

OWNER-CONTRACTOR AGREEMENT

(for Contract Amounts of \$100,000 or less)

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

Execution Date: _____

Project Identification

Project Name:

Project Address, City, State:

SPWB Project No:

SPWB Contract No:

Owner

State Public Works Board

515 E. Musser Street, Suite 102

Carson City, Nevada 89701-4263

(775) 684-4141

Contractor

Firm Name

Address

City, State, Zip Code

Phone

ARTICLE 1 CONTRACT SUM

For furnishing all labor, materials, equipment, tools and services and for doing everything required by this Agreement and the Specifications and Drawings, and for completing the work in accordance with the requirements of the Specifications and Drawings, the Owner will pay and the Contractor shall receive as full compensation therefore, in accordance with the attached Bid Proposal Form and related supporting documentation as required to determine the final contract amount, a total sum not to exceed:

Base Bid Amount: \$

Bid Alternate(s) 1 thru x: \$

Negotiated Revisions: \$

Total Contract Amount: \$

ARTICLE 2 CONTRACT DOCUMENTS

The Contract Documents form the Contract. The Contract Documents are complementary and what is required by one shall be binding as if required by all. The Owner and the Contractor mutually agree that the following documents are incorporated into and made a part of this Agreement by reference and form the Contract Documents:

- Scope of Work Dated:
- Contractor’s Proposal Dated:
- Drawings Dated:
- Specifications Dated:
- Addenda (*list*) N/A
- Other Documents (*list*): N/A
- Change Orders

ARTICLE 3 CONTRACT TIME

The Contractor shall commence the work on the Project as directed by the Owner in a written Notice to Proceed. After the referenced date of commencement, all work shall be substantially completed and accepted by the Owner within the number of calendar days stipulated below and as set forth in the Notice to Proceed, after which time, the stipulated liquidated damages provisions shall apply.

Calendar Days:

ARTICLE 4 LIQUIDATED DAMAGES

The Contractor agrees that time is of the essence of this Agreement and further agrees to satisfactorily complete all work in accordance with the Contract Documents within the specified Contract Time plus any adjustments to the Contract Time resulting from approved Change Orders, and failing to do so, agrees to pay, not as a penalty but as liquidated damages, the sum stipulated below for each calendar day in excess of the Contract Time stipulated in this Agreement.

Liquidated Damages: \$

ARTICLE 5 TERMS AND CONDITIONS

The Contractor agrees to provide all labor, materials, equipment, tools, and services, and agrees to do everything required by this Agreement and by the Contract Documents, as necessary to complete all Work required for the Project.

The term Work includes all labor, materials, services, equipment, tools, transportation, power, water, permanent and temporary utilities, connections, provisions for safety, and all incidental and other things necessary to produce the finished construction as described by the Contract Documents.

This Agreement and the Contract Documents incorporated herein constitute the entire agreement between the parties and may be modified only by a written Change Order executed by the parties.

ARTICLE 6 EXECUTION OF AGREEMENT

This Agreement may be executed in counterparts, each having full force and effect of the original. A facsimile copy or electronic copy of a signature may be accepted and shall have the same force and effect as an original signature.

ARTICLE 7 EXAMINATION OF CONTRACT DOCUMENTS

Execution of this Agreement by each party shall constitute the representation by each party that he has examined the contents of all the Contract Documents and that he has read and understands the same, and specifically agrees to be bound thereby.

ARTICLE 8 CONTRACT TIME EXTENSIONS

The Contractor shall not claim or be entitled to any compensation or damages from the Owner because of delay caused by the Owner, the Architect, or any person working for either of them, and any entitlement therefore is hereby waived. The Contractor agrees that his sole remedy shall be an extension of time to complete the Work as provided in the Contract Documents, except that the Owner agrees to compensate the Contractor for any damages resulting from any affirmative, willful act in bad faith performed by the Owner or his employees which unreasonably interferes with the Contractor's ability to complete the Work within the Contract Time.

ARTICLE 9 CHANGES IN THE WORK

A Change Order is an amendment to the Owner-Contractor Agreement and is a written order to the Contractor signed by the Owner and the Contractor, issued after the execution of the Contract, authorizing a change in the Work and/or an adjustment in the Contract Sum or the Contract Time.

The Owner and the Architect have the authority to order minor changes in the Work which do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be binding on the Contractor.

If the Contractor proceeds with changes to the Work without proper written approval, he does so at his own risk.

The costs for changes in the Work may be increased to include a fixed mark-up of 15% for profit and overhead on work done by the General Contractor's own forces. This fixed mark-up shall be full compensation for the cost of supervision, home office overhead, profit, tools, insurance, and all other costs or expenses associated with completing the change in the Work. No other costs or expenses, including, but not limited to, direct daily job costs, general conditions, and/or extended overhead will be paid for time extensions incorporated into a Change Order unless otherwise agreed to in writing by the Owner.

Execution of a Change Order shall be considered complete and final adjustment of the Contract Sum and the Contract Time and represents complete and final resolution of all matters related to, or arising out of, the Change Order.

ARTICLE 10 CORRECTION OF WORK

The Contractor shall promptly correct all work rejected as defective or as failing to conform to the Contract Documents, whether or not fabricated, installed, or completed. The Contractor shall bear all costs of correcting such rejected work, including, but not limited to, the cost for additional professional services.

If the Contractor fails to correct defective or non-conforming work, the Owner may correct it at the Contractor's expense.

ARTICLE 11 SUBSTANTIAL COMPLETION

Substantial Completion is the stage in the progress of the Work, or a designated portion thereof, when construction is sufficiently complete in accordance with the Contract Documents, so that the Owner can occupy and/or utilize the Work (or portion thereof) for its intended use.

ARTICLE 12 FINAL PAYMENT

When the Work and all requirements of the Contract Documents are fully and satisfactorily completed, the Owner will pay to the Contractor a final payment consisting of the remaining unpaid balance of the Contract Sum due the Contractor. The acceptance of the final payment by the Contractor shall constitute a full and final release and waiver of all Contractor claims and rights of claim against the Owner relating or pertaining to the Work.

Acceptance of the final payment by the Contractor shall terminate the Owner-Contractor Agreement after which time the applicable terms and conditions for Warranties and Insurance shall continue to apply.

ARTICLE 13 STATUTORY REQUIREMENTS

This Agreement shall be construed and interpreted according to the laws of the State of Nevada.

ARTICLE 14 INFORMATION ACCESS

The books, records, documents, and accounting procedures and practices of the Contractor relevant to this Agreement shall be subject to inspection, examination and audit by the State of Nevada, the contracting agency, the State Attorney General, or the State Legislative Auditor.

ARTICLE 15 ASSIGNMENT

The Contractor shall neither assign, transfer, nor delegate any rights, obligations, monies or duties under this Agreement without the prior written consent of the Owner.

ARTICLE 16 INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless the Owner, the Architect, the Architect's consultants, and the agents and employees of any of them from and against all claims, damages, losses, and expenses, including, but not limited to attorneys' fees arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph.

The Owner and the Contractor shall each indemnify the other for any losses principally caused by the indemnifying party. Any indemnification rights described herein shall not be diminished or limited in any way by the limits of insurance. All indemnification obligations of the Contractor shall survive final payment.

ARTICLE 17 USE OF DOCUMENTS

Any drawings, reports, studies, photographs, negatives, or other documents prepared by the Contractor in the performance of his obligations under this Agreement shall be the exclusive property of the Owner and all such materials shall be remitted to the Owner by the Contractor upon completion, termination, or cancellation of this contract. The Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of the Contractor's obligations under this Agreement, without the prior written consent of the Owner.

ARTICLE 18 THE CONTRACTOR

The Contractor shall perform the Work in a timely and workmanlike manner and in strict conformance with the Contract Documents.

The Contractor shall supervise and direct all portions of the Work. The Contractor shall be solely responsible for all construction procedures, methods, techniques, sequences, and safety, and for coordinating all portions of the Work to comply with the Contract Documents. The Contractor shall be responsible for the acts and omissions of his employees and Subcontractors, their agents and employees, and all other persons performing any of the Work.

The Contractor and each Subcontractor shall have and maintain a State of Nevada Contractor's license in good standing for the entire duration of the Contract Time.

The Contractor shall at all times enforce good discipline and order among his employees and Subcontractors and shall, at his own cost, provide the security necessary to adequately protect the Work.

The Contractor shall at all times, and at his own cost, safely guard and protect the Owner's property, the Work, and all property adjacent to the Project, from damage, injury, or loss in connection with the Project and shall replace or make good any such damage, injury, or loss. The Contractor shall be responsible for the protection of adjacent property and the maintenance of passageways, guard fences, and other protective facilities.

The Contractor shall give all notices and shall comply with all laws, ordinances, rules, orders, and regulations of all public authorities, relating to the performance of the Work.

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, and the Contract Documents, and shall not unreasonably encumber the site. The Contractor shall at all times keep the site and the Work free from accumulation of waste materials and rubbish resulting from his operations.

Upon completion of the Work the Contractor shall remove all waste materials, rubbish, tools, construction equipment and machinery, and surplus materials from the Project site. The Contractor shall clean all surfaces and leave the Work in a finished, cleaned, washed, waxed, and polished condition.

ARTICLE 19 DISPUTE RESOLUTION

Each party shall be responsible for their own costs, expenses, consultant fees, and attorney's fees incurred in the presentation or defense of any claim, dispute, or controversy brought before the mediator.

If a dispute is unresolved after formal mediation, the parties may file a lawsuit in a court of competent jurisdiction. Nothing in these Contract Documents is intended to prevent the parties from agreeing to another form of dispute resolution; including, but not limited to, binding or non-binding arbitration. In the event litigation is initiated the parties to a judicial action may agree to a form of alternative dispute resolution pursuant to Nevada Revised Statutes Section 38.250, or as otherwise agreed between the parties and the judge.

ARTICLE 20 WARRANTY REQUIREMENTS

The Contractor shall unconditionally guarantee all workmanship and materials incorporated in the Work to be and remain free of defects for a period of one year from the date of the Certificate of Substantial Completion, or for such longer periods as stipulated in the Contract Documents.

The obligations of the Contractor herein shall be in addition to and not in limitation of any obligation imposed by law.

ARTICLE 21 TERMINATION BY THE OWNER

If any one of the following occurs, then the Owner may, without prejudice to any other right or remedy, and after giving the Contractor 7 days written notice, terminate the employment of the Contractor.

1. The Contractor is adjudged bankrupt.
2. The Contractor makes a general assignment for the benefit of his creditors.
3. A receiver is appointed on account of the Contractor's insolvency.
4. The Contractor refuses or fails to supply an adequate number of properly skilled workmen, proper supervision, or proper materials.
5. The Contractor fails to make prompt payment to Subcontractors or to materials suppliers for materials or labor.
6. The Contractor disregards any law, ordinance, rule, regulation, or order of any public authority having jurisdiction.
7. The Contractor otherwise breaches the Contract.

Upon termination by the Owner, the Owner may take possession of the site and of all materials, equipment, tools, and machinery thereon owned by the Contractor and may finish the Work utilizing whatever means and methods the Owner deems appropriate.

Should the Owner terminate the Contract for any of the aforementioned reasons, the Contractor shall not be entitled to receive any further payment until the entire Work is fully complete and the actual amount due the Contractor can be properly determined.

If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including compensation for any additional professional services, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor or his Surety shall promptly pay the difference to the Owner. This obligation for payment survives the termination of the Contract.

Upon 7 days written notice the Owner expressly reserves the right to terminate the Contract at any time due to a national emergency, court injunction, or for any reason determined to be in the best interest of the State of Nevada. The Contractor shall be paid for work completed and approved, including reasonable overhead, profit, and termination costs. The Contractor will not be entitled to overhead and profit on any unperformed work.

ARTICLE 22 TERMINATION BY THE CONTRACTOR

The Contractor may, upon 7 days written notice, terminate the Contract after the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, of a Subcontractor, or their employees or agents; or due to issuance of a court order or other order from a public authority having jurisdiction. In such event, the Contractor will only be entitled to overhead and profit on completed work.

ARTICLE 23 FAIR EMPLOYMENT PRACTICES

In connection with the performance of work under this Agreement, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, or age. Such agreement shall include, but not be limited 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 apprenticeship.

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

Any violation of such provision by the Contractor shall constitute a material breach of contract.

ARTICLE 24 INSURANCE

The Contractor shall provide Commercial General Liability and Workers Compensation Insurance in the amounts listed herein. The Owner shall be named as additional insured on all liability policies required in this Section.

A certificate of insurance evidencing the required coverage, including additional insured endorsements, shall be filed with the Owner prior to the Contractor mobilizing onto the project site and prior to commencement of any work on the Project. The required insurance coverage shall remain in effect at all times during construction. If the Contractor fails to comply with this Article, the Contractor shall be considered in material default of the Contract.

The Contractor waives all rights of subrogation against the Owner, the Owner’s officers, agents and employees, and the Architect, the Architect’s officers, agents and employees, for losses arising from the Work.

Commercial General Liability Insurance

Minimum limits for all contract amounts are to be applicable only to work performed under this Contract and shall be those that would be provided with the attachment of the Amendment of Limits (Designated Project or Premises) endorsement.

General Aggregate	\$1,000,000
Products/Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (Any One Fire)	\$NIL
Medical Expense (Any One Person)	\$NIL

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 25 INDEPENDENT CONTRACTOR

The parties agree that the Contractor is an independent contractor and that this Contract is entered into in accordance with Nevada Revised Statutes Section 284.173, which statute in pertinent part provides that the Contractor is not a State employee, and that there shall be no:

1. Withholding of income taxes by the State,
2. Industrial insurance coverage provided by the State,
3. Participation in group insurance plans which may be available to employees of the State,
4. Participation or contribution by either the independent contractor or the State to the Public Employees Retirement System,
5. Accumulation of vacation leave or sick leave,
6. Unemployment compensation coverage provided by the State if the requirements of Nevada Revised Statutes Section 612.085 for independent contractors are met.

ARTICLE 26 PREVAILING WAGES

The prevailing wage rates as established by the Office of the Nevada Labor Commissioner must be paid whenever noted in the Contract Documents and/or whenever the Contract Sum is \$85,000 or greater. The applicable wage rates must be posted at the site of the project in a place generally visible to the workmen.

Owner

State Public Works Board

By: _____

Print: Gustavo Nunez, PE

Title: Manager

Date: _____

Contractor

Firm Name

By: _____

Print: _____

Title: _____

Date: _____

State Attorney General

(Approved as to Form Only)

Catherine Cortez Masto

By: _____

Title: Deputy Attorney General

Date: _____

SPWB Project Manager

(Signed as to Review Only)

By: _____ Date: _____

Deputy Manager, Professional Services

(Signed as to Review Only)

By: _____ Date: _____

SPWB Accounting

(Account Codes & Funds Availability Verified)

By: _____ Date: _____

GL No.: _____

Authorization

SPWB Project No.:

Fund Code No:

Assigned Amount:

SPWB Project No.:

Fund Code No:

Assigned Amount:

Distribution

Original, SPWB

SPWB Project Manager

Contractor

Using Agency

Architect/Engineer

SPWB Inspector