

FISH PROFESSIONAL SERVICES CONSULTANT AGREEMENT

Contract No. WS202008

Title:

THIS CONTRACT made and entered into this _____ day of _____, 2020, by and between Friends In Service Helping Emergency Referral Services Program, Inc., a 501 (c)(3), hereinafter referred to as "FISH", and (Vendor Name), hereinafter referred to as "CONSULTANT".

WITNESSETH:

WHEREAS, the Purchasing and Contracts Manager for FISH is authorized pursuant to Nevada Revised Statutes (hereinafter referred to as "NRS") 332 and 338 and Carson FISH Purchasing Resolution #1990-R71, to approve and accept this Contract as set forth in and by the following provisions; and

WHEREAS, this Contract is for consulting services from one or more licensed architects, engineers and/or land surveyors; and

WHEREAS, CONSULTANT'S compensation under this agreement (does x) (does not) utilize in whole or in part money derived from one or more federal grant funding source(s); and

WHEREAS, it is deemed necessary that the services of CONSULTANT for CONTRACT No. WS202008 (hereinafter referred to as "Contract") are both necessary and in the best interest of FISH; and

NOW, THEREFORE, in consideration of the aforesaid premises, and the following terms, conditions and other valuable consideration, the parties mutually agree as follows:

1. REQUIRED APPROVAL:

This Contract shall not become effective until signed by all parties and insurance certificates are received.

2. SCOPE OF WORK (Incorporated Contract Documents):

2.1 **CONSULTANT** shall provide and perform the following services set forth in **Exhibit A, (Signed Contract)**, which shall all be attached hereto and incorporated herein by reference for and on behalf of FISH and hereinafter referred to as the "SERVICES".

2.2 **CONSULTANT** represents that it is duly licensed by Carson City for the purposes of performing the SERVICES.

2.3 **CONSULTANT** represents that it is duly qualified and licensed in the State of Nevada for the purposes of performing the SERVICE.

2.4 **CONSULTANT** represents that it and/or the persons it may employ possess all skills and training necessary to perform the SERVICES described herein and required hereunder. **CONSULTANT** shall perform the SERVICES faithfully, diligently, in a timely and professional manner, to the best of its ability, and in such a manner as is customarily performed by a person who is in the business of providing such services in similar circumstances. **CONSULTANT** shall be responsible for the professional quality and technical accuracy of all SERVICES furnished by **CONSULTANT** to FISH.

2.5 **CONSULTANT** represents that neither the execution of this Contract nor the rendering of services by **CONSULTANT** hereunder will violate the provisions of or constitute a default under any other contract or agreement to which **CONSULTANT** is a party or by which **CONSULTANT** is bound, or which

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would preclude **CONSULTANT** from performing the SERVICES required of **CONSULTANT** hereunder, or which would impose any liability or obligation upon **FISH** for accepting such SERVICES.

2.6 Before commencing with the performance of any work under this Contract, **CONSULTANT** shall obtain all necessary permits and licenses as may be necessary. Before and during the progress of work under this Contract, **CONSULTANT** shall give all notice and comply with all the laws, ordinances, rules and regulations of every kind and nature now or hereafter in effect promulgated by any Federal, State, County, or other Governmental Authority, relating to the performance of work under this Contract. If **CONSULTANT** performs any work that is contrary to any such law, ordinance, rule or regulation, it shall bear all the costs arising therefrom.

2.7 Special Terms and Conditions for Engineers, Architects, and Land Surveying/Testing:

2.7.1 *Use of **CONSULTANT'S** Drawings, Specifications and Other Documents:*

2.7.1.1 The drawings, specifications and other documents prepared by **CONSULTANT** for this Contract are instruments of **CONSULTANT'S** service for use solely with respect to this Contract and, unless otherwise provided, **CONSULTANT** shall be deemed the author of these documents and shall retain all common law statutory and other reserved rights, including the copyright.

2.7.2 *Cost Accounting and Audits:*

2.7.2.1 If required by **FISH**, **CONSULTANT** agrees to make available to **FISH** for three (3) years after the completion of the SERVICES under this Contract, such books, records, receipts, vouchers, or other data as may be deemed necessary by **FISH** to enable it to arrive at appropriate cost figures for the purpose of establishing depreciation rates for the various materials and other elements which may have been incorporated into the SERVICES performed under this Contract.

2.7.3.2 FEDERAL FUNDING: In the event federal funds are used for payment of all or part of this Contract, **CONSULTANT** shall submit a Statement of Compliance form WH347 or a form with identical wording and a Statement of Compliance prescribed by the Nevada Labor Commissioner **within 7 days after the regular pay date for the pay period**. The original Statements shall be delivered to FISH, 138 E. Long St. Carson City, Nevada 89706. This applies to the **CONSULTANT** and/or any Subcontractors

2.7.3.4 FAIR EMPLOYMENT PRACTICES: Pursuant to NRS 338.125, Fair Employment Practices, the following provisions must be included in any contract between **CONSULTANT** and **FISH**:

2.7.3.4.1 *In connection with the performance of work or SERVICES under this Contract, CONSULTANT agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation, gender identity, 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.*

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2.7.3.4.2 **CONSULTANT** further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

2.7.3.5 **PREFERENTIAL EMPLOYMENT**: Unless, and except if, this Contract is funded in whole or in part by federal grant funding (see 40 C.F.R. § 31.36(c) *Competition*), pursuant to NRS 338.130, in all cases where persons are employed in the construction of public works, preference must be given, the qualifications of the applicants being equal: (1) First: To persons who have been honorably discharged from the Army, Navy, Air Force, Marine Corps or Coast Guard of the United States, a reserve component thereof or the National Guard; and are citizens of the State of Nevada. (2) Second: To other citizens of the State of Nevada.

2.7.3.5.1 In connection with the performance of SERVICES under this Contract, **CONSULTANT** agrees to comply with the provisions of NRS 338.130 requiring certain preferences to be given to which persons are employed in the construction of a public work. If **CONSULTANT** fails to comply with the provisions of NRS 338.130, pursuant to the terms of NRS 338.130(3), this Contract is void, and any failure or refusal to comply with any of the provisions of this section renders this Contract void.

2.8 **FISH Responsibilities:**

2.8.1 **FISH** shall make available to **CONSULTANT** all technical data that is in **FISH'S** possession, reasonably required by **CONSULTANT** relating to the SERVICES.

2.8.2 **FISH** shall provide access to and make all provisions for **CONSULTANT** to enter upon public and private lands, to the fullest extent permitted by law, as reasonably required for **CONSULTANT** to perform the SERVICES.

2.8.3 **FISH** shall examine all reports, correspondence, and other documents presented by **CONSULTANT** upon request of **FISH**, and render, in writing, decisions pertaining thereto within a reasonable time so as not to delay the work of **CONSULTANT**.

2.8.4 It is expressly understood and agreed that all work done by **CONSULTANT** shall be subject to inspection and acceptance by **FISH** and approval of SERVICES shall not forfeit the right of **FISH** to require correction, and nothing contained herein shall relieve **CONSULTANT** of the responsibility of the SERVICES required under the terms of this Contract until all SERVICES have been completed and accepted by **FISH**.

3. **CONTRACT TERM:**

3.1 This Contract shall be effective from **Month XX, 2020 to Month XX, 20XX**, unless sooner terminated by either party as specified in **Section 7** (CONTRACT TERMINATION).

4. **NOTICE:**

4.1 Except any applicable bid and award process where notices may be limited to postings by **FISH** on its Bid Opportunities website (www.nvfish.com), all notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given

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if delivered personally in hand, by e-mail, by regular mail, by telephonic facsimile with simultaneous regular mail, or by certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified below.

4.2 Notice to **CONSULTANT** shall be addressed to:

(Company Contact), (Title)
(Company)
(Street Address)
(FISH), (State) (ZIP)
(Telephone Number)/ (Fax Number)
email: (E-Mail Address)

4.3 Notice to **FISH** shall be addressed to:

FISH c/o Jim Peckham
138 E. Long Street
Carson City, NV 89706
775-882-3474 / FAX 775-884-0308
Jim@nvfish.com

5. COMPENSATION:

5.1 The parties agree that **CONSULTANT** will provide the SERVICES specified in **Section 2** (SCOPE OF WORK) and **FISH** agrees to pay **CONSULTANT** the Contract's compensation based upon Time and Materials and the Scope of Work Fee Schedule for a not to exceed maximum amount of (Amount written out in words) Dollars and 00/100 (\$XXX,000.00) and hereinafter referred to as "Contract Sum".

5.2 Contract Sum represents full and adequate compensation for the completed SERVICES, and includes the furnishing of all materials; all labor, equipment, tools, and appliances; and all expenses, direct or indirect, connected with the proper execution of the SERVICES.

5.3 **CONSULTANT** shall provide **FISH** with a scope of work for each task to be completed and if approved by the XXXX Director, **CONSULTANT** will be provided written authorization for the work.

5.4 Payment by **FISH** for the SERVICES rendered by **CONSULTANT** shall be due within thirty (30) calendar days from the date **FISH** acknowledges that the performance meets the requirements of this Contract or from the date the correct, complete, and descriptive invoice is received by **FISH** employee designated on the sample invoice, whichever is the later date.

5.5 **FISH** does not agree to reimburse **CONSULTANT** for expenses unless otherwise specified.

6. CONTRACT TERMINATION:

6.1 Termination Without Cause:

6.1.1 Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated upon written notice by mutual consent of both parties or unilaterally by either party without cause.

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6.1.2 **FISH** reserves the right to terminate this Contract for convenience whenever it considers termination, in its sole and unfettered discretion, to be in the public interest. In the event that the Contract is terminated in this manner, payment will be made for SERVICES actually completed. If termination occurs under this provision, in no event shall **CONSULTANT** be entitled to anticipated profits on items of SERVICES not performed as of the effective date of the termination or compensation for any other item, including but not limited to, unabsorbed overhead. **CONSULTANT** shall require that all subcontracts which it enters related to this Contract likewise contain a termination for convenience clause which precludes the ability of any subconsultant to make claims against **CONSULTANT** for damages due to breach of contract, of lost profit on items of SERVICES not performed or of unabsorbed overhead, in the event of a convenience termination.

6.2 Termination for Non-appropriation:

7.2.1 All payments and SERVICES provided under this Contract are contingent upon the availability of the necessary public funding, which may include various internal and external sources. In the event that Carson FISH does not acquire and appropriate the funding necessary to perform in accordance with the terms of the Contract, the Contract shall automatically terminate upon **FISH'S** notice to **CONSULTANT** of such non-appropriation, and no claim or cause of action may be based upon any such non-appropriation.

6.3 Cause Termination for Default or Breach:

6.3.1 A default or breach may be declared with or without termination.

6.3.2 This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:

6.3.2.1 If **CONSULTANT** fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or any SERVICES called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or

6.3.2.2 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 **CONSULTANT** to provide the goods or SERVICES or any services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or

6.3.2.3 If **CONSULTANT** becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or

6.3.2.4 If **FISH** materially breaches any material duty under this Contract and any such breach impairs **CONSULTANT'S** ability to perform; or

6.3.2.5 If it is found by **FISH** that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by **CONSULTANT**, or any agent or representative of **CONSULTANT**, to any officer or employee of **FISH** with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or

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6.3.2.6 If it is found by **FISH** that **CONSULTANT** has failed to disclose any material conflict of interest relative to the performance of this Contract.

6.4 Time to Correct (Declared Default or Breach):

6.4.1 Termination upon a declared default or breach may be exercised only after providing 7 (seven) calendar days written notice of default or breach, and the subsequent failure of the defaulting or breaching party, within five (5) calendar days of providing that default or breach notice, to provide evidence satisfactory to the aggrieved party demonstrating that the declared default or breach has been corrected. Time to correct shall run concurrently with any notice of default or breach and such time to correct is not subject to any stay with respect to the nonexistence of any Notice of Termination. Untimely correction shall not void the right to termination otherwise properly noticed unless waiver of the noticed default or breach is expressly provided in writing by the aggrieved party. There shall be no time to correct with respect to any notice of termination without cause or termination for non-appropriation.

6.5 Winding Up Affairs Upon Termination:

6.5.1 In the event of termination of this Contract for any reason, the parties agree that the provisions of this **Subsection 7.5** (Winding Up Affairs Upon Termination) survive termination:

6.5.1.1 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; and

6.5.1.2 **CONSULTANT** shall satisfactorily complete SERVICES in progress at the agreed rate (or a pro rata basis if necessary) if so requested by **FISH**; and

6.5.1.3 **CONSULTANT** shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by **FISH**; and

6.5.1.4 **CONSULTANT** shall preserve, protect, and promptly deliver into **FISH** possession all proprietary information in accordance **Section 19** (FISH OWNERSHIP OF PROPRIETARY INFORMATION).

6.6 Notice of Termination:

6.6.1 Unless otherwise specified in this Contract, termination shall not be effective until seven (7) calendar days after a party has provided written notice of default or breach, or notice of without cause termination. Notice of Termination may be given at the time of notice of default or breach, or notice of without cause termination. Notice of Termination may be provided separately at any time after the running of the 7-day notice period, and such termination shall be effective on the date the Notice of Termination is provided to the party unless a specific effective date is otherwise set forth therein. Any delay in providing a Notice of Termination after the 7-day notice period has run without a timely correction by the defaulting or breaching party shall not constitute any waiver of the right to terminate under the existing notice(s).

7. **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, and to a prevailing party reasonable attorney's fees and costs. The parties agree that,

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in the event a lawsuit is filed and a party is awarded attorney's fees by the court, for any reason, the amount of recoverable attorney's fees shall not exceed the rate of \$125 per hour. **FISH** may set off consideration against any unpaid obligation of **CONSULTANT** to **FISH**.

8. LIMITED LIABILITY:

Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise expressly provided for elsewhere in this Contract. Damages for any **FISH** breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to **CONSULTANT**, for the fiscal year budget in existence at the time of the breach. **CONSULTANT'S** tort liability shall not be limited.

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 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:

10.1 To the extent permitted by law, including, but not limited to, the provisions of NRS Chapter 41, each party shall indemnify, hold harmless and defend, not excluding the other's right to participate, the other party from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorney's fees and costs, arising out of any alleged negligent or willful acts or omissions of the indemnifying party, its officers, employees and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of the indemnity which would otherwise exist as to any party or person described in this Section.

10.2 Except as otherwise provided in **Subsection 10.4** below, the indemnifying party shall not be obligated to provide a legal defense to the indemnified party, nor reimburse the indemnified party for the same, for any period occurring before the indemnified party provides written notice of the pending claim(s) or cause(s) of action to the indemnifying party, along with:

10.2.1 a written request for a legal defense for such pending claim(s) or cause(s) of action; and

10.2.2 a detailed explanation of the basis upon which the indemnified party believes that the claim or cause of action asserted against the indemnified party implicates the culpable conduct of the indemnifying party, its officers, employees, and/or agents.

10.3 After the indemnifying party has begun to provide a legal defense for the indemnified party, the indemnifying party shall not be obligated to fund or reimburse any fees or costs provided by any additional counsel for the indemnified party, including counsel through which the indemnified party might voluntarily choose to participate in its defense of the same matter.

10.4 After the indemnifying party has begun to provide a legal defense for the indemnified party, the indemnifying party shall be obligated to reimburse the reasonable attorney's fees and costs incurred by the indemnified party during the initial thirty (30) day period of the claim or cause of action, if any, incurred by separate counsel.

11. INDEPENDENT CONTRACTOR:

11.1 **CONSULTANT**, as an independent contractor, is a natural person, firm or corporation who agrees to perform SERVICES for a fixed price according to his or its own methods and without subjection to the supervision or control of the **FISH**, except as to the results of the SERVICES, and not as to the means by which the SERVICES are accomplished.

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11.2 It is mutually agreed that **CONSULTANT** is associated with **FISH** 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. **CONSULTANT** 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.

11.3 Nothing contained in this Contract shall be 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 **FISH** whatsoever with respect to the indebtedness, liabilities, and obligations of **CONSULTANT** or any other party.

11.4 **CONSULTANT**, in addition to **Section 10** (INDEMNIFICATION), shall indemnify and hold **FISH** harmless from, and defend **FISH** against, any and all losses, damages, claims, costs, penalties, liabilities, expenses arising out of or incurred in any way because of, but not limited to, **CONSULTANT'S** obligations or legal duties regarding any taxes, fees, assessments, benefits, entitlements, notice of benefits, employee's eligibility to work, to any third party, subcontractor, employee, state, local or federal governmental entity.

11.5 Neither **CONSULTANT** nor its employees, agents, or representatives shall be considered employees, agents, or representatives of **FISH**.

12. **INSURANCE REQUIREMENTS (GENERAL):**

12.1 NOTICE: The following general insurance requirements shall apply unless these general requirements are altered by any specific requirements set forth in FISH'S solicitation for bid document, the adopted bid or other document incorporated into this Contract by the parties.

12.2 **CONSULTANT**, as an independent contractor and not an employee of **FISH**, must carry policies of insurance in amounts specified and pay all taxes and fees incident hereunto. **FISH** shall have no liability except as specifically provided in this Contract.

12.3 **CONSULTANT** shall not commence work before: (1) **CONSULTANT** has provided the required evidence of insurance to **FISH** Purchasing and Contracts, and (2) **FISH** has approved the insurance policies provided by **CONSULTANT**.

12.4 Prior approval of the insurance policies by **FISH** shall be a condition precedent to any payment of consideration under this Contract and **FISH'S** approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of **FISH** to timely approve shall not constitute a waiver of the condition.

12.5 *Insurance Coverage (13.6 through 13.23):*

12.6 **CONSULTANT** shall, at **CONSULTANT'S** sole expense, procure, maintain and keep in force for the duration of this Contract the following insurance conforming to the minimum requirements specified below. Unless specifically specified herein or otherwise agreed to by **FISH**, the required insurance shall be in effect prior to the commencement of work by **CONSULTANT** and shall continue in force as appropriate until the later of:

12.6.1 Final acceptance by **FISH** of the completion of this Contract; or

12.6.2 Such time as the insurance is no longer required by **FISH** under the terms of this Contract.

12.6.3 Any insurance or self-insurance available to **FISH** under its coverage(s) shall be in excess of and non-contributing with any insurance required from **CONSULTANT**. **CONSULTANT'S** insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by **FISH**, **CONSULTANT** shall provide **FISH** with renewal or replacement evidence of insurance no less than thirty (30) calendar days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required

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by this Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as **CONSULTANT** has knowledge of any such failure, **CONSULTANT** shall immediately notify **FISH** and immediately replace such insurance or bond with an insurer meeting the requirements.

12.7 *General Insurance Requirements (12.8 through 12.23):*

12.8 **Certificate Holder:** Each certificate shall list: FISH c/o Jim Peckham, 138 E. Long Street, Carson City, NV 89706 as a certificate holder.

12.9 **Additional Insured:** By endorsement to the general liability insurance policy evidenced by **CONSULTANT**, The FISH and County of Carson FISH, Nevada, its officers, employees and immune contractors shall be named as additional insureds for all liability arising from this Contract.

12.10 **Waiver of Subrogation:** Each liability insurance policy, except for professional liability, shall provide for a waiver of subrogation in favor of FISH.

12.11 **Cross-Liability:** All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.

12.12 **Deductibles and Self-Insured Retentions:** Insurance maintained by **CONSULTANT** shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by **FISH**. Such approval shall not relieve **CONSULTANT** from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$5,000.00 per occurrence, unless otherwise approved by **FISH**.

12.13 **Policy Cancellation:** Except for ten (10) calendar days' notice for non-payment of premium, premium, **CONSULTANT** or its insurers must provide thirty (30) calendar days prior written notice to Carson FISH Purchasing and Contracts if any policy will be canceled, non-renewed or if required coverage and /or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by mail FISH c/o Jim Peckham, 138 E. Long Street, Carson City, NV 89706. When available, each insurance policy shall be endorsed to provide thirty (30) days' notice of cancellation, except for ten (10) days' notice for non-payment of premium, to FISH.

12.14 **Approved Insurer:** Each insurance policy shall be issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers under federal and Nevada law and having agents in Nevada upon whom service of process may be made, and currently rated by A.M. Best as "A-VII" or better.

12.15 **Evidence of Insurance:** Prior to commencement of work, **CONSULTANT** must provide the following documents FISH c/o Jim Peckham, 138 E. Long Street, Carson City, NV 89706.

12.16 **Certificate of Insurance:** **CONSULTANT** shall furnish FISH with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth herein. The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to Carson FISH Purchasing and Contracts to evidence the insurance policies and coverages required of **CONSULTANT**.

12.17 **Additional Insured Endorsement:** An Additional Insured Endorsement (CG20 10 or C20 26), signed by an authorized insurance company representative, must be submitted to Carson FISH Purchasing and Contracts to evidence the endorsement of **FISH** as an additional insured per **Subsection 12.9** (Additional Insured).

12.18 **Schedule of Underlying Insurance Policies:** If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlying Schedule from the Umbrella or Excess insurance policy may be required.

12.19 **Review and Approval:** Documents specified above must be submitted for review and approval by **FISH** Purchasing and Contracts prior to the commencement of work by **CONSULTANT**. Neither

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approval by **FISH** nor failure to disapprove the insurance furnished by **CONSULTANT** shall relieve **CONSULTANT** of **CONSULTANT'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 **CONSULTANT** or its subcontractors, employees or agents to **FISH** or others, and shall be in addition to and not in lieu of any other remedy available to **FISH** under this Contract or otherwise. **FISH** reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

12.20 **COMMERCIAL GENERAL LIABILITY INSURANCE:**

CONSULTANT shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence.

12.20.1 *Minimum Limits required:*

12.20.2 Two Million Dollars (\$2,000,000.00) - General Aggregate.

12.20.3 Two Million Dollars (\$2,000,000.00) - Products & Completed Operations Aggregate.

12.20.4 One Million Dollars (\$1,000,000.00) - Each Occurrence.

12.20.5 CGL insurance shall be written on ISO occurrence form CG 00 01 04 13 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract [(including the tort liability of another assumed in a business contract)].

12.20.6 FISH, its officers, employees and immune contractors shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 or CG 20 26, or a substitute providing equivalent coverage, and under the commercial umbrella, if any.

12.20.7 This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to FISH. There shall be no endorsement or modification of the CGL to make it excess over other available insurance; alternatively, if the CGL states that it is excess or pro rata, the policy shall be endorsed to be primary with respect to the additional insured.

12.20.8 There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability assumed under a contract.

12.20.9 Consultant waives all rights against FISH and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained pursuant to this Contract. Insurer shall endorse CGL policy as required to waive subrogation against FISH with respect to any loss paid under the policy.

12.21 **BUSINESS AUTOMOBILE LIABILITY INSURANCE:**

12.21.1 *Minimum Limit required:*

12.21.2 Consultant shall maintain automobile liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident for bodily injury and property damage.

12.21.3 Such insurance shall cover liability arising out of owned, hired, and non-owned autos (as applicable). Coverage as required above shall be written on ISO form

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CA 00 01, CA 00 05, CA 00 25, or a substitute form providing equivalent liability coverage.

12.21.4 Consultant waives all rights against FISH and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the automobile liability or other liability insurance obtained by **CONSULTANT** pursuant this Contract.

12.22 PROFESSIONAL LIABILITY INSURANCE

12.22.1 *Minimum Limit required:*

12.22.2 **CONSULTANT** shall maintain professional liability insurance applying to all activities performed under this Contract with limits not less than One Million Dollars (\$1,000,000.00) and Two Million Dollars (\$2,000,000) in the aggregate.

12.22.3 Retroactive date: Prior to commencement of the performance of this Contract.

12.22.4 **CONSULTANT** will maintain professional liability insurance during the term of this Contract and for a period of three (3) years after termination of this Contract unless waived by the FISH. In the event of non-renewal or other lapse in coverage during the term of this Contract or the three (3) year period described above, **CONSULTANT** shall purchase Extended Reporting Period coverage for claims arising out of **CONSULTANT's** negligence acts, errors and omissions committed during the term of the Professional Liability Policy. The Extended Reporting Period shall continue through a minimum of three (3) years after termination date of this Contract.

12.22.5 A certified copy of this policy may be required.

12.23 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:

12.23.1 **CONSULTANT** shall provide workers' compensation insurance as required by NRS Chapters 616A through 616D inclusive and Employer's Liability insurance with a minimum limit not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

12.23.2 **CONSULTANT** may, in lieu of furnishing a certificate of an insurer, provide an affidavit indicating that **CONSULTANT** is a sole proprietor; that **CONSULTANT** will not use the services of any employees in the performance of this Contract; that **CONSULTANT** has elected to not be included in the terms, conditions, and provisions of NRS Chapters 616A-616D, inclusive; and that **CONSULTANT** is otherwise in compliance with the terms, conditions, and provisions of NRS Chapters 616A-616D, inclusive.

12.23.3 **CONSULTANT** waives all rights against FISH and its agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by the workers' compensation and employer's liability or commercial umbrella liability insurance obtained by Consultant pursuant to this Contract. Consultant shall obtain an endorsement equivalent to WC 00 03 13 to affect this waiver.

13. BUSINESS LICENSE:

13.1 **CONSULTANT** shall not commence work before **CONSULTANT** has provided a copy of his Carson City business license to FISH.

13.2 The Carson City business license shall continue in force until the later of: (1) final acceptance by **FISH** of the completion of this Contract; or (2) such time as the Carson FISH business license is no longer required by **FISH** under the terms of this Contract.

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14. COMPLIANCE WITH LEGAL OBLIGATIONS:

CONSULTANT shall procure and maintain for the duration of this Contract any state, county, FISH, or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by **CONSULTANT** to provide the goods or SERVICES or any services of this Contract. **CONSULTANT** will be responsible to pay all government obligations, including, but not limited to, all taxes, assessments, fees, fines, judgments, premiums, permits, and licenses required or imposed by law or a court. Real property and personal property taxes are the responsibility of **CONSULTANT** in accordance with NRS Chapter 361 generally and NRS 361.157 and 361.159, specifically regarding for profit activity. **CONSULTANT** agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. **FISH** may set-off against consideration due any delinquent government obligation.

15. 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 breach.

16. SEVERABILITY:

If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

17. 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 **FISH**, such offending portion of the assignment shall be void, and shall be a breach of this Contract. **CONSULTANT** shall neither assign, transfer nor delegate any rights, obligations or duties under this Contract without the prior written approval of **FISH**. The parties do not intend to benefit any third party beneficiary regarding their respective performance under this Contract.

18. FISH OWNERSHIP OF PROPRIETARY INFORMATION:

Any files, reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer programs, computer codes, and computer records (which are intended to be consideration under this Contract), or any other documents or drawings, prepared or in the course of preparation by **CONSULTANT** (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of **FISH** and all such materials shall be delivered into **FISH** possession by **CONSULTANT** upon completion, termination, or cancellation of this Contract. **CONSULTANT** shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of **CONSULTANT'S** obligations under this Contract without the prior written consent of **FISH**. Notwithstanding the foregoing, **FISH** shall have no proprietary interest in any materials licensed for use by **FISH** that are subject to patent, trademark or copyright protection.

19. PUBLIC RECORDS:

Pursuant to NRS 239.010, information or documents received from **CONSULTANT** may be open to public inspection and copying. **FISH** will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests. **CONSULTANT** may clearly label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 332.061, provided that **CONSULTANT** thereby agrees to indemnify and defend **FISH** for honoring such a designation. The failure to so label any document that is released by **FISH** shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

20. CONFIDENTIALITY:

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CONSULTANT shall keep confidential all information, in whatever form, produced, prepared, observed or received by **CONSULTANT** to the extent that such information is confidential by law or otherwise required by this Contract.

21. **FEDERAL FUNDING:**

21.1 *In the event federal grant funds are used for payment of all or part of this Contract:*

21.1.1 **CONSULTANT** 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.

21.1.2 **CONSULTANT** 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.

21.1.3 **CONSULTANT** 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 Executive Order 11478 (July 21, 2014) and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, sexual orientation, gender identity, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions).

21.1.4 If and when applicable to the particular federal funding and the Scope of Work under this Contract, **CONSULTANT** and its subcontractors shall comply with: American Iron and Steel (AIS) provisions of P.L. 113- 76, Consolidated Appropriations Act, 2014, Section 1605 – Buy American (100% Domestic Content of iron, steel and manufactured goods); Federal Highway Administration (FHWA) 23 U.S.C. § 313 – Buy America, 23 C.F.R. §635.410 (100% Domestic Content of steel, iron and manufactured products); Federal Transit Administration (FTA) 49 U.S.C. § 5323(j), 49 C.F.R. Part 661 – Buy America Requirements (See 60% Domestic Content for buses and other Rolling Stock).

22. **LOBBYING:**

22.1 The parties agree, whether expressly prohibited by federal 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 for any purpose the following:

22.1.1 Any federal, state, county or local agency, legislature, commission, council or board;

22.1.2 Any federal, state, county or local legislator, commission member, council member, board member, or other elected official; or

22.1.3 Any officer or employee of any federal, state, county or local agency; legislature, commission, council or board.

23. **GENERAL WARRANTY:**

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CONSULTANT warrants that it will perform all SERVICES required hereunder in accordance with the prevailing standard of care by exercising the skill and care normally required of individuals performing the same or similar SERVICES, under the same or similar circumstances, in the State of Nevada.

24. PROPER AUTHORITY:

The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. **CONSULTANT** acknowledges that this Contract is effective only for the period of time specified in this Contract. Any SERVICES performed by **CONSULTANT** before this Contract is effective or after it ceases to be effective is performed at the sole risk of **CONSULTANT**.

25. ALTERNATIVE DISPUTE RESOLUTION (Public Work):

If the SERVICES under this Contract involve a "public work" as defined under NRS 338.010(17), then pursuant to NRS 338.150, a public body charged with the drafting of specifications for a public work shall include in the specifications a clause requiring the use of a method of alternative dispute resolution ("ADR") before initiation of a judicial action if a dispute arising between the public body and the **CONSULTANT** engaged on the public work cannot otherwise be settled. Therefore, unless ADR is otherwise provided for by the parties in any other incorporated attachment to this Contract, in the event that a dispute arising between **FISH** and **CONSULTANT** regarding that public work cannot otherwise be settled, **FISH** and **CONSULTANT** agree that, before judicial action may be initiated, **FISH** and **CONSULTANT** will submit the dispute to non-binding mediation. **FISH** shall present **CONSULTANT** with a list of three potential mediators. **CONSULTANT** shall select one person to serve as the mediator from the list of potential mediators presented by **FISH**. The person selected as mediator shall determine the rules governing the mediation.

26. GOVERNING LAW / JURISDICTION:

This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. **CONSULTANT** consents and agrees to the jurisdiction of the courts of the State of Nevada located in Carson FISH, Nevada for enforcement of this Contract.

27. ENTIRE CONTRACT AND MODIFICATION:

This Contract and its integrated attachment(s) constitute the entire Contract of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other Contracts that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto. Conflicts in language between this Contract and any other agreement between **FISH** and **CONSULTANT** on this same matter shall be construed consistent with the terms of this Contract. The parties agree that each has had their respective counsel review this Contract which shall be construed as if it was jointly drafted.

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28. ACKNOWLEDGMENT AND EXECUTION:

This Contract may be executed in counterparts. The parties hereto have caused this Contract to be signed and intend to be legally bound thereby as follows:

FISH

Executive Director
Jim Peckham,
138 E. Long Street,
Carson City, NV 89706
Telephone: 775-882-3474
Fax: 775-884-0308
jim@nvfish.com

By: _____
Jim Peckham

_____ Dated

Undersigned deposes and says under penalty of perjury: That he/she is **CONSULTANT** or authorized agent of **CONSULTANT**; that he/she has read the foregoing Contract; and that he/she understands the terms, conditions and requirements thereof.

CONSULTANT

BY: (Contact Person)

TITLE:

FIRM: (Company Name)

CARSON CITY BUSINESS LICENSE #:

Address:

City: _____ **State:** _____ **Zip Code:** _____

Telephone: (XXX) XXX-XXXX/ **Fax:** (XXX) XXX-XXXX

E-mail Address:

(Signature of Consultant)

DATED

STATE OF _____)

County of _____)

Signed and sworn (or affirmed before me on this _____ day of _____, 20____.

(Signature of Notary)

(Notary Stamp)

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Title:

SAMPLE INVOICE

Invoice Number: _____

Invoice Date: _____

Invoice Period: _____

Invoice shall be submitted to:

FISH
Attn: Jim Peckham
138 E. Long Street
Carson City, NV 89706

Line Item #	Description	Unit Cost	Units Completed	Total \$\$
Total for this invoice				

Original Contract Sum \$ _____
Less amount previously billed \$ _____
= contract sum prior to this invoice \$ _____
Less this invoice \$ _____
=Dollars remaining on Contract \$ _____

ENCLOSE COPIES OF RECEIPTS & INVOICES FOR EXPENSES & OUTSIDE SERVICES