

PROFESSIONAL SERVICES CONTRACT
between
Central Shoshone County Water District and Panhandle Area Council
for the
Enaville Plant, Off-site Utilities and Meter Installation Project

This Contract is entered into this ____ day of _____, 2009 by and between Central Shoshone County Water District, 409 Main Street, Kellogg, Idaho, herein referred to as the "DISTRICT" and Panhandle Area Council, 11100 N. Airport Drive, Hayden, Idaho, 83835, herein referred to as the "CONTRACTOR," Witnesseth:

WHEREAS, the DISTRICT desires to engage the CONTRACTOR to render certain services related to the project; and

WHEREAS, the DISTRICT has complied with provisions for solicitation of contractors as cited in OMB Circular A-102; and

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. **EMPLOYMENT OF CONTRACTOR.** The DISTRICT agrees to engage the CONTRACTOR, and the CONTRACTOR agrees to provide the services described in Attachment A in order to provide for Davis Bacon monitoring under the CSCWD Enaville Project for the DISTRICT.
2. **EMPLOYEE-EMPLOYER RELATIONSHIP.** The contracting parties warrant by their signature that no employer-employee relationship is established between the CONTRACTOR and the DISTRICT by the terms of this contract. It is understood by the parties hereto that the CONTRACTOR is an independent contractor and as such neither it nor its employees, if any, are employees of the DISTRICT for purposes of tax, retirement system, or social security (FICA) withholding.
3. **CONTRACTOR'S INSURANCE.** The CONTRACTOR warrants that it has obtained, and will maintain at its expense for the duration of this Contract, statutory worker's compensation coverage, employer's liability and comprehensive general liability insurance coverage for its principals and employees for the services to be performed hereunder. The comprehensive general liability insurance shall have, at a minimum, a coverage limit of at least one million dollars (\$1,000,000) per claim, and two million dollars (\$2,000,000) aggregate.
4. **LIAISON.** The DISTRICT'S designated liaison with the CONTRACTOR is Dennis Norris. The CONTRACTOR'S designated liaison with the DISTRICT will be Nelle Coler as the primary contact and Kay Kitchel, Fiscal Contracts Manager as the secondary contact.
5. **EFFECTIVE DATE AND TIME OF PERFORMANCE.** This Contract takes effect on _____. The services to be performed by the CONTRACTOR will be completed no later than November 30, 2010.

If the services covered by this agreement have not been completed by November 30, 2010, through no fault of the CONTRACTOR, compensation for the extension of services beyond this time shall be re-negotiated.

6. SCOPE OF SERVICES. The Scope of Services is as set forth in the ATTACHMENT A, which by this reference is made a part hereof.

It is understood and agreed by the parties that the services of the CONTRACTOR do not include any of the following: the disbursement or accounting of funds distributed by the DISTRICT'S financial officer, legal advice, fiscal audits or assistance with activities not related to the project.

7. COMPENSATION. For satisfactory completion of services to be provided under this Contract, the DISTRICT, will pay the CONTRACTOR a sum not to exceed \$75,000.00 which the DISTRICT agrees to pay as set forth in ATTACHMENT B, which by this reference is made a part hereof.

8. CONFLICT OF INTEREST. The CONTRACTOR warrants that it presently has no interest and will not acquire any interest, direct or indirect, in the project, which would conflict in any manner or degree with the performance of its services hereunder. The CONTRACTOR further covenants that, in performing this Contract, it will employ no person who has any such interest. Should any conflict of interest arise during the performance of this Contract, it will be disclosed to the DISTRICT.

9. MODIFICATION AND ASSIGNABILITY OF CONTRACT. This Contract contains the entire agreement between the parties, and no statements, promises, or inducements made by either party, or agents of either party, which are not contained in the written Contract, are valid or binding. This Contract may not be enlarged, modified or altered except upon written agreement signed by both parties hereto. The CONTRACTOR may not subcontract or assign it rights (including the right to compensation) or duties arising hereunder without the prior written consent of the DISTRICT. Any subcontractor or assignee will be bound by all of the terms and conditions of this Contract.

10. TERMINATION OF CONTRACT. This Contract may be terminated as follows:

(a) **Termination due to loss of funding.** In the event funding is reduced or is terminated under the project so as to prevent the DISTRICT from paying the CONTRACTOR with American Recovery and Reinvestment Act (ARRA) funds, the DISTRICT will give the CONTRACTOR written notice which sets forth the effective date of the termination and explain the reasons for the termination. The notice shall also describe the conditions for any reimbursement for any work completed.

(b) **Termination for Convenience.** The DISTRICT may terminate this Contract in whole, or in part, for the convenience of the DISTRICT when the DISTRICT determines that the continuation of the project is not in the best interest of both parties and that further expenditure of funds will not produce any results. The DISTRICT shall notify in writing the conditions, effective date and make reasonable payment for work completed.

(c) **Termination for Cause.**

- (i) If the DISTRICT determines that the CONTRACTOR has failed to comply with the terms and conditions of this Contract, it may terminate this Contract in whole or in part, at any time before the date of completion. If the CONTRACTOR fails to comply with any of the terms and conditions of this Contract, the DISTRICT may give notice, in writing, to the CONTRACTOR of any or all deficiencies claimed. The notice will be sufficient for all purposes if it describes the default in general terms. If all defaults are not cured and corrected within a reasonable period as specified in the notice, the DISTRICT may, with no further notice, declare this Contract to be terminated. The CONTRACTOR will thereafter be entitled to receive payment for those services reasonably performed to the date of termination less the amount of reasonable damages suffered by the DISTRICT by reason of the CONTRACTOR'S failure to comply with this Contract.

11. **CIVIL RIGHTS ACT OF 1964.** The CONTRACTOR will abide by the provisions of the Civil Rights Act of 1964 which states that under Title VI, no person may, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

12. **NONDISCRIMINATION.** The CONTRACTOR will not discriminate against any employee or applicant for employment on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

13. **REPORTS AND INFORMATION.** The CONTRACTOR will maintain accounts and records to assure documentation of Davis-Bacon compliance. These records will be made available to the DISTRICT or its authorized representative, and will be retained for four (4) years after the expiration of this Contract.

14. **ACCESS TO RECORDS.** It is expressly understood that the CONTRACTOR'S records relating to this Contract will be available during normal business hours for inspection by the DISTRICT, the U.S. Comptroller General, Office of Inspector General, and, when required by law, representatives of the State of Idaho.

15. **CONSTRUCTION AND VENUE.** This Contract will be construed under and governed by the laws of the State of Idaho. In the event of litigation concerning it, venue is the First Judicial District in and for the County of Kootenai, State of Idaho.

16. **INDEMNIFICATION.** The CONTRACTOR waives any and all claims and recourse against the DISTRICT, including the right of contribution for loss and damage to persons or property arising from, growing out of, or in any way connected with or incident to the CONTRACTOR'S performance of this Contract except for liability arising out of concurrent or sole negligence of the DISTRICT or its officers, agents or employees. Further, the CONTRACTOR will indemnify, hold harmless, the DISTRICT against any and all claims, demands, damages, costs, expenses or liability arising out of the CONTRACTOR'S performance of this Contract except for liability arising out of the concurrent or sole negligence of the DISTRICT or its officers, agents or employees.

17. **LEGAL FEES.** In the event either party incurs legal expenses to enforce the terms and conditions of this Contract, the prevailing party is entitled to recover reasonable attorney's fees and other costs and expenses, whether the same are incurred with or without suit.

18. **SPECIAL WARRANTY.** The CONTRACTOR warrants that nothing of monetary value has been given, promised or implied as remuneration or inducement to enter into this Contract. The CONTRACTOR further declares that no improper personal, political or social activities have been used or attempted in an effort to influence the outcome of the competition, discussion, or negotiation leading to the award of this Contract. Any such activity by the CONTRACTOR shall make this Contract null and void.

24. **ATTACHMENTS.** Attachment A "Scope of Services" and Attachment B "Compensation-Pay Schedule" are attached hereto, which by this reference is made a part thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Contract.

PANHANDLE AREA COUNCIL

CENTRAL SHOSHONE COUNTY WATER DISTRICT

BY: _____
James L. Deffenbaugh
Executive Director

BY: _____
Duane Little
Chairman

DATE: _____

DATE: _____

ATTEST: _____

ATTEST: _____

ATTACHMENT A
SCOPE OF SERVICES
PANHANDLE AREA COUNCIL

The CONTRACTOR shall perform the following services:

A. DAVIS BACON MONITORING

Primary Responsibility: Ms. Nelle Coler and Ms. Kay Kitchel

1. Review Davis-Bacon wage rate applicable to the project.
2. Document subcontractor eligibility and Davis-Bacon certifications.
3. Hold a Preconstruction Conference with contractors to discuss labor standards and other requirements for Davis Bacon compliance.
4. Request additional classifications as necessary.
5. Collect, review and verify all payrolls.
6. Conduct worker interviews and verify against payrolls.
7. Advice contractors and sub-contractors of errors resulting in non-compliance and proper procedures to remedy problems.
8. Report all payroll discrepancies to the DISTRICT.

ATTACHMENT B
COMPENSATION-PAY SCHEDULE
PANHANDLE AREA COUNCIL

The DISTRICT shall pay the CONTRACTOR for performance of the services described in Attachment A, an amount not to exceed \$75,000.00. The fee for service shall be payable on a monthly basis, in increments of \$4,166.66 for a period of 17 months and one payment of \$4,166.78.

17 months @ \$4,166.66
1 month @ \$4,166.78
= \$75,000

Upon written request the DISTRICT shall make monthly payments to the CONTRACTOR. Payments are to be made payable to:

Panhandle Area Council
11100 N. Airport Drive
Hayden, Idaho 83835