

# 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: 7/1/18
SPWD Adopted Standards	Dated: 7/1/18

**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 sample 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 sample schedule. A preliminary schedule shall be provided by the Consultant and attached to this Agreement that includes as a minimum the durations required for development and issuance of each of the major document deliverables and the duration of construction. A finalized schedule including all of the dates and durations listed in the sample 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 Administrator.

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

# SAMPLE PROJECT SCHEDULE

Note: Listed durations are intended only to serve as examples.

Project Name:	Sample Project
Project Location:	Las Vegas, Nevada
Project No:	19-xxx
Date:	7/1/2018
<b>Professional Services Agreement Executed:</b>	Tuesday, October 9, 2018
<i>Approximate Duration (between previous item and following item)</i>	6
<b>Begin Schematic Design Phase</b>	Monday, October 15, 2018
<i>Approximate Duration (between previous item and following item)</i>	59
<b>Schematic Design Delivery (to State Public Works Division)</b>	Thursday, December 13, 2018
<i>Approximate Duration (between previous item and following item)</i>	7
Schematic Design Presentation Meeting	Thursday, December 20, 2018
<i>Approximate Duration (between previous item and following item)</i>	14
Schematic Design Review Comments Issued	Thursday, January 3, 2019
<i>Approximate Duration (between previous item and following item)</i>	4
<b>Begin Design Development Phase</b>	Monday, January 7, 2019
<i>Approximate Duration (between previous item and following item)</i>	59
<b>Design Development Delivery (to State Public Works Division)</b>	Thursday, March 7, 2019
<i>Approximate Duration (between previous item and following item)</i>	7
Design Development Presentation Meeting	Thursday, March 14, 2019
<i>Approximate Duration (between previous item and following item)</i>	14
Design Development Review Comments Issued	Thursday, March 28, 2019
<i>Approximate Duration (between previous item and following item)</i>	4
<b>Begin 50% Construction Documents Phase</b>	Monday, April 1, 2019
<i>Approximate Duration (between previous item and following item)</i>	59
<b>50% Construction Documents Delivery (to State Public Works Division)</b>	Thursday, May 30, 2019
<i>Approximate Duration (between previous item and following item)</i>	7
50% Construction Documents Presentation Meeting	Thursday, June 6, 2019
<i>Approximate Duration (between previous item and following item)</i>	14
50% Construction Documents Review Comments Issued	Thursday, June 20, 2019
<i>Approximate Duration (between previous item and following item)</i>	7
<b>Begin 100% Construction Documents Phase</b>	Thursday, June 27, 2019
<i>Approximate Duration (between previous item and following item)</i>	60
<b>100% Construction Documents Delivery (to State Public Works Division)</b>	Monday, August 26, 2019
<i>Approximate Duration (between previous item and following item)</i>	7
100% Construction Documents Presentation Meeting	Monday, September 2, 2019
<i>Approximate Duration (between previous item and following item)</i>	0
100% Construction Documents Delivery (to Plan Checking Firms/Agencies)	Monday, September 2, 2019
<i>Approximate Duration (between previous item and following item)</i>	35
Responses to Review Comments Incorporated and Bid Documents Issued	Monday, October 7, 2019
<i>Approximate Duration (between previous item and following item)</i>	14
<b>Advertise for Bids</b>	Monday, October 21, 2019
<i>Approximate Duration (between previous item and following item)</i>	28
<b>Bid Opening</b>	Monday, November 18, 2019
<i>Approximate Duration (between previous item and following item)</i>	28
<b>Owner-Contractor Agreement Executed and Distributed</b>	Monday, December 16, 2019
<i>Approximate Duration (between previous item and following item)</i>	14
<b>Notice to Proceed/Begin Construction</b>	Monday, December 30, 2019
<i>Approximate Duration (between previous item and following item)</i>	178
<b>Certificate of Substantial Completion/Certificate of Occupancy Issued</b>	Thursday, June 25, 2020
<i>Approximate Duration (between previous item and following item)</i>	14
Agency Move-In	Thursday, July 9, 2020
<i>Approximate Duration (between previous item and following item)</i>	11
Building Open for Intended Use	Monday, July 20, 2020

**ARTICLE 21 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 22 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)

Adam Paul Laxalt

By: \_\_\_\_\_

Title: Deputy Attorney General

Date: \_\_\_\_\_

**Board of Examiners**

(Required for Execution)

By: \_\_\_\_\_

Date: \_\_\_\_\_

**SPWD Project Manager**

(Signed as to Review Only)

By: \_\_\_\_\_ Date: \_\_\_\_\_

**Deputy Administrator, Professional Services**

(Signed as to Review Only)

By: \_\_\_\_\_ Date: \_\_\_\_\_

**SPWD Accounting**

(Account Codes & Funds Availability Verified)

By: \_\_\_\_\_ Date: \_\_\_\_\_

GL No.: \_\_\_\_\_

**Authorization**

SPWD Project No.:

Fund Code No:

Assigned Amount:

**Distribution**

Original, SPWD

SPWD Project Manager

Consultant

Using Agency