive Order 11246, entitled "Equal Employment Opportunity" as amended by Executive Order 11375, and as supplemented in the Department of Labor Regulation (41 CFR Part 60), the California Fair Employment and Housing Act, and any other applicable federal and state laws and regulations relating to equal employment opportunity, including the provisions of the Fair Employment and Housing Act (Government Code § 12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, § 7285.0, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code §§ 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Consultant and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
 - d. **Solicitations for Subcontractors, including procurement of materials and equipment:** In all solicitations either by competitive bidding or negotiations made by Consultant 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 Consultant of Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, or national origin.
 - e. **Information and Reports:** Consultant 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 NCTC or the Federal Transit Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information is required of Consultant which is in the exclusive possession of another

who fails or refuses to furnish this information, Consultant shall so certify to NCTC or the Federal Transit Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

- f. **Sanctions for Noncompliance:** In the event of Consultant's noncompliance with the nondiscrimination provisions of this Agreement, NCTC shall impose such contract sanctions as it or the Federal Transit Administration may determine to be appropriate, including but not limited to:
 - i. Withholding of payments to Consultant under the Agreement until Consultant complies, and/or,
 - ii. Cancellation, termination or suspension of the Agreement, in whole or in part.
 - g. **Incorporation of Provisions:** Consultant shall include the provision of this Section 29 in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Consultant shall take such action with respect to any subcontract of procurement as NCTC or the Federal Transit Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Consultant may request that NCTC enter into such litigation to protect the interests of NCTC. In addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.
 - h. **Subcontracts:** All subcontracts awarded shall contain provisions requiring compliance with Title VI of the Civil Rights Act of 1964, as amended. Accordingly, 49 CFR Part 21 through Appendix C and 23 CFR 710.405 (b) shall be made applicable by reference in all subcontracts.
30. **Drug-Free Certification:** By signing this Agreement, Consultant hereby certifies, under penalty of perjury under the laws of the State of California, Consultant will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code § 8350, et seq.) and will provide a drug-free workplace by taking the following actions:
- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited, and specifying actions to be taken against employees for violations.
 - b. Establish a Drug-Free Awareness Program to inform employees about:
 - (1) The dangers of drug abuse in the workplace;
 - (2) The person's or the organization's policy of maintaining a drug-free workplace;
 - (3) Any available counseling, rehabilitation, and employee assistance programs; and
 - (4) Penalties that may be imposed upon employees for drug abuse violations.

- c. Every employee of Consultant who works under this Agreement shall:
 - (1) Receive a copy of Consultant's Drug-Free Workplace Policy Statement; and
 - (2) Agree to abide by the terms of Consultant's Statement as a condition of employment on this Agreement.

- 31. **Union Organizing:** By signing this Agreement, Consultant hereby acknowledges the applicability of Government Code § 16645 through § 16649 to this Agreement, excluding § 16645.2 and § 16645.7.
 - a. Consultant will not assist, promote, or deter union organizing by employees performing work on this Agreement if such assistance, promotion, or deterrence contains a threat of reprisal or force, or a promise of benefit.
 - b. Consultant will not meet with employees or supervisors on NCTC or state property if the purpose of the meeting is to assist, promote, or deter union organizing, unless the property is equally available to the general public for meetings.

- 32. **Ownership of Documents:** Original document, methodological explanations, computer programs, drawings, designs and reports generated by this Agreement shall belong to and become the property of NCTC. Consultant is not liable for changes made by others or any use beyond the scope of this Agreement. Any additional copies, not otherwise provided for herein, shall be the responsibility of NCTC.

It is understood that in addition to NCTC, state and federal funding agencies shall have the right to reproduce, publish, or otherwise use, and authorize others to use, the information developed from federally reimbursed projects.

- 33. **Campaign Contribution Disclosure:** Consultant has complied with the campaign contribution disclosure provisions of the California Levine Act (Government Code § 84308) and has completed the Levine Act Disclosure Statement attached hereto as Exhibit C.

- 34. **Entire Agreement:** This Agreement contains the entire agreement of the parties, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are no representations, agreement arrangements, or understandings, oral or written, between the parties relating to the subject matter contained in this Agreement, which are not fully expressed herein. The provisions of this Agreement may be waived, altered, amended, or repealed in whole or in part only upon written consent of all parties to this Agreement.

- 35. **Severability:** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law, unless the exclusion of such term or provision, or the application of such term or provision, would result in such a material change so as to cause completion of the obligations contemplated herein to be unreasonable.

36. **Headings:** The headings of the various sections of this Agreement are intended solely for convenience of reference and are not intended to explain, modify, or place any interpretation upon any of the provisions of this Agreement.
37. **Authority:** Each person signing this Agreement on behalf of a party hereby certifies, represents, and warrants that he or she has the authority to bind that party to the terms and conditions of this Agreement.
38. **Counterparts:** This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument.
39. **Necessary Acts:** Each party to this Agreement agrees to perform any further acts and execute and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

IN WITNESS HEREOF, this Agreement between the Nevada County Transportation Commission and _____ for professional services has been executed by the parties hereto the day and year shown below.

By: _____ Date: _____
Chairman
Nevada County Transportation Commission

By: _____ Date: _____
Consultant

Nevada County Transportation Commission Counsel, Approved as to Form

By: _____ Date: _____
Nancy C. Miller, Attorney-at-Law
Miller & Owen
A Professional Corporation

- Exhibit A: NCTC RFP
Exhibit B: Consultant's Proposal
Exhibit C: Levine Act Disclosure Statement

EXHIBIT C
LEVINE ACT DISCLOSURE STATEMENT

California Government Code § 84308, commonly referred to as the "Levine Act," precludes an Officer of a local government agency from participating in the award of a contract if he or she receives any political contributions totaling more than \$250 in the 12 months preceding the pendency of the contract award, and for three months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the Officer, or received by the Officer on behalf of any other Officer, or on behalf of any candidate for office or on behalf of any committee. The Levine Act also requires disclosure of such contributions by a party to be awarded a specified contract.

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any NCTC Commissioner(s) in the 12 months preceding the date of the issuance of this request for proposal or request for qualifications?

YES NO

If yes, please identify the Commissioner(s):

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contributions of more than \$250 to any NCTC Commissioner(s) in the three months following the award of the contract?

YES NO

If yes, please identify the Commissioner(s):

Answering yes to either of the two questions above does not preclude NCTC from awarding a contract to your firm. It does, however, preclude the identified Commissioner(s) from participating in the contract award process for this contract.

DATE

(SIGNATURE OF AUTHORIZED OFFICIAL)

(TYPE OR WRITE APPROPRIATE NAME, TITLE)

(TYPE OR WRITE NAME OF COMPANY)