

CONTRACT

A Contract For Design Professional Services

THIS CONTRACT is made and entered into this ____ day of _____, _____, by and between the CITY OF FERNLEY, a municipal corporation within the State of Nevada whose address is 595 Silver Lace Blvd, Fernley, Nevada 89408 (the "City"), and _____, a _____, whose address is _____ ("Contractor").

WHEREAS, Nevada Revised Statutes ("NRS") Chapter 266 authorizes the City to engage the services of independent contractors; and

WHEREAS, the services of Contractor are deemed to be both necessary and in the best interests of the City; and

WHEREAS, the City desires to retain the services of Contractor on the terms and conditions set forth in this Contract;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. **CONTRACT TERM:** This Contract shall be effective from the day it is approved by the City Council (which date shall be inserted into the introductory paragraph of this Contract) and, subject to appropriation, shall remain in full force and effect until the services are completed unless terminated earlier pursuant to Section 6.

2. **CONTRACTOR'S SERVICES:**

a. **Description of Services.**

i. **Attachments:**

1. **Attachment A:** Scope of Work. Contractor hereby agrees to provide the services set forth in the Scope of Work attached hereto as Attachment A and incorporated herein by this reference.
2. **Attachment B:** Fee Schedule
3. **Attachment C:** Schedule of Services. Tasks and subtasks shall be completed in accordance with the schedule in Attachment C. Any change(s) to the schedule must be approved in writing by the City's Project Manager.
4. **Attachment D:** Project Team. Contractor will perform the work using the project team identified in Attachment D. Any

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changes to the project team must be approved in writing by the City's Project Manager.

- b. **Standard Of Care:** Notwithstanding anything to the contrary in this agreement or in any other contract document relating to the project, in performing its work under this agreement Contractor shall perform its services to the standard of care of a reasonable professional that is performing the same or similar work, at the same time and locality and under the same or similar conditions faced by Contractor Cooperation with City. Contractor agrees that its officers, associates, employees and subcontractors will cooperate with the City in providing the services under this Contract and will be, with advance notice, available for consultation with the City at such reasonable times as to not conflict with the City's other responsibilities.
- c. **Notice to Proceed.** Contractor shall not commence work until the Contract is fully executed by City and Contractor and a Notice to Proceed (NTP) has been issued to the Contractor by the City.
- d. **Optional Services.** The City shall have the right to exercise its option(s) for all or any part of the OPTIONAL tasks or subtasks identified in Attachment B Fee Schedule, (and further described in Attachment A Scope of Services). The Contractor shall not commence work on any OPTIONAL task prior to issuance of a NTP for the OPTIONAL task by the City.

3. REQUIRED APPROVAL COMPENSATION AND TERMS OF PAYMENT:

- a. **Compensation.** The City agrees to pay Contractor for the services set forth in the Scope of Work either a lump sum fee or an hourly fee based on the Fee Schedule attached hereto as Attachment B and incorporated herein by this reference.
- b. **Reimbursable Expenses.** Contractor agrees that all of its direct and indirect expenses are included in the lump sum or hourly fee set forth in the Fee Schedule, unless the Fee Schedule specifically provides otherwise.
- c. **Payment Invoicing.** Contractor shall submit an invoice for payment for the services provided by Contractor based on the manner or method of payment set forth in Attachment A (Scope of Work) and Attachment B (Fee Schedule).
- d. **Timeliness of Billing.** Contractor acknowledges and agrees that timeliness of billing is of the essence to this Contract and recognizes that the City is on a fiscal year ending on June 30. All invoices for services rendered prior

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to July 1 must be submitted to the City no later than 30 days after the end of the fiscal year.

- e. **Not to Exceed.** The maximum amount payable to Contractor to complete each task is equal to the not-to-exceed amounts identified in Attachment B. Contractor may submit a written request to the City's Project Manager to reallocate not-to-exceed amounts between Tasks. The request to reallocate must be accompanied by a revised fee schedule with associated revised not-to-exceed amounts and must be approved in writing by the City's Project Manager prior to performance of the work. Contractor shall not be compensated in excess of the Total not-to-exceed Contract amount:

Total Professional Services: (Task 1 through 5)	\$58,630
Total OPTIONAL Services: (N/A)	
<hr/>	
Total NTE Amount (Including OPTIONAL Services)	\$58,630

- f. **NOTICE:** All notices or other communications required or permitted to be given hereunder shall be deemed delivered: (i) when written notice is received by the party to whom it is directed, if delivered personally, or by email; or (ii) three (3) days after deposit with the United States Post Office, if mailed by certified mail, return receipt requested, postage prepaid and addressed to the party to be notified. Notices shall be addressed as follows:

If to the City: Derek Starkey, P.E., City Engineer
City of Fernley
595 Silverlace BLVD
Fernley, NV 89408

If to Contractor: Sudhakar R. Athuru, P.E.
WSP USA
434 Fayetteville ST, Suite 1500
Raleigh, NC 27601

4. INSPECTION & AUDIT:

- a. **Books and Records.** Contractor agrees to keep and maintain under general accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the City, the State of Nevada or the United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.
- b. **Inspection & Audit.** Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise),

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including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to the performance of this Contract shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the City, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect the requirements of this paragraph.

- c. **Period of Retention.** All books, records, reports, and statements relevant to this Contract must be retained a minimum three years and for five years if any federal funds are used under this Contract. The retention period runs from the date of payment for the relevant services by the City, or from the date of termination of this Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

5. TERMINATION OR SUSPENSION:

- a. **Suspension.** The City may suspend, without cause, the performance by Contractor under this Contract for such period of time as the City, in its sole discretion, may prescribe by providing written notice to Contractor. The suspension shall be effective as of the date set forth in the written notice. With such suspension, the City agrees to pay Contractor the amount of compensation earned as of the effective date of the suspension.
- b. **Termination Without Cause.** The City reserves the right to terminate this Contract without cause or default on the part of Contractor with ten (10) days' prior written notice to Contractor. In the event of termination, without cause or default, the City agrees to pay Contractor for the services performed before the date that notice of termination is received by Contractor.
- c. **Termination for Non-Appropriation.** Contractor acknowledges that the City is a governmental entity and the Contract's validity is based upon the availability of public funding under its authority. The City reserves the right to reduce estimated or actual quantities, in whatever amount necessary, without prejudice or liability to the City, if funding is not available or if legal restrictions are placed upon the expenditure of monies for the services required under this Contract. In addition, without prejudice or liability to the

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City, if funding is not appropriated or otherwise made available to support the continuation of this Contract in any fiscal year succeeding the first fiscal year, this Contract will be deemed to have been terminated automatically when appropriated funds expire and are not available.

- d. **Default or Breach.** A default or breach (an “Event of Default”) may be declared with or without termination. Each of the following shall constitute an Event of Default:
- i. If Contractor fails, in the judgment of the City, to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract, and such failure continues for more than fifteen (15) days after written notice is delivered to Contractor provided that if the nature of such breach is such that although curable, the breach cannot reasonably be cured within a fifteen (15) day period, an Event of Default shall not exist if Contractor shall commence to cure such breach and thereafter rectifies and cures such breach with due diligence, but in no event later than sixty (60) days after the written notice;
 - ii. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
 - iii. If Contractor: (i) becomes insolvent, subject to receivership, or voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; (ii) makes a general assignment for the benefit of creditors; (iii) admits in writing to the inability to pay its debts as they become due; or (iv) takes any action for the purpose of effecting any of the foregoing.
- e. **For Cause Termination and Time to Correct. For Cause Termination and Time to Correct.** This Contract may be terminated by the non-defaulting party upon a declared default or breach only after service of formal written notice as specified in paragraph (4), and the subsequent failure of the defaulting party within a reasonable time of receipt of that notice to provide evidence, satisfactory to the non-defaulting party, showing that the declared default or breach has been corrected or is being corrected as expeditiously as is prudent and practicable.

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- f. **Winding Up Affairs upon Termination.** In the event that this Contract is terminated for any reason, the parties agree that the provisions of this paragraph survive termination:
- i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination.
 - ii. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if requested by the City.
 - iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if requested by the City; and
 - iv. Contractor shall preserve, protect, and promptly deliver possession to the City of all proprietary information in accordance with Section 18.
 - v. In the event that dispute(s) arise during the winding up of affairs upon termination, the parties agree to meet and negotiate in good faith to resolve any such disputes(s).
6. **REMEDIES:** Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages exclusive of lost profits.
7. **ATTORNEYS' FEES, COSTS, AND EXPENSES:** Unless otherwise stated herein, the parties will bear their own attorneys' fees, costs, and expenses in connection with the negotiation, execution, and performance of this Contract.
8. **LIMITED LIABILITY:** Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the Attachments. Damages for any default or breach by the City shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the default or breach.
9. **FORCE MAJEURE:** Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or

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storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of this Contract after the intervening cause ceases.

10. INDEMNIFICATION: The City does not require the Contractor to defend, indemnify or hold harmless the public body or the employees, officers or agents of that public body from any liability, damage, loss, claim, action or proceeding caused by the negligence, errors, omissions, recklessness or intentional misconduct of the employees, officers or agents of the public body.

- a. The City does require the Contractor to indemnify and hold harmless the public body, and the employees, officers and agents of the public body from any liabilities, damages, losses, claims, actions or proceedings, including, without limitation, reasonable attorneys' fees and costs, to the extent that such liabilities, damages, losses, claims, actions or proceedings are caused by the negligence, errors, omissions, recklessness or intentional misconduct of the Contractor or the employees or agents of the Contractor in the performance of the contract.
- b. The City does not require the Contractor to defend the public body and the employees, officers and agents of the public body with respect to the liabilities, damages, losses, claims, actions or proceedings caused by the negligence, errors, omissions, recklessness or intentional misconduct of the Contractor or the employees or agents of the Contractor which are based upon or arising out of the professional services of the Contractor. If the Contractor is adjudicated to be liable by a trier of fact, the trier of fact shall award reasonable attorney's fees and costs to be paid to the public body, as reimbursement for the attorney's fees and costs incurred by the public body in defending the action, by the Contractor in an amount which is proportionate to the liability of the Contractor.
- c. The City does require the Contractor to defend the public body and the employees, officers and agents of the public body with respect to the liabilities, damages, losses, claims, actions or proceedings caused by the negligence, errors, omissions, recklessness or intentional misconduct of the Contractor or the employees or agents of the Contractor which are not based upon or arising out of the professional services of the Contractor.

11. INDEPENDENT CONTRACTOR: Contractor is associated with the City only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be

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deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the City whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and the City shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the City; (4) participation or contributions by either Contractor or the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the City. Contractor shall indemnify and hold the City harmless from, and defend the City against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees. Neither Contractor nor its employees, agents, or representatives shall be considered employees, agents, or representatives of the City.

12. INSURANCE: Unless expressly waived in writing by the City, Contractor shall, at Contractor's sole expense, procure, maintain and keep in force during the entire term of this Contract those policies of insurance which have been agreed to by the parties as evidenced by the parties initials in the signature spaces provided below. The City shall have no liability except as specifically provided in this Contract. Contractor shall not commence work before Contractor has provided the required evidence of insurance to the City. Any insurance or self-insurance available to the City shall be in excess of, and non-contributing with, any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the City, Contractor shall provide the City with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by this Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the City and immediately replace such insurance or bond with an insurer meeting the requirements.

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- a. **Workers' Compensation and Employer's Liability Insurance.** Industrial insurance protecting Contractor and the City from potential employee claims based upon job-related sickness, injury, or accident, during the performance of this Contract. Contractor shall provide a work certificate issued by a qualified insurer in accordance with NRS 616B.627. Prior to commencing any work, Contractor shall complete and provide the following written request to a qualified insurer: ****CONTACTOR NAME has entered into a contract with Owner to perform work from THE ___ DAY OF _____, 20__ to THE ___ DAY OF _____, 20__ and requests that an industrial insurance provider qualified and licensed to offer such insurance within the State of Nevada, provide to The City of Fernley, Nevada 1) a certificate of coverage issued pursuant to NRS 616B.627 and

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2) notice of any lapse in coverage or nonpayment of coverage that Contractor is required to maintain. The certificate and notice should be mailed to:

City of Fernley

595 Silver Lace Blvd

Fernley, NV 89408

- i. Contractor may, in lieu of furnishing a certificate of an insurer, provide an affidavit indicating that Contractor is a sole proprietor and that:
 1. In accordance with the provisions of NRS 616B.659, Contractor has not elected to be included within the terms, conditions, and provisions of NRS chapters 616A to 616D, inclusive; and
 2. Contractor is otherwise in compliance with those terms, conditions and provisions.

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b. **Professional Liability Insurance.** Minimum Coverage Limit required (not deductible amount): \$1,000,000 Each Claim, \$2,000,000 Aggregate.

- i. Retroactive date: Prior to commencement of the performance of this Contract
- ii. Discovery period: Three (3) years after the termination date of this Contract.

c. **General Requirements.**

- i. Additional Insured: By endorsement to the general liability insurance policy evidenced by Contractor, ***the City of Fernley, its officers, employees, and immune contractors*** shall be named as additional insureds for all liability arising from this Contract.
- ii. Waiver of Subrogation: Each insurance policy with the exception of Professional Liability, shall provide for a waiver of subrogation in favor of the City.
- iii. Cross-Liability: All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.

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- iv. Policy Cancellation: Except for ten days' notice for non-payment of premium, each insurance policy shall be endorsed to state that; without thirty (30) days prior written notice to the City, the policy shall not be canceled, non-renewed or coverage and/or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mail to the address shown below.
 - v. Approved Insurer: Each insurance policy shall be issued by insurance companies: (a) authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the City and having agents in the State of Nevada upon whom service of process may be made; and (b) currently rated by A.M. Best as "A-VII" or better.
- d. **Evidence of Insurance.** Prior to the start of any work, Contractor must provide the following documents to the City:
- i. Certificate of Insurance: The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the City to evidence the insurance policies and coverages required of Contractor.
 - ii. Additional Insured Endorsement: An Additional Insured Endorsement (CG20 10 or C20 26), signed by an authorized insurance company representative, **must** be submitted to the City to evidence the endorsement of the City as an additional insured per General Requirements, Subsection 1) above.
 - iii. Review and Approval: Documents specified above must be submitted for review and approval by the City prior to the commencement of work by Contractor. Neither approval by the City nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its sub-contractors, employees or agents to the City or others, and shall be in addition to and not in lieu of any other remedy available to the City under this Contract or otherwise. Contractor will mail all required insurance documents to the City at the address identified in section 4 of this Contract.
- e. **Failure to Maintain Required Coverages.** If Contractor fails to carry the required insurance, the City may: (i) order Contractor to stop further performance of the Contract, and declare contractor in breach, terminate the Contract if such breach is not remedied; or (ii) purchase replacement insurance and withhold the costs or premium payments made from the

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payments due to Contractor or charge the replacement insurance costs back to Contractor.

- 13. COMPLIANCE WITH LEGAL OBLIGATIONS:** Contractor shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract.
- 14. WAIVER OF BREACH:** Failure to declare a breach or the actual waiver of any particular breach of this Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other default or breach.
- 15. SEVERABILITY:** If any portion, provision, or part of this Contract is held, determined, or adjudicated by any court of competent jurisdiction to be invalid, unenforceable, or void for any reason whatsoever, each such portion, provision, or part shall be severed from the remaining portions, provisions, or parts of this Contract, and such determination or adjudication shall not affect the validity or enforceability of such remaining portions, provisions, or parts.
- 16. ASSIGNMENT/DELEGATION:** To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by the City, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Contractor shall neither assign, transfer nor delegate any rights, obligations, or duties under this Contract without the prior written consent of the City.
- 17. PROPRIETARY INFORMATION:** Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under this Contract), or any other documents or drawings, prepared or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the City and all such materials shall be delivered into the possession of the City by Contractor upon completion, termination, or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without the prior written consent of the City. Notwithstanding the foregoing, the City shall have no proprietary interest in any materials licensed for use by the City that are subject to patent, trademark, or copyright protection. Notwithstanding the

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foregoing, the Contractor shall retain all common law, statutory, and other reserved rights, including copyrights to its standard design elements and Contractor details and the City shall be granted a non-exclusive license to reproduce such design elements and details relative to the Project.

18. PUBLIC RECORDS: Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The City will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential," provided that Contractor thereby agrees to indemnify and defend the City for honoring such a designation. The failure to so label any document that is released by the City shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

19. FEDERAL FUNDING: In the event federal funds are used for payment of all or part of this Contract:

- a. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.
- b. Contractor and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.
- c. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)

20. LOBBYING: The parties agree, whether expressly prohibited by federal, state or local law, or otherwise, that no funding associated with this Contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence any of the following: (a) any federal, state, county or local agency, legislature, commission, council or board; (b) any federal, state, county or local

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legislator, commission member, council member, board member, or other elected official; or (c) any officer or employee of any federal, state, county or local agency; legislature, commission, council or board.

- 21. CERTIFICATION REQUIRED BY NEVADA SENATE BILL 26 (2017):** By signing this Agreement, the CONSULTANT provides a written certification, as a material part of this Agreement, that the CONSULTANT is not currently engaged in, and during the Term shall not engage in, a boycott of Israel. The term “boycott of Israel” has the meaning ascribed to that term in Section 3 of Nevada Senate Bill 26 (2017). The CONSULTANT shall be responsible for fines, penalties, and repayment of any State of Nevada or federal funds that may arise (including those that the CITY pays, becomes liable to pay, or becomes liable to repay) as a direct result of the CONSULTANT’s non-compliance with this Section. If, at any time during the formation or duration of this Agreement, CONSUTLANT is engaged or engages in a boycott of Israel, it will constitute a material breach of this Agreement.
- 22. PROPER AUTHORITY:** Contractor represents and warrants Contractor has full power and authority to enter into this Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.
- 23. GOVERNING LAW; VENUE:** This Contract will be interpreted, and the rights and liabilities of the parties determined, in accordance with the laws of the State of Nevada, excluding its conflict of laws rules. In any action or proceeding arising under this Contract, each party (a) consents to the jurisdiction of Nevada Courts, and of the pertinent appellate courts, and consents to the venue of such action or proceeding in Lyon County, Nevada courts, (b) irrevocably agrees that all actions or proceedings arising out of or relating to this Contract shall be litigated in such courts, and (c) consents to personal jurisdiction within Lyon County, Nevada. Each party accepts for itself, generally and unconditionally, the exclusive jurisdiction and venue of the aforesaid courts and waives any defense of lack of personal jurisdiction, improper venue, inconvenient forum or any similar defense, and irrevocably agrees to be bound by any non-appealable judgment rendered thereby in connection with this Contract.
- 24. INTEGRATED CONTRACT:** This Contract (including any addenda, exhibits, or attachments incorporated into and made a part of this contract) constitutes the entire agreement and understanding among the parties regarding the matters set forth herein and supersedes all previous negotiations, discussions, and understandings regarding such matters. The parties acknowledge and represent that they have not relied on any promise, inducement, representation, or other statement made in connection with this Contract that is not expressly contained herein. The terms of this Contract are contractual and not a mere recital.

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- 25. COUNTERPARTS:** This Contract may be executed in multiple counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.
- 26. ADVICE OF COUNSEL:** Each party hereto represents and agrees that it has had the opportunity to seek and has sought from attorneys any such advice as it deems appropriate with respect to signing this Contract or the meaning of it. Each party has undertaken such independent investigation and evaluation as it deems appropriate and is entering into this Contract in reliance on that and not in reliance on any advice, disclosure, representation or information provided by or expected from any other party or such party's attorneys. This is an agreement of settlement and compromise, made in recognition that the parties may have different, disputed or incorrect understandings, information and contentions, as to facts and law, and with each party compromising and settling any potential correctness or incorrectness of its understandings, information and contentions as to the facts, law, claims, duties, disclosures and conduct occurring before or during the entry into this Contract. No conduct, failure, misunderstanding or misinformation and no claim of fraud or fraudulent inducement occurring prior to or in connection with the execution hereof shall be a ground for rescission hereof or for recovery of damages, except as otherwise expressly provided herein.
- 27. MODIFICATION; NO WAIVER:** The provisions of this Contract, including this paragraph, may be modified or waived only in writing signed by both parties. No waiver with respect to any portion of this Contract shall apply to any other portion of the Contract, and a waiver on one occasion shall not be deemed to be a waiver of the same or any other breach on a future occasion. No course of dealing by any party, and no failure, omission, delay, or forbearance by any party in exercising such party's rights or remedies shall be deemed a waiver of any such rights or remedies or a modification of this Contract.
- 28. INTERPRETATION OF AGREEMENT:** This Contract shall be construed without regard to the party or parties responsible for its preparation and shall be deemed to have been prepared collectively by the parties. Any ambiguity or uncertainty arising herein shall not be interpreted or construed against any party hereto on the basis that a party prepared or drafted a particular provision of this Contract.
- 29. COOPERATION OF PARTIES:** The parties agree to cooperate to accomplish the purpose of this Contract and to execute any and all supplementary documents and to take all additional actions not inconsistent with the terms set forth in this Contract that are necessary and appropriate to give full force and effect to the terms and intent of this Contract.
- 30. NON-DISCRIMINATION:** In connection with the performance of work under this Contract, Contractor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation,

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gender identity or expression, or age, including, without limitation, with regard to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including, without limitation, apprenticeship. Contractor further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

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In witness whereof, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby:

CITY OF FERNLEY

Mayor, City of Fernley Date

City Clerk, City of Fernley Date

Approved as to form:

City Attorney, City of Fernley Date

Originating Department:

Department Head Date

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CONTRACTOR, being first duly sworn, deposes and says: That CONTRACTOR. is the Contractor; that NAME OF PERSON REPRESENTING CONTRACTOR has read the foregoing Contract; and that he understands the terms, conditions, and requirements thereof.

CONTRACTOR

BY:

TITLE:

FIRM:

BUSINESS LICENSE #:

Address: 3

City: C State: Zip Code:

Telephone: Fax #:

E-mail Address:

(Signature of Contractor)

DATED this _____ day of _____, 20__.

STATE OF _____)
) ss
County of _____)

On this _____ day of , in the year 20__, before me, _____ / Notary Public, personally appeared , personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.

WITNESS my hand and official seal.

Notary's Signature

My Commission Expires: _____



Attachment A – Scope of Work

Prepared for City of Fernley Nevada

April 22, 2021

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Introduction

In November 2019, RTC-Washoe staff expressed interest in extending the model boundary to include the City of Fernley east of Reno. We were asked to provide a “rough estimate” of the cost to “implement the changes and make sure the model runs smoothly”. The rough estimate did not include any re-validation of the model – simply an expansion using data provide by RTC, making sure the model runs through and a spot check of I-80 volumes. In September of 2020, we were asked by RTC and the City of Fernley to revisit this rough estimate and include a second estimate for making sure the model runs smoothly and validating the results as well as a third estimate for building a stand-alone model for Fernley. In January of 2021, the decision was made to proceed with the original scope which was to “implement the changes and make sure the model runs smoothly”. The scope and budget below reflect that level of effort.

The current version of RTC TDM runs with TransCAD 8.0 on a Windows 10 computer and this update will be delivered using the same version. The current base year is 2015 and this work will be confined to that dataset. As noted above, the 2015 base year model results will not be calibrated or validated due to the limited budget and scope of this project.

The client in this document refers to the City of Fernley. The consultant refers to WSP.

Task 1: Input Data Coordination

The client is responsible for updating the 2015 input data files including the master highway network, transit network, and socioeconomic (TAZ) boundaries and data to include Fernley. The client is responsible for providing input data related to the visitor model including number hotel rooms etc. The client is also responsible for providing 2015 I-80 count data between Reno and Fernley, coded onto the network in a “Count” attribute field. WSP will provide guidance to RTC/City of Fernley on developing TAZ structure and highway networks according to best practices and perform QA/QC checks on the base year highway network and TAZ structure developed by RTC/COF for the expanded geography. WSP will test the model using the files for the 2015 base year scenario only. Testing future year data is not part of this scope. Data errors that cause model runtime issues will be identified by WSP. Client will be responsible for correcting the errors. Up to 40 hours, WSP will provide support to the City of Fernley/RTC to establish a set of appropriate input data files.

Deliverables:

- List of 2015 input files that client is responsible for providing
- Communication about best practices in developing zone structure, highway network, data-related model runtime errors and problems with data
- Successful testing of 2015 base year “initial steps” with new input data

Exclusions:

- RTC/COF is responsible for developing model input data, including TAZ boundaries and networks
- WSP is providing guidance and performing reviews of model input data for the expanded region up to the hours specified in the cost proposal
- Testing future data is not part of this scope.

Task 2: Population Synthesizer Data Preparation and JAVA Code Testing

The consultant will prepare control datasets for the population synthesizer based on the socioeconomic data provided by the client. The current model uses 2005-2009 ACS 5-year data files and this work will use the same ACS data files by including additional PUMA geographies that contain Fernley. Household worker distribution model and university housing JAVA components will also be tested as part of this task. The population synthesizer JAVA code will be updated as necessary.

Deliverables: Working version of population synthesizer with expanded geography.

Exclusions: No calibration/validation of population synthesizer results will be performed in this task.

Task 3: External & Truck Model Input Data Development and Testing

The consultant will define a new set of external stations for the expanded region. It will be the client's responsibility to provide Streetlight data to WSP in order to provide 2015 (or closest year) count data at all external stations. The client is also responsible for providing forecasted volumes at new external stations, similar to the other external station data forecasts provides in the RTC region. The consultant will process Streetlight data to develop inputs for the external model including (a) External to External through trip table also known as seed matrix for the 2015 base year (or closest year) depending on the Streetlight data availability and (b) Through trip percentage of trips for all external stations in the region. The existing internal-external model structure and parameters will be applied to the expanded model region.

The consultant will rerun the national truck model and subarea analysis to develop external to external truck trip tables for the 2015 base year and for future year scenarios at five-year increments until year 2050. It should be noted that the FAF3 data will be used in this analysis and FAF3 data forecasts are only available until year 2040. The 2050 FAF4/FAF5 freight data will be compared with 2040 FAF3 data to evaluate if there is a need to adjust 2040 FAF3 truck model input so it can be used for the 2045 and 2050 future year scenarios, similar to the analysis performed in 2020 RTC model update work. Internal to internal & internal to external truck trip table procedures will be retained from the existing model and applied to the expanded model region.

Deliverables: Working version of External & Truck Model procedures with required input data.

Exclusions:

- This task will not involve calibration/validation of External & Truck Model results.
- WSP will not use more recent version national freight data like FAF4/FAF5 in this task.

Task 4: Testing of GISDK/JAVA/FORTRAN Model Components and Code Update

The consultant will test each of the following model components for the expanded RTC model geography.

- Highway network preparation and skimming
- Transit network preparation and skimming

- Auto ownership model
- Daily activity pattern models including mandatory, non-mandatory, at-home, and the intermediate stops models
- Destination choice models
- Mode choice models
- Visitor model
- Time of Day
- Highway assignment
- Transit assignment
- Post processing utility scripts

The consultant will update GISDK, JAVA, FORTRAN code as necessary due to the expansion of RTC model geography. The purpose of this task is to test all the model components with the provided input data and make changes to GISDK, JAVA and FORTRAN code so that the model successfully runs.

Deliverables: Working version of model code and 2015 base year model package with updated input datasets

Exclusions:

- The consultant is not responsible for calibration/validation of results from any of the above model components.
- The client is responsible for providing any inputs and parameters, other than model outputs, needed for model reporting tools including the Air Quality Tool.
- The client is responsible for correcting any input file errors that cause runtime errors
- Future year model testing is not part of this task

Task 5: Check I-80 Volumes & Tech Memo & Model Transmittal

The consultant will verify volumes on I-80 particularly near the expanded area and see how well they match with provided counts. The consultant will spend 24 hours attempting to match 2015 I-80 base year assigned daily volumes to within 20% of the 2015 I-80 count. Adjustments may potentially be made to the work location choice model, the daily pattern models, the externals or the truck models.

The consultant will develop a short technical memorandum that describes the RTC model expansion work. This document will provide a summary of the model changes and the resulting volume changes along I-80. WSP will address comments/questions on the first version of the document provided, up to 4 hours.

The consultant will transmit the working version of model package to the client and provide up to 8 hours of support so that the client is able to install and run the updated model.

Deliverables: The full model package with 2015 base year scenario with expanded geography.

Exclusions:

- 2015 base year model will not be validated except for checking I-80 volumes and making adjustments as described above
- Future year model testing is not part of this task and deliverables.

Attachment D: Project Team

