

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement, between the State of Nevada, represented by the listed Owner, hereinafter referred to as "Owner", and the Consultant, hereinafter referred to as "Consultant", is entered into as of the following date:

Execution Date: _____

Project Identification

Project Name:

Project Address:

SPWD Project No.:

SPWD Contract No.:

Owner

State Public Works Division

515 E. Musser Street, Suite 102

Carson City, Nevada 89701-4263

(775) 684-4141

Consultant

Firm Name

Address

City, State, Zip Code

Phone

Email

ARTICLE 1 FEE

The Owner agrees to pay to the Consultant as full compensation for the complete and proper performance of all professional services and work required by this Agreement the total sum of:

\$

Such fee shall be due and payable as set forth in the incorporated documents upon satisfactory completion of the various phases of work and upon receipt of the Consultant's written request for payment. No additional monies, fees, or compensation shall be paid by the Owner without an approved written endorsement to this Agreement.

Upon acceptance by the Consultant of the final fee payment under the terms of this Agreement, as it may be modified by endorsement, the Consultant waives any and all claims for any additional fees under this Agreement.

ARTICLE 2 INCORPORATED DOCUMENTS

The Owner and the Consultant mutually agree that the following documents are incorporated into and made a part of this Agreement by reference:

Consultant’s Proposal	Dated:
SPWD Request for Proposal	Dated:
Scope of Professional Services	Dated: 10/1/19
SPWD Adopted Standards	Dated: 10/1/19

ARTICLE 3 AGREEMENT MODIFICATIONS

This Agreement constitutes the entire agreement between the parties and may be modified only by a written endorsement executed by the parties.

ARTICLE 4 AGREEMENT TERMS AND CONDITIONS

The Consultant warrants that he is properly licensed to practice his profession in the State of Nevada and has not paid or agreed to pay to any State officer or employee any compensation, contingent or otherwise, either directly or indirectly, in the solicitation, procurement, or execution of this Agreement.

In consideration of the mutual covenants and conditions provided herein, the Owner hereby agrees to retain the Consultant for performance of the professional services and work required to satisfactorily complete the stipulated scope of work, and the Consultant agrees to expeditiously perform such required professional services and work.

ARTICLE 5 OWNERSHIP AND USE OF DOCUMENTS

The parties agree that all designs, specifications, reports or other documents produced by the Consultant in the performance of this Agreement are his property. The Consultant agrees that the Owner has the exclusive right to use such documents.

ARTICLE 6 SUCCESSORS AND ASSIGNS

The parties agree that this Agreement shall be binding upon the Owner and upon the Consultant, and their partners and successors. The Consultant shall neither assign, transfer, nor delegate any rights, obligations, monies, or duties under this Agreement without the prior written consent of the Owner.

ARTICLE 7 WRITTEN NOTICE

Written notice shall be deemed to have been duly served to either party when delivered or when sent by certified mail to the addresses listed in this Agreement.

ARTICLE 8 TIME

Time shall be of the essence of this Agreement and the Consultant agrees to satisfactorily complete all professional services and work within the time limits established in the incorporated documents. Failure to comply with the time schedule set forth in this Agreement shall be deemed to be adequate cause for termination of the Agreement.

ARTICLE 9 PAYMENT

If the Owner should fail to pay the Consultant within 30 calendar days after the date that an invoice is signed and approved for payment by the Owner, then the Consultant may, after 7 additional calendar days, give written notice to the Owner and stop providing services until payment is received.

ARTICLE 10 TERMINATION OF AGREEMENT

This Agreement may be terminated or amended only by mutual written consent of the parties hereto. The Owner, however, specifically reserves the right at any time to terminate this Agreement seven calendar days after having served the Consultant with a written notice of termination.

A breach of any of the warranted provisions concerning professional licenses, nondiscrimination, or payments to State officers or employees as set forth in this Agreement shall give the Owner the right to terminate this Agreement without further compensation or payment to the Consultant.

Upon termination, for other than a breach of a warranted provision, the Owner shall make payments to the Consultant of all fees due but unpaid for services or work completed to the satisfaction of the Owner. The making of such payments by the Owner shall constitute a complete release of all the responsibilities of the Owner under the terms of this Agreement.

ARTICLE 11 FAIR EMPLOYMENT PRACTICES

Under the terms of this Agreement, the Consultant warrants that he shall not discriminate nor allow discrimination against any employee, or against any application for employment based on race, creed, color, national origin, sex, sexual orientation, gender identity or expression, or age. The Consultant shall permit the Owner access to his records of employment, employment advertisement, and other pertinent data relative to this provision for a period of seven years after termination of this Agreement.

ARTICLE 12 STATUTORY REQUIREMENTS

This Agreement shall be construed and interpreted according to the laws of the State of Nevada. The Consultant agrees to comply with all applicable Nevada Revised Statutes.

ARTICLE 13 CLAIMS

Should any claim or action be brought, either directly or indirectly relating to the Consultant's professional services or work under this Agreement, the Consultant shall render to the Owner, without compensation, any proper and necessary assistance which the Owner may require, provided however, that if the claim is the result of action or negligence by the Owner, the Consultant shall be reimbursed by the Owner for any assistance he may be required to provide.

ARTICLE 14 OWNER APPROVAL

Approval by the Owner of any documents, services, or work provided by the Consultant under the terms of this Agreement shall not relieve the Consultant of responsibility for performing professional services in accordance with reasonable and ordinary standards of care.

ARTICLE 15 INDEPENDENT CONTRACTOR

The parties agree that the Consultant is an independent contractor and that this Agreement is entered into in accordance with Nevada Revised Statutes Section 333.700, which statute in pertinent part provides that the Consultant is not a State employee and that the Consultant will not be entitled to any State insurance or benefits.

ARTICLE 16 INDEMNIFICATION

The Consultant shall indemnify and hold harmless the Owner's officers, agents, and employees from all suits and claims, including attorney's fees and cost of litigation, actions, loss, damage, expense, cost, or claims of any character or any nature arising out of or resulting in any way from the Consultant's performance of the services required in this Agreement, or arising as a result of the Consultant's errors or omissions, or arising out of the failure of the Consultant to conform to any statutes, ordinances, regulations, laws, or court decrees. Pursuant to Nevada Revised Statutes Section 338.155 the Owner may be entitled to recovery of fees and costs incurred in defending any suits.

ARTICLE 17 DISPUTE RESOLUTION

In the event of a dispute between the Owner and the Consultant that cannot be resolved satisfactorily between the parties, third party mediation shall be commenced and concluded utilizing a mediator acceptable to the Owner and the Consultant prior to pursuing either arbitration or legal action. Fees for mediation shall be shared equally between the Owner and the Consultant. Any legal action brought by the Consultant or his representatives shall be made in Clark County, Washoe County, or Carson City, whichever is closest to the location of the Project. In the event of either arbitration or litigation the prevailing party shall be entitled to an award of attorney's fees and costs.

ARTICLE 18 SCOPE OF AGREEMENT

This Agreement constitutes the entire agreement between the parties, and may be modified only by a written endorsement signed by both parties.

ARTICLE 19 BOARD OF EXAMINERS

This Agreement shall not be effective until/unless signed by the Nevada State Board of Examiners.

ARTICLE 20 PROJECT SCHEDULE

The Consultant shall develop a project schedule based on the initial schedule included in this Agreement. The schedule shall be coordinated with the State Public Works Division Project Manager and shall include as a minimum the line items listed in the initial schedule. A finalized schedule including all of the dates and durations listed in the initial schedule shall be provided by the Consultant no later than 30 days after the date that this Agreement is executed. Any changes to the finalized project schedule require the written approval of the State Public Works Division.

Smaller projects that involve only renovation, remodel, or equipment replacement may utilize an abbreviated version of the initial schedule upon written approval of the State Public Works Division Project Manager.

ARTICLE 21 PERFORMANCE AND PAYMENT

Contract time is one of the elements used in determining the compensation established in the Professional Services Agreement. The various phases of services shall be performed within the time periods established in the Performance and Payment Schedule. The Consultant hereby agrees to bind themselves, their employees, and their sub-consultants to the completion dates specified in the Performance and Payment Schedule.

Upon approval by the State for a phase of the work, a lump sum progress payment will be made in accordance with the Performance and Payment Schedule. The Consultant may request a more frequent payment schedule and the State may agree to such a request if deemed appropriate, but in no case may the payment schedule be less than monthly. Payments during the Construction Administration Phase may not exceed the progress of the work as determined by the percentage approved in the Contractor's Progress Payment Application.

A final progress payment of 10% of the amount due under the Construction Administration Phase shall not be due or payable until the Project has been completed and the record drawings and other close-out documents have been received and accepted by the State.

The Consultant shall pay each sub-consultant, within 15 calendar days after receipt of payment from the State, an amount equal to the percentage of payment allowed to the Consultant for completed portions of the work.

It is understood and agreed that the Consultant will not be entitled to additional fees for inflation costs affecting the estimated or actual construction cost after the Consultant's fee is negotiated and the Professional Services Agreement is executed.

Performance and Payment Schedule

The Schematic Design Phase shall commence on the date that the Professional Services Agreement is fully executed, unless another date is agreed to between the Consultant and the State.

The time indicated in this section for the Construction Administration Phase is agreed and understood to be a reasonable estimate of the time required for construction and may be adjusted for approved time extensions issued by change order and for project close-out procedures. The Consultant shall not be entitled to additional fees for such time extensions or for other reasonably anticipated extensions to the time allocated for the Construction Administration Phase.

Should the construction time indicated in this section be adjusted to a longer or shorter duration during the design process the Consultant will not be entitled to additional fees (or to reduced fees) for such adjustments.

Payment for services will generally be allocated in accordance with the following schedule:

<u>Phase of Work</u>	<u>Date of Completion</u>	<u>Payment</u>
Schematic Design Phase	See Project Schedule	15% of total
Design Development Phase	See Project Schedule	20% of total
100% Construction Documents	See Project Schedule	40% of total
Bidding and Review of Submittals	See Project Schedule	3% of total
Construction Administration	See Project Schedule	22% of total

Dates listed above shall be assessed and inserted as developed and agreed upon as part of the Consultant's Project Schedule required in Article 20.

Submittal Sets Required

As part of the Consultant’s services and fee the following number of complete sets of documents shall be submitted for each phase of work:

<u>Submittal Sets Required</u>	<u>Full Size</u>	<u>Half Size</u>
Schematic Design Phase	xx sets	xx sets
Design Development Phase	xx sets	xx sets
50% Construction Documents	xx sets	xx sets
100% Construction Documents and Plan Checking	xx sets	xx sets
Bid Documents	xx sets	xx sets
Conformed Sets (for Owner use during Construction)	xx sets	xx sets

In addition to the physical or hard copy sets of documents listed above the Consultant shall also provide a pdf file of the bid documents (and a pdf file of the conformed documents when deemed appropriate by the State Public Works Division). The pdf file version of the bid documents and/or the conformed documents shall be formatted and assembled as necessary for posting on the Quest Construction Data Network website.

In addition to the submittal sets listed above, the Consultant shall provide and distribute complete sets of documents (plans and specifications) to each of their sub-consultants at each phase of the design process (to facilitate the review and coordination process).

The Consultant shall provide a minimum of four sets of stamped and signed bid documents (or conformed documents in some cases) for use by the State in obtaining and issuing the required building permit. The required number of sets for each project shall be coordinated with the State prior to printing the documents. The size of the sets (full size and/or half size) shall also be coordinated with the State prior to printing the documents.

In addition to the design documents, Consultant must provide a cost estimate as required in the Scope of Professional Services, Section 1.2.4.

Project Budget and Building Size

The bid documents shall represent a complete and usable project within the following budget limitations set forth in the Request for Proposal:

The established construction budget shall include all structures, site work, landscaping, and built-in equipment and furnishings. The established construction budget does not include the construction contingency amount reserved by the State.

The furnishings budget shall include only movable furnishings, fixtures, and equipment.

For new construction and for building additions, the total gross square footage of the building(s) shall not exceed the amounts stipulated below without written approval by the State.

The total gross square footage shall be calculated based on the entire building footprint, including the exterior walls.

ARTICLE 22 INSURANCE

General Requirements

The Consultant shall procure and maintain professional liability insurance and workers compensation insurance conforming to the requirements set forth in this Article. The insurance shall cover the entire period of design and construction for the Project. All insurance policies shall contain a waiver of subrogation against the Owner, the Owner’s officers, agents, and employees, for losses arising from the work performed by the Consultant for the Owner.

The Owner is not liable for payment of any premiums, deductibles, or any assessments on any insurance policies purchased by the Consultant. A certificate of insurance evidencing the required coverage shall be filed with the Owner prior to the Consultant commencing any work under this Agreement.

Professional Liability Insurance

The Consultant shall procure and maintain professional liability insurance conforming to the requirements set forth in this Article. Professional liability insurance shall be in the amounts listed below as applicable to the estimated construction cost for the Project. The insurance shall cover the entire period of design and construction, and the one year warranty period for the Project.

The insurance certificate shall state that written notice shall be issued to the Owner in the event of cancellation or material alteration of the insurance coverage. The certificate shall also state that any coverage afforded the certificate holder shall apply as primary and not excess to any insurance issued in the name of the certificate holder.

The Consultant shall furnish to the Owner documentation of any existing or pending claims against their insurance and shall also immediately notify the Owner of any claims that occur during the course of the design and construction of the Project.

The Consultant shall also provide proof of coverage for each major Sub-consultant indicating coverage in the amounts listed. Major sub-consultants shall include mechanical, electrical, civil, and structural Sub-consultants.

<u>Estimated Construction Cost</u>	<u>Consultant Coverage</u>	<u>Major Sub-Consultant Coverage</u>
Under \$1,000,000	\$500,000 per occurrence \$500,000 aggregate	No Requirement
\$1,000,000 to \$9,999,999	\$1,000,000 per occurrence \$2,000,000 aggregate	No Requirement
\$10,000,000 to \$49,999,999	\$2,000,000 per occurrence \$2,000,000 aggregate	\$1,000,000 per occurrence \$1,000,000 aggregate
\$50,000,000 and above	\$3,000,000 per occurrence \$3,000,000 aggregate	\$2,000,000 per occurrence \$2,000,000 aggregate

The Consultant’s professional liability insurance policy shall have a maximum deductible of \$100,000.

Workers Compensation/Employers Liability Insurance

Provide Workers Compensation/Employers Liability insurance in the amounts listed. Provide additional coverage as may be required by applicable federal or state laws.

Part One	Statutory Limits	Nevada Revised Statutes Chapters 616A thru 618
Part Two	Each Accident	\$1,000,000
Disease	Policy Limit	\$1,000,000
Disease	Each Employee	\$1,000,000

ARTICLE 23 PROJECTS WITH FEDERAL FUNDING

This article applies only to projects that involve federal funding.

This project involves federal funding Yes No

If federal funding is indicated above, the Consultant agrees to comply with following:

The Consultant certifies, by signing this Agreement, that neither the firm 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 CFR Part 67, Section 67.510, as published as Part VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall also be required of every sub-consultant receiving any payment for work on this project. A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension". SAM Exclusions contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

The Consultant and his sub-consultants shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 USC 12101, as amended, and regulations adopted thereunder contained in 28 CFR 26.101-36.999, inclusive, and any relevant program-specific regulations.

For all Agreements in excess of \$150,000, the Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401-7671q) and the Federal Water Pollution Control Act as amended (33 USC 1251-1387). The Consultant agrees to report all violations to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

For all Agreements exceeding \$100,000: Byrd Anti-Lobbying Amendment (31 USC 1352): The Consultant certifies, by signing this Agreement, that they will not and have not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 USC 1352. The Consultant must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Disclosures will be forwarded to the appropriate agencies.

Consultant

Firm Name

By: _____

Print: _____

Title: _____

Date: _____

Owner

State Public Works Division

By: _____

Print: Ward D. Patrick, PE

Title: Administrator

Date: _____

State Attorney General

(Approved as to Form Only)

Aaron D. Ford

By: _____

Title: Deputy Attorney General

Date: _____

Board of Examiners

(Required for Execution)

By: _____

Date: _____

SPWD Project Manager

(Signed as to Review Only)

By: _____ Date: _____

Authorization

SPWD Project No.:

Fund Code No:

Assigned Amount:

Chief of Design

(Signed as to Review Only)

By: _____ Date: _____

Authorization

SPWD Project No.:

Fund Code No:

Assigned Amount:

Deputy Administrator, Professional Services

(Signed as to Review Only)

By: _____ Date: _____

Distribution

Original, SPWD

SPWD Project Manager

Consultant Using Agency

SPWD Accounting

(Account Codes & Funds Availability Verified)

By: _____ Date: _____

GL No.: _____