**Professional Services And Consulting Agreement**

      Agency- State of Idaho

Agreement Title:

This Agreement (“Agreement”) is between the       (the “Agency”), whose address is       and       (the “Contractor"), whose address is      , for the services described in this Agreement. The Contractor agrees to undertake performance of this Agreement under the terms and conditions set forth herein. The Agency and the Contractor, in consideration of the mutual covenants and conditions contained herein, agree as follows:

1 AUTHORITY

Pursuant to Idaho Code, Section 67-9221, the director of the department of administration and the administrator may approve noncompetitive acquisitions. Pursuant to IDAPA 38.05.01.044.01.c, state agencies may acquire professional services in the open market under certain conditions. The Agency has determined that this Agreement meets those conditions.

2 TERM OF AGREEMENT

This Agreement shall commence on       and expire on       unless extended, in writing, by the parties or unless terminated earlier in accordance with this Agreement.

3 CONTRACTOR RESPONSIBILITIES

The Contractor shall perform services and provide deliverables as described in **Attachment A**, incorporated herein by reference. This Agreement shall have no force or effect until Attachment A is finalized, signed by the parties and attached to this Agreement. Services shall be performed at the Contractor’s place of business and, as necessary, at the Agency’s offices. Project status meetings will be held weekly or bi-monthly, upon reasonable notice and request of the Agency, at       to review the progress of the work.

The Contractor shall be required to assume responsibility for production and delivery of all material and services detailed in Attachment A, whether or not the Contractor is the manufacturer or producer of them. Further, the Contractor will be the sole point of contact on contractual matters, including payment of charges resulting from the use or purchase or items selected.

The Contractor warrants that its services under this Agreement shall be performed in a professional manner and shall be of a high grade, nature and quality. The Contractor warrants that for a period of       following final acceptance, all deliverables delivered under this Agreement shall      . In event of nonconformity, and without limitation upon any other remedy, the Agency shall have no financial obligation in regard to the nonconforming goods or services. This right is not to the exclusion of any other right that the Agency has in law or equity. Without limiting the foregoing, the Contractor recognizes its obligation to work with the Agency to correct any errors discovered after delivery and installation and the start of the warranty period.

The Contractor represents and warrants that it has the necessary and requisite skill to perform the work required under this Agreement and that the personnel assigned by the Contractor to perform any such work will be qualified to perform the assigned duties.

It will be the responsibility of the Contractor to fully comply with the State of Idaho law regarding the minimum wage law for residents hired to help on projects and jobs in Idaho.

4 TAXES

The State of Idaho and the Agency are generally exempt from payment of Idaho State Sales and Use Tax for property purchased for its use under the authority of Idaho Code, Section 63-3622 as a government instrumentality. In addition, the State of Idaho and the Agency are generally exempt from payment of Federal Excise Tax under a permanent authority from the district Director of the Internal Revenue Service. Exemption certificates will be furnished upon written request by the Contractor. If the Contractor is required to pay any taxes incurred as a result of doing business with the State of Idaho, it shall be solely responsible for the payment of those taxes. If the Contractor is performing public works construction (installation of fixtures, etc.), it shall be responsible for payment of all sales and use taxes as required.

5 PAYMENT

Payment by the Agency and its obligations under this Agreement are conditioned upon and subject to the continued availability of state funds. The Agency shall pay the Contractor in amounts as detailed in Attachment B, incorporated herein by reference.

Invoicing

5.1 Payment for services rendered shall be made upon acceptance of the work/required deliverables by the Agency and submission of a signed itemized invoice to the Agency. The Agreement number and/or purchase order numbers must be shown on all invoices. Invoices must specify the dates that services were performed, the nature of the work done on each date, and the number of hours worked on each date.

5.2 Billing must be done on a monthly basis or when the services are completed, whichever is sooner. If the Agency disputes any invoiced amount, it shall notify the Contractor in writing within five (5) business days. The Agency will process payments of any amounts not in dispute, in accordance with Idaho Code 67-9218.

5.3 Invoices are to be sent directly to: \_\_\_\_\_\_\_\_\_\_\_\_. Alternative invoicing arrangements must be mutually agreed upon in writing and specified in **Attachment B**. The Contractor understands that, while the Agency will use its best efforts to secure prompt payment of invoices, as a state agency, the Agency may not make direct payment under this Agreement, but must submit the invoices to the State Controller's Office for payment. Any late payments shall be governed by Idaho Code Section 67-2302.

6 OWNERSHIP

All information furnished to the Contractor for its use pursuant to this Agreement shall belong to the Agency and shall be returned to the Agency in good order upon completion of the Agreement or upon the Agency's request. All documents, reports, and any other data developed by the Contractor for the Agency in the performance of this Agreement shall become the property of the Agency. The Agency shall retain exclusive rights of ownership to all work produced by the Contractor under this Agreement.

7 RELATION OF PARTIES

The service or services to be rendered under this Agreement are those of an independent contractor. The Agency is interested only in the quality of service or services provided and the final results to be achieved; the conduct and control of the work will be solely with the Contractor. The Contractor is not an officer, employee, or agent of the Agency as those terms are used in Idaho Code § 6-902, et al, and is not entitled to any benefits provided by the Agency to employees.

8 TIME OF PERFORMANCE

Time is of the essence to this Agreement; therefore, all times for performance stated herein will be strictly followed by the parties.

9 SAVE HARMLESS

The Contractor shall exonerate, indemnify, and hold the Agency harmless from and against and assume full responsibility for payment of all federal, state and local taxes or contributions imposed or required under unemployment insurance, social security, workman's compensation, and income tax laws with respect to the Contractor or the Contractor's employees engaged in the performance of this Agreement. If requested by the Agency, the Contractor will provide either a certificate of workers' compensation insurance issued by a surety licensed to write workers' compensation insurance in the State of Idaho, as evidence that the contractor has in effect a current Idaho workers' compensation insurance policy, or an extraterritorial certificate approved by the Idaho Industrial Commission from a state that has a current reciprocity agreement with the Industrial Commission, or proof that the Contractor is exempt from the workers’ compensation requirement. Failure to provide a Certificate of Workman's Compensation Insurance upon request may result in termination of this Agreement. The Agency will not assume liability as an employer.

The Contractor shall maintain insurance of the types and in the amounts typically maintained by legal professionals of the same type as the Independent Contractor, including, but not limited to, comprehensive general liability insurance in the minimum amount of $1,000,000 per occurrence, and professional malpractice insurance, all with insurance companies properly licensed to do business in Idaho and reasonably satisfactory to the Client.

The Contractor shall protect, indemnify, and save the Agency harmless from and against any damage, cost, or liability including reasonable attorney's fees for any or all injuries to persons, property or claims for damages arising from any acts or omissions of the Contractor, its employees, or subcontractors.

It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of the Agency be in any way personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this Agreement.

10 ASSIGNMENTS

This Agreement or any interest therein shall not be transferred by the Contractor without prior written permission of the Agency.

11 DEFAULT AND TERMINATION

11.1 For Cause:

Contractor default occurs if the Contractor fails to perform any of the covenants or conditions of this Agreement or the Contractor fails to prosecute the work so as to endanger performance of this Agreement, and the Contractor does not cure such defects in performance within ten (10) business days after receipt of written notice from the Agency informing it of such defects in performance. If at the end of such cure period, the Contractor is still in default or noncompli­ance, then the Agency may terminate this Agreement. Upon such termination, the Agency may pursue any and all legal, equitable and other remedies available to the Agency. The Contractor shall be liable for any and all expenses that are incurred by the Agency as a result of the default, including, but not limited to, the costs of procuring substitute performance, legal fees, and losses incurred due to default.

11.2 For Convenience:

The Agency may terminate this Agreement for its convenience at any time upon 10 business days written notice to Contractor, and, upon such termination, the Agency’s sole obligation shall be to pay for services satisfactorily rendered to the date of such termination. Notwithstanding any other provision in this Agreement, the Agency may terminate this Agreement immediately if the Contractor becomes insolvent or voluntarily or involuntarily bankrupt, or if a receiver or other liquidating officer is appointed for substantially all of the business of the Contractor or if the Contractor makes an assignment for the benefit of creditors.

12 ANTI-DISCRIMINATION CLAUSE

Acceptance of this Agreement binds the Contractor to Section 601, Title VI, Civil Rights Act of 1964: In that "No person in the United States shall, on the grounds of race, color, national origin, sex, or age, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance." In addition, "No otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

13 GOVERNING LAW

This Agreement shall be governed by the laws of the State of Idaho. The venue of any action brought by any party to this Agreement shall be the Fourth District Court in and for the County of Ada.

14 NO PENALTY

It is understood and agreed by the parties that the Agency is a governmental entity and that this Agreement shall in no way bind or obligate the State of Idaho beyond the terms of any particular appropriation of funds by the state or federal legislature, as may exist from time to time.

15 NONWAIVER OF BREACH

The failure of the Contractor or the Agency to insist upon strict performance of any of the covenants and conditions of this Agreement or to exercise any option herein conferred in any one or all instances shall not be construed to be a waiver or relinquishment of any such covenant or condition but the same shall be and remain in full force and effect unless such waiver is evidenced by prior written consent of the Contractor or the Agency.

16 DUPLICATE ORIGINALS

This Agreement may be executed in duplicate originals. Each of the two agreements with an original signature of each party shall constitute one original.

17 GENERAL PROVISIONS

17.1 Neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement or interruption of service resulting from Acts of God, civil or military authority, acts of war, riots, or insurrections.

17.2 This Agreement, with **Attachments A** and **B** attached hereto, constitutes the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous proposals, both oral and written, negotiations, representations, commitments, and all other communications between the parties. This Agreement may not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

Unless otherwise stated above, this Agreement is effective on the date of last signature:

|  |  |  |
| --- | --- | --- |
| Contractor's Legal Name | | |
|  | | |
| Contractor's Authorized Representative’s Printed Name | Title | |
|  |  | |
| Signature | | Date |
|  | |  |

|  |  |
| --- | --- |
| Agency Administrator/Director Printed Name | |
|  | |
| Signature | Date |
|  |  |

**Attachment A**

Scope of Work and Delivery Schedule

*(This will be mutually developed and agreed upon by the department and contractor)*

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| Note: If software development is involved, you should specify whether source code is part of deliverables. In such case, you should also put in somewhere something to the effect that the Contractor warrants that it knows of no, and that nothing in any original software contains, any protection feature designed to prevent its use, including, without limitation, any virus, work, lock, drop dead device, Trojan horse routine, trap door, time bomb or any other code or instruction that could be used to access, modify, delete, damage or disable the software or the Agency’s computer system. |

**Attachment B**

Cost and Billing Procedure

(Note: Provide Line Items or a Table to list cost by project, hourly rate, etc. Explain that cost must be fully burdened, e.g. “all costs, including hourly rates, must be fully burdened to include, but not be limited to, wages, transportation, lodging, overhead, and per diem; specifically identify any exceptions to the fully burdened requirement – if there are expenses which may be reimbursed at the State’s rates – and include the BOE link)