

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

THIS AGREEMENT is entered into between Washoe County Health District, a political subdivision of the State of Nevada ("County") and Keep Truckee Meadows Beautiful ("Consultant"), collectively (the "Parties").

WITNESSETH:

WHEREAS, County desires to engage Consultant to render certain consulting services in Support of "Waste Removal, Waste Reduction and Partner Engagement" (the "Project"); and

WHEREAS, County requires certain professional services in connection with the Project, as described in Exhibit "A", Scope of Work (the "Services"); and

WHEREAS, Consultant represents that it is duly qualified, ready, willing and able to provide the Services by virtue of its education, training and experience; and

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

ARTICLE 1 - EFFECTIVE DATE

The effective date of this Agreement shall be July 1, 2021 through June 30, 2023 with no renewals.

CONSULTANT shall begin performance of services as provided herein upon notice to proceed and shall complete all Services identified in Exhibit A, Scope of Work in accordance with the Standard of Care as set forth in Article 5 herein no later than July 1, 2021, unless this Agreement is terminated sooner in accordance with its terms.

ARTICLE 2 - SERVICES TO BE PERFORMED BY CONSULTANT

Consultant agrees to perform and complete all Services identified in Exhibit A, Scope of Work under this Agreement, and any amendment thereto in accordance with the Standard of Care as set forth in Article 5 herein. Consultant shall be responsible for the quality, technical accuracy, completeness and coordination of all reports, information, specifications and other items and services furnished under this Agreement and any amendments hereto. County reserves the right to inspect, comment on, and request revision of, all Services identified in Exhibit A and any amendments thereto performed by Consultant prior to acceptance, and Consultant warrants that such Services shall be fit and sufficient for the purposes expressed in, or reasonably inferred from, this Agreement and any amendments hereto.

Failure to provide major deliverables, including, but not limited to, Services identified in Exhibit A, Scope of Work, shall constitute a material breach of this Agreement, unless waived in writing by the County.

ARTICLE 3 - COMPENSATION

3.1 Compensation for Services

For Services defined in Article 2 above, Consultant's compensation shall be determined in accordance with the Fee Schedule described in Exhibit "A", which is attached hereto and incorporated by reference as part of the Agreement and shall not exceed the sum of \$240,000.00. Consultant shall satisfy its obligations hereunder without additional cost or expense to County



during the term of this Agreement other than the heretofore stated compensation and the fee schedule described in Exhibit A. The Fee Schedule may be renegotiated at the end of one (1) year upon request by either the County or the Consultant. Renegotiated fees are subject to approval by County's Board of County Commissioners. The actual costs charged for the work by Consultant in accordance with this provision shall be full compensation to Consultant for all Services and duties required by the Scope of Work, including, but not limited to: costs of supplies, facilities and equipment; costs of labor and services of employees, consultants and sub-consultants engaged by Consultant; travel expenses, telephone charges, typing, duplicating, costs of insurance, and all items of general overhead. Consultant shall submit billings on a monthly basis.

3.2 Compensation for Additional Services

If County requests Consultant to perform additional services, other than those required to be performed under Services identified in Exhibit A, Scope of Work, the cost of such additional services shall be determined prior to commencing additional work. All additional services and amount of payment must be authorized in writing by County prior to commencing any work for such services.

3.3 Methods and Times of Payment

Consultant shall submit to County monthly progress invoices indicating the number of hours each employee provided services and other allowed direct expenses. Payment to Consultant for work on the Project shall be made within forty-five (45) days after receipt and approval of Consultant's invoice, said approval not to be unreasonably withheld. Payment by County of invoices or requests for payment shall not constitute acceptance by County of work performed on the Project by Consultant. No penalty shall be imposed upon the County for payment(s) received by Consultant after forty-five days.

3.4 Dispute of Work

County shall notify Consultant in writing within thirty (30) days of receipt of the work, or portion of work, which is not approved. For work, or portions of the work, which are unapproved, the County and Consultant shall develop a mutually acceptable method to resolve the dispute within thirty (30) days of receipt by the Consultant of notice from the County. If the County and Consultant cannot reasonably agree to remedy the dispute of unapproved work within the thirty-day period, the work shall be terminated or suspended per Article 12.

ARTICLE 4 - TIME SCHEDULE FOR COMPLETION

The Services identified in Exhibit A, Scope of Work on the Project shall be diligently performed and be completed monthly through June 30, 2023. Consultant shall be granted time extensions for items within the phases of the Project in writing by County if the time schedules cannot be met because of delays beyond Consultant's reasonable control, including, but not limited to, County's failure to furnish information, or to approve or disapprove Consultant's work promptly. Consultant will provide to County a monthly report including a schedule identifying progress or work completed, problems or difficulties being encountered, work to be initiated during the following month and other useful information. This report will be submitted on the first day of each month and will be in a format suitable for submittal to other interested agencies. Consultant's failure to submit promptly the monthly progress report may cause delay in payment from the County.

ARTICLE 5 - STANDARD OF CARE

Consultant shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily provided under similar circumstances and Consultant shall, at no cost to County, re-perform services which fail to satisfy the foregoing standard of care provided that Consultant is notified in writing by County of the deficiency within six (6) months of performance of the deficient Services. Such re-performed Services may include, but not be limited to, correcting errors and omissions, or any other deficiencies in designs, drawings, specifications and reports. County reserves the right to inspect, comment on, and request revision of, all Services performed by Consultant prior to acceptance, and Consultant warrants that Services shall be fit and sufficient for the purposes expressed in and intended by this Agreement and any amendments thereto. Failure to provide Services or re-performed Services in accordance with the foregoing standard of care shall constitute a material breach of this Agreement unless waived by the County. Review and approvals by County do not relieve Consultant of its responsibilities under this Article. Except as is otherwise provided for in this Article, the re-performance of Services is the Consultant's entire responsibility and the County's exclusive remedy for Services rendered or to be rendered hereunder, and no additional warranties, guarantees or obligations are to be implied.

ARTICLE 6 - OPINIONS OF COST AND SCHEDULE

Since Consultant has no control over the cost of labor, materials, equipment or services furnished by others, including over any other consultants', subcontractors', or vendors' methods of determining prices, or over competitive bidding or market conditions, Consultant's cost estimates shall be made on the basis of qualification and experience.

Since Consultant has no control over the resources provided by others to meet contract schedules, Consultant's forecast schedules for completion of Services shall be established based on generally acceptable schedules for and performance standards of similarly situated professionals qualified and experienced to perform the Services. Consultant cannot and does not guarantee that proposals, bids or actual project costs will not vary from its cost estimates or that actual schedules will not vary from its forecast schedules.

ARTICLE 7 - INDEPENDENT CONTRACTOR

Consultant undertakes performance of the Services as an independent contractor and shall be wholly responsible for the methods of performance. County shall have no right to supervise the methods used by Consultant. County shall have the right to observe such performance. Consultant shall work closely with County in performing Services under this Agreement.

ARTICLE 8 - PERMITS AND LICENSES

Consultant shall procure the permits, certificates, and licenses necessary to allow Consultant to perform the Services. Consultant shall not be responsible for procuring permits, certificates, and licenses required for any construction unless such responsibilities are specifically assigned to Consultant in Exhibit A, Scope of Services.



ARTICLE 9 - COUNTY'S RESPONSIBILITY

County shall provide any information authorized by law in its possession that is requested by Consultant and is necessary to complete the Project. County shall assist Consultant in obtaining access to public and private lands so Consultant can perform the Services. County shall examine all studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by Consultant and shall render decisions pertaining thereto within a reasonable time so as not to delay the work of Consultant.

ARTICLE 10 - REUSE OF DOCUMENTS

All documents, including computer files, drawings, specifications, and computer software, prepared by Consultant pursuant to this Agreement are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by County or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by Consultant for the specific purpose intended will be at County's sole risk and without liability or legal exposure to Consultant; and County shall indemnify and hold harmless Consultant against all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting from such reuse. Any such verification or adaptation will entitle Consultant to further compensation at rates to be agreed upon by County and Consultant.

Copies of all documents, including reports, computer files, drawings, specifications, and computer software, prepared by Consultant pursuant to this agreement will be provided to the County in electronic format accompanied by the appropriate documentation necessary to catalog them in the context of this project.

When transferring data in electronic media format, Consultant makes no representation as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by Consultant at the beginning of the Project.

Because the data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. Consultant shall not be responsible to maintain documents stored in electronic media format after acceptance by County.

ARTICLE 11 - TERMINATION OR EXTENSION OF CONTRACT

Either Party may terminate this Agreement by written notice to the other Party if the other Party is in material breach or default of any provision of this Agreement and does not remedy such breach or default, or provide satisfactory evidence that such default will be expeditiously remedied, within thirty (30) days after being given such notice. In the event of such termination, County shall pay Consultant for all Services satisfactorily performed to the date of termination.

County, in its sole discretion, shall have the right to terminate this Agreement or suspend performance thereof for County's convenience upon written notice to Consultant, and Consultant

shall terminate or suspend performance of services within thirty (30) days on a schedule acceptable to County. In the event of termination or suspension for County's convenience, County shall pay Consultant for all Services performed in accordance with the terms of this Agreement.

In the event that the County's governing body fails to appropriate or budget funds for the purposes specified in this Agreement, or that the County's governing body has been required, in its sole judgment, to amend previous appropriations or budgeted amounts to eliminate or reduce funding for the purposes of this Agreement, this Agreement shall be terminated without penalty, charge, or sanction.

ARTICLE 12 - NONDISCLOSURE OF PROPRIETARY INFORMATION

Consultant shall consider all information provided by County to be proprietary unless such information is available from public sources, was known to Consultant prior to the execution of this Agreement, was received by Consultant from a third-party source not under any obligation of confidentiality to the County, or is required by law or ordered to be disclosed in a regulatory or judicial proceeding. Consultant shall not publish or disclose proprietary information for any purpose other than the performance of the Services without the prior written authorization of County or in response to legal process or as required by the regulations of public entities.

ARTICLE 13 - NOTICE

Any notice, demand, or request required by or made pursuant to this Agreement shall be deemed properly made if personally delivered in writing or deposited in the United States mail, postage prepaid, to the address specified below:

To County:

To Consultant:

Wes Rubio
Washoe County Health District
1001 East 9th Street
Reno, NV 89512

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Consultant and County.

ARTICLE 14 - UNCONTROLLABLE FORCES

Neither County nor Consultant shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to uncontrollable forces the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid and is not reasonably foreseeable at the time of entering into this Agreement. The term "uncontrollable forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the control of the non-performing party. It includes, but is not limited to, fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, inability to procure permits, licenses, or authorizations from any state, local, or federal agency or person for any of the supplies, materials, accesses, or services required to be provided by either County or Consultant under this Agreement, strikes, work slowdowns or other labor disturbances, and judicial restraint. Consultant shall be paid for services performed prior to the delay plus related costs incurred attributable to the delay.

Neither Party shall, however, be excused from performance if nonperformance is due to uncontrollable forces which are removable or remediable nor which the non-performing Party could have, with reasonable dispatch removed or remedied. The provisions of this Article shall not be interpreted or construed to require Consultant or County to prevent, settle, or otherwise avoid a strike, work slowdown, or other labor action. The non-performing Party shall upon being prevented or delayed from performance by an uncontrollable force, immediately give written notice to the other Party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

ARTICLE 15 - GOVERNING LAW-VENUE

Nevada law governs this Agreement and all adversarial proceedings arising out of this Agreement or arising out of planning or constructing the Project outlined in Article 2 – Services to be Performed by Consultant. Venue for all adversarial proceedings arising out of this Agreement or arising out of planning or constructing the Project outlined in Article 2 – Services to be Performed by Consultant shall be in state district court in Washoe County, Nevada.

ARTICLE 16 - MISCELLANEOUS

16.1 Nonwaiver

A waiver by either County or Consultant of any breach of this Agreement shall not be binding upon the waiving Party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

16.2 Severability

If any provision of this Agreement is held to be unenforceable, then that provision is to be construed either by modifying it to the minimum extent necessary to make it enforceable or disregarding it. If an unenforceable provision is modified or disregarded in accordance with this Article 16, the rest of the Agreement is to remain in effect as written, and the unenforceable provision is to remain as written in any circumstances other than those in which the provision is held to be unenforceable.

16.3 Attorney Fees

The prevailing party in any dispute arising out this Agreement or Consultant's work described in Exhibit A – Scope of Work, is entitled to reasonable costs and attorneys' fees.

ARTICLE 17 - INTEGRATION AND MODIFICATION

This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by each of the Parties. Unless otherwise specified in writing, if there is any inconsistency between the terms of this Agreement and any other agreement between the Parties, the terms of this Agreement shall control.

In the event of any conflict between the documents that make up this Agreement, the documents will prevail in the following order: the Agreement for Professional Consulting Services Agreement, Insurance Exhibit "B" and then any other agreement / exhibits.

ARTICLE 18 - SUCCESSORS AND ASSIGNS

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County and Consultant each binds itself and its directors, officers, partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives of such other party, in respect to all covenants, agreements, and obligations of this Agreement.

ARTICLE 19 - ASSIGNMENT

Neither County nor Consultant shall assign, sublet, or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the other, except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Consultant from employing such independent consultants, associates, and subcontractors, as he may deem appropriate to assist him in the performance of the Services hereunder.

ARTICLE 20 - THIRD PARTY RIGHTS

Nothing herein shall be construed to give any rights or benefits to anyone other than County and Consultant.

ARTICLE 21 – INDEMNIFICATION AND INSURANCE

Washoe County has established specific indemnification and insurance requirements for agreements/contracts with consultants, engineers, and architects to help assure that reasonable insurance coverage is maintained. Indemnification and hold harmless clauses are intended to assure that consultants accept and are able to pay for the loss or liability related to their activities. Exhibit “B” Insurance Specifications is included by reference. All conditions and requirements identified in this exhibit shall be completed prior to the commencement of any work under this Agreement.

ARTICLE 22 – LIMITED LIABILITY

County will not waive and intends to assert available defenses and limitations contained in Chapter 41 of the Nevada Revised Statutes. Contract liability of both parties shall not be subject to punitive damages. Actual damages for the County’s breach of this Agreement shall never exceed the amount of funds that have been appropriated for payment under this Agreement, but not yet paid, for the fiscal year budget in existence at the time of the breach.

ARTICLE 23 - ORGANIZATION’S CERTIFICATION

Consultant, its principals and agents, to the best of its knowledge and belief:

- a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or state department or agency;
- b) Have not within a three year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in (ii) above;
- d) Have not within a three-year period preceding this Agreement had one or more public transactions (Federal, State, or local) terminated for cause or default; and
- e) Understand that a false statement on this certification may be grounds for rejection or termination of this Agreement. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

IN WITNESS WHEREOF, the parties have executed this Agreement.

WASHOE COUNTY:

Dated this ____ day of _____, 2021

By _____
Mark Stewart
Purchasing & Contracts Manager

CONSULTANT:

Dated this 14TH day of APRIL, 2021

By 
MARK D. CAMERON
KTMB, EXECUTIVE DIRECTOR



Exhibit A – Scope of Work
Agreement for Waste Removal, Waste Reduction and Partner Engagement
Total contract shall not to exceed \$240,000 (\$10,000.00 per month) for the term
July 1, 2021 - June 30, 2023

The following contract outlines current Keep Truckee Meadows Beautiful (KTMB) projects and programs that aid in Waste Removal and Waste Reduction activities aligned with the Solid Waste Management Program of the Environmental Health Services Division:

Waste Removal

KTMB volunteer and community engagement waste removal programs

1. KTMB will maintain and grow their Adopt-A-Spot Program to engage local citizen groups, businesses, and organizations in waste removal volunteer activities around the community throughout the year. This includes KTMB's Adopt-A-Spot program, Neighborhood Cleanups, and Open Space Cleanups.
 - a. Continue to support local organizations that organize local community cleanup and collection events (4.6.A)
 - b. Provide more support to KTMB for their local recycling and diversion efforts whether or not they are required to be permitted by the WMP (3.6.C)
2. KTMB will continue coordination and management of major seasonal cleanup related programs throughout our community. These community programs engage a large and diverse group of partners and stakeholders to improve the health and cleanliness of the Truckee Meadows. These major annual programs include KTMB's Litter Index Survey, KTMB's Great Community Cleanup, KTMB's Truckee River Cleanup and KTMB's Christmas Tree Recycling.
 - a. Continue to support local organizations that organize local community cleanup and collection events (4.6.A)
 - b. Provide more support to KTMB for their local recycling and diversion efforts whether or not they are required to be permitted by the WMP (3.6.C)

Waste Reduction

Recycling Guide & Illegal Dumping

1. KTMB will continue to leverage their position in the community to be a voice for education through the reach of their digital and traditional outreach mediums. This outreach will raise awareness for proper waste disposal, ways to reduce waste, as well as information on decreasing and reporting illegal dumping.
 - a. Work with nonprofits and other SWMAs to build a more comprehensive public education program regarding waste generation and how to possibly reduce it in WC and Nevada (2.3.A)
 - b. Provide more support to KTMB for their local recycling and diversion efforts whether or not they are required to be permitted by the WMP (3.6.C)

2. KTMB will expand efforts to reach community members in a variety of settings through in-person outreach and education on Waste Reduction topics including proper disposal, alternatives to illegal dumping, and reporting abilities to eliminate illegal dumping in our community.
 - a. Develop educational materials to reduce wastes prior to generation; i.e., reduced packaging purchasing, reusing products, sending wastes back to the generators (3.6.A)
 - b. Provide more support to KTMB for their local recycling and diversion efforts whether or not they are required to be permitted by the WMP (3.6.C)
3. KTMB will continue to expand their Waste Warriors Youth Education Program to reach local students with information on "the 5 R's Refuse, Reduce, Reuse, Recycle, Rot".
 - a. Provide more support to KTMB for their local recycling and diversion efforts whether or not they are required to be permitted by the WMP (3.6.C)

Partner Engagement

1. KTMB will continue to collaborate with partners on the issues surrounding illegal dumping in our community.
 - a. Continue to monetarily support Keep Truckee Meadows Beautiful (for work surrounding illegal dumping and waste removal issues) (3.6.D)
 - b. Provide a framework to have the ongoing support of the IDTF (3.6.D)
2. KTMB will grow our outreach and engagement efforts with local businesses and partner organizations to encourage and enable sustainability practices, especially regarding waste reduction and diversion rates. KTMB will also provide recognition to businesses engaging in such efforts.
 - a. Partner with local businesses to bring more green initiatives and opportunities to local events and community programs (2.3.C)
 - b. Coordinate with local agencies and non-profit groups to address potential recycling and diversion strategies in the community to include commercial and industrial businesses outreach programs (3.6.C)
 - c. Determine barriers of commercial and industrial businesses to reduce waste generation or utilize waste reduction practices
3. KTMB will continue to coordinate with Sustainability Partners in Northern Nevada (SPINN), the Waste Reduction Workgroup, and WCHD on waste reduction efforts and issues in our community.
 - a. Partner with other organizations and entities to compile resources and for consistent messaging regarding how to manage wastes, organize cleanups, and eliminate illegal dumping and waste storage prior to it becoming an issue in WC (4.6.A)
4. KTMB will continue providing education to local decision-makers on waste-related issues facing our community and lead a Solid Waste & Recycling Advisory Committee to inform Policy and Program Development.
5. KTMB will begin research on conducting a survey to gather info on illegal dumping issues in the Truckee Meadows.

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- a. Work with nonprofits and other SWMAs to build a more comprehensive public education program regarding waste generation and how to possibly reduce it in WC and Nevada (2.3.A)
 - b. Provide more support to KTMB for their local recycling and diversion efforts whether or not they are required to be permitted by the WMP (3.6.C)
- 6. KTMB, with input from WCHD, will work throughout the contract term to formulate SMART goals and strategies of what we are aiming to accomplish with the WCHD contract funds. We will also outline metrics to accompany the new goals and strategies that will allow us to demonstrate and track tangible progress towards our new objectives.
 - a. In service of this work area, KTMB and WCHD staff will meet on a monthly basis throughout the contract term to discuss progress and direction of KTMB's efforts.

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