

**Carson City Culture & Tourism Authority
Agenda Report**

Date Submitted: 05/08/19

Agenda Date Requested: 05/13/19

Time Requested: 10 Minutes

To: Carson City Culture & Tourism Authority - Board of Directors

From: David Peterson, Executive Director

Subject Title: Discussion and possible action regarding approval of Contract No. CTA1920-003, with KPS3, for Web/Digital Development & E-Marketing/Customer Relationship Management (CRM), for a total not to exceed amount of \$135,000.00.

Staff Summary: On April 8, 2019 the CTA Board of Directors directed staff to draft an agreement with terms consistent with RFP No. 1920-102 and the proposal submitted by KPS3 for providing Web/Digital Development & E Marketing/Customer Relationship Management (CRM).

Type of Action Requested:

Resolution

Ordinance

Formal Action/Motion

Other (Specify) Presentation Only

Recommended Board Action: I move to approve Contract No. CTA1920-003, with KPS3, for Web/Digital Development & E-Marketing/Customer Relationship Management (CRM), for a total not to exceed amount of \$135,000.00

Applicable Statute, Code, Policy, Rule or Regulation:

Fiscal Impact: Not to exceed \$135,000.00

Explanation of Impact:

Funding Source: 740-7201-450.03-49

Supporting Material: Contract No. CTA1920-003 with KPS3

Prepared By: Chris Kipp, Operations Manager

INDEPENDENT CONTRACTOR AGREEMENT

Contract No. CTA1920-003

Title: Web/Digital Development & E-Marketing/Customer Relationship Management (CRM)

THIS CONTRACT is made and entered into this 14th day of May, 2019, by and between Carson City Culture & Tourism Authority, a local government entity, hereinafter referred to as “**CTA**”, and **KPS3**, hereinafter referred to as “**CONTRACTOR**”.

WITNESSETH:

WHEREAS, the Carson City Culture & Tourism Authority Board of Directors is authorized pursuant to Nevada Revised Statutes (hereinafter referred to as “**NRS**”) 332 to approve and accept this Contract as set forth in and by the following provisions; and

WHEREAS, CONTRACTOR’S compensation under this agreement 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 **CONTRACTOR** for **CONTRACT No. CTA1920-003** (hereinafter referred to as “**Contract**”) are both necessary and in the best interest of **CTA**; 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 **CONTRACTOR** shall provide and perform the following services set forth in **Exhibit A**, which shall all be attached hereto and incorporated herein by reference for and on behalf of **CTA** and hereinafter referred to as the “**SERVICES**”.

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

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

2.4 **CONTRACTOR** 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. **CONTRACTOR** 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. **CONTRACTOR** shall be responsible for the professional quality and technical accuracy of all **SERVICES** furnished by **CONTRACTOR** to **CTA**.

For CTA Use Only	
CCBL expires	_____
NVCL expires	_____
GL expires	_____
AL expires	_____
WC expires	_____

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2.5 **CONTRACTOR** represents that neither the execution of this Contract nor the rendering of services by **CONTRACTOR** hereunder will violate the provisions of or constitute a default under any other contract or agreement to which **CONTRACTOR** is a party or by which **CONTRACTOR** is bound, or which would preclude **CONTRACTOR** from performing the SERVICES required of **CONTRACTOR** hereunder, or which would impose any liability or obligation upon **CTA** for accepting such SERVICES.

2.6 Before commencing with the performance of any SERVICES under this Contract, **CONTRACTOR** shall obtain all necessary permits and licenses as may be necessary. Before and during the progress of work under this Contract, **CONTRACTOR** 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 **CONTRACTOR** performs any work that is contrary to any such law, ordinance, rule or regulation, it shall bear all the costs arising therefrom.

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

3. **CONTRACT TERM:**

3.1 This Contract shall be effective from May 14, 2019 to June 30, 2020, with the possibility to extend the contract by two additional fiscal years, 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 **CTA** on its website (www.visitcarsoncity.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 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 **CONTRACTOR** shall be addressed to:

Rob Gaedtke, President and CEO
KPS3
500 Ryland St., Ste 300
Reno, NV 89502-1677
775-686-7439
rob@kps3.com

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

Carson City Culture & Tourism Authority
Chris Kipp, Operations Manager
716 N. Carson St., Suite 100
Carson City, NV 89701
775-283-7682
ckipp@visitcarsoncity.com

5. **COMPENSATION:**

5.1 The parties agree that **CONTRACTOR** will provide the SERVICES specified in **Section 2** (SCOPE OF WORK) and **CTA** agrees to pay **CONTRACTOR** the Contract's compensation based upon Time and Materials and the Scope of Work Fee Schedule for a not to exceed maximum amount of one hundred and thirty five thousand dollars (\$135,000.00), 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 **CTA** does not agree to reimburse **CONTRACTOR** for expenses unless otherwise specified.

6. **TIMELINESS OF BILLING SUBMISSION:**

6.1 The parties agree that timeliness of billing is of the essence to this Contract and recognize that **CTA** is on a fiscal year which is defined as the period beginning July 1 and ending June 30 of the following year. All billings for dates of service prior to July 1 must be submitted to **CTA** no later than the July 15th of the same year. A billing submitted after the first Friday in August will subject **CONTRACTOR** to an administrative fee not to exceed \$100.00. The parties hereby agree this is a reasonable estimate of the additional costs to **CTA** of processing the billing as a stale claim and that this amount will be deducted from the stale claim payment due to **CONTRACTOR**.

7. **CONTRACT TERMINATION:**

7.1 Termination Without Cause:

7.1.1 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.

7.1.2 **CTA** 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 **CONTRACTOR** be entitled to anticipated profits on items of SERVICES not performed as of the effective date of the termination or compensation

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for any other item, including but not limited to, unabsorbed overhead. **CONTRACTOR** 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 subcontractor to make claims against **CONTRACTOR** for damages due to breach of contract, lost profit on items of SERVICES not performed, or unabsorbed overhead, in the event of a convenience termination.

7.2 Termination for Nonappropriation:

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 City does not acquire and appropriate the funding necessary to perform in accordance with the terms of the Contract, the Contract shall automatically terminate upon **CTA'S** notice to **CONTRACTOR** of such nonappropriation, and no claim or cause of action may be based upon any such nonappropriation.

7.3 Cause Termination for Default or Breach:

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

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

7.3.2.1 If **CONTRACTOR** 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

7.3.2.2 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 **CONTRACTOR** 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

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

7.3.2.4 If **CTA** materially breaches any material duty under this Contract and any such breach impairs **CONTRACTOR'S** ability to perform; or

7.3.2.5 If it is found by **CTA** that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by **CONTRACTOR**, or any agent or representative of **CONTRACTOR**, to any officer or employee of **CTA** 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

7.3.2.6 If it is found by **CTA** that **CONTRACTOR** has failed to disclose any material conflict of interest relative to the performance of this Contract.

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7.4 Time to Correct (Declared Default or Breach):

7.4.1 Termination upon a declared default or breach may be exercised only after providing thirty (30) 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 nonappropriation.

7.5 Winding Up Affairs Upon Termination:

7.5.1 In the event of termination of this Contract for any reason, the parties agree that the provisions of this **Subsection 7.5** survive termination:

7.5.1.1 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

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

7.5.1.3 **CONTRACTOR** shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by **CTA**; and

7.5.1.4 **CONTRACTOR** shall preserve, protect, and promptly deliver into **CTA** possession all proprietary information in accordance with "**Section 19**".

7.6 Notice of Termination:

7.6.1 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).

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8. 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, 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. **CTA** may set off consideration against any unpaid obligation of **CONTRACTOR** to **CTA**.

9. LIMITED LIABILITY:

CTA will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. 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 **CTA** breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to **CONTRACTOR**, for the fiscal year budget in existence at the time of the breach. **CONTRACTOR'S** tort liability shall not be limited.

10. 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.

11. INDEMNIFICATION:

11.1 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.

11.2 Except as otherwise provided in **Subsection 11.4** 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:

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

11.2.2 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.

11.3 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.

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11.4 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.

12. **INDEPENDENT CONTRACTOR:**

12.1 **CONTRACTOR**, 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 **CTA**, except as to the results of the SERVICES, and not as to the means by which the SERVICES are accomplished.

12.2 It is mutually agreed that **CONTRACTOR** is associated with **CTA** 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. **CONTRACTOR** 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.

12.3 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 **CTA** whatsoever with respect to the indebtedness, liabilities, and obligations of **CONTRACTOR** or any other party.

12.4 **CONTRACTOR**, in addition to **Section 11** (INDEMNIFICATION), shall indemnify and hold **CTA** harmless from, and defend **CTA** 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, **CONTRACTOR'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.

12.5 Neither **CONTRACTOR** nor its employees, agents, or representatives shall be considered employees, agents, or representatives of **CTA**.

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

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

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

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

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

13.5 *Insurance Coverage (13.6 through 13.23):*

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13.6 **CONTRACTOR** shall, at **CONTRACTOR'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 **CTA**, the required insurance shall be in effect prior to the commencement of work by **CONTRACTOR** and shall continue in force as appropriate until the later of:

13.6.1 Final acceptance by **CTA** of the completion of this Contract; or

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

13.6.3 Any insurance or self-insurance available to **CTA** under its coverage(s) shall be in excess of and non-contributing with any insurance required from **CONTRACTOR**. **CONTRACTOR'S** insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by **CTA**, **CONTRACTOR** shall provide **CTA** 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 by this Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as **CONTRACTOR** has knowledge of any such failure, **CONTRACTOR** shall immediately notify **CTA** and immediately replace such insurance or bond with an insurer meeting the requirements.

13.7 *General Insurance Requirements (13.8 through 13.23):*

13.8 **Certificate Holder:** Each certificate shall list Carson City Culture & Tourism Authority, 716 N. Carson Street, Suite 100, Carson City, NV 89701 as a certificate holder.

13.9 **Additional Insured:** By endorsement to the general liability insurance policy evidenced by **CONTRACTOR**, Carson City Culture & Tourism Authority, its officers, employees and immune contractors shall be named as additional insureds for all liability arising from this Contract.

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

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

13.12 **Deductibles and Self-Insured Retentions:** Insurance maintained by **CONTRACTOR** shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by **CTA**. Such approval shall not relieve **CONTRACTOR** 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 **CTA**.

13.13 **Policy Cancellation:** Except for ten (10) calendar days' notice for non-payment of premium, premium, **CONTRACTOR** or its insurers must provide thirty (30) calendar days prior written notice to Carson City Culture & Tourism Authority 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 to Carson City Culture & Tourism Authority, 716 N. Carson Street, Suite 100, Carson City, NV 89701. 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 **CTA**.

13.14 **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.

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13.15 **Evidence of Insurance:** Prior to commencement of work, **CONTRACTOR** must provide the following documents to Carson City Culture & Tourism Authority, 716 North Carson Street, Suite 100, Carson City, NV 89701:

13.16 **Certificate of Insurance:** **CONTRACTOR** shall furnish CTA 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 City Culture & Tourism Authority to evidence the insurance policies and coverages required of **CONTRACTOR**.

13.17 **Additional Insured Endorsement:** An Additional Insured Endorsement (CG20 10 or C20 26), signed by an authorized insurance company representative, must be submitted to Carson City Culture & Tourism Authority to evidence the endorsement of **CTA** as an additional insured per **Subsection 13.9** (Additional Insured).

13.18 **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.

13.19 **Review and Approval:** Documents specified above must be submitted for review and approval by **CTA** Purchasing and Contracts prior to the commencement of work by **CONTRACTOR**. Neither approval by **CTA** nor failure to disapprove the insurance furnished by **CONTRACTOR** shall relieve **CONTRACTOR** of **CONTRACTOR'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 **CONTRACTOR** or its sub-contractors, employees or agents to **CTA** or others, and shall be in addition to and not in lieu of any other remedy available to **CTA** under this Contract or otherwise. **CTA** reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

13.20 **COMMERCIAL GENERAL LIABILITY INSURANCE:**

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

13.20.1 *Minimum Limits required:*

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

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

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

13.20.5 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)].

13.20.6 CTA, 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.

13.20.7 This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to CTA There shall be no endorsement or modification of the CGL to make it excess over other available insurance; alternatively, if the CGL

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states that it is excess or pro rata, the policy shall be endorsed to be primary with respect to the additional insured.

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

13.20.9 Contractor waives all rights against CTA 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 CTA with respect to any loss paid under the policy.

13.21 BUSINESS AUTOMOBILE LIABILITY INSURANCE:

13.21.1 *Minimum Limit required:*

13.21.2 Contractor 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.

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

13.21.4 Contractor waives all rights against CTA 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 **CONTRACTOR** pursuant this Contract.

13.22 PROFESSIONAL LIABILITY INSURANCE

13.22.1 *Minimum Limit required:*

13.22.2 **CONTRACTOR** 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.

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

13.22.4 **CONTRACTOR** 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 CTA. 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, **CONTRACTOR** shall purchase Extended Reporting Period coverage for claims arising out of **CONTRACTOR'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.

13.22.5 A certified copy of this policy may be required.

13.23 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:

13.23.1 **CONTRACTOR** 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

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\$1,000,000 each employee for bodily injury by disease.

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

13.23.3 **CONTRACTOR** waives all rights against CTA 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 Contractor pursuant to this Contract. Contractor shall obtain an endorsement equivalent to WC 00 03 13 to affect this waiver.

14. BUSINESS LICENSE:

14.1 **CONTRACTOR** shall not commence work before **CONTRACTOR** has provided a copy of his Carson City business license to Carson City Culture & Tourism Authority.

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

15. COMPLIANCE WITH LEGAL OBLIGATIONS:

CONTRACTOR shall procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by **CONTRACTOR** to provide the goods or SERVICES or any services of this Contract. **CONTRACTOR** 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 **CONTRACTOR** in accordance with NRS Chapter 361 generally and NRS 361.157 and 361.159, specifically regarding for profit activity. **CONTRACTOR** agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. **CTA** may set-off against consideration due any delinquent government obligation.

If the CTA was required by NRS 332.039(1) to advertise or request a proposal for this Agreement, by signing this Agreement, the **CONTRACTOR** provides a written certification that the **CONTRACTOR** is not currently engaged in, and during the Term shall not engage in, a Boycott of Israel. The term "Boycott of Israel" has the meaning ascribed to that term in Section 3 of Nevada Senate Bill 26 (2017). The **CONTRACTOR** shall be responsible for fines, penalties, and payment of any State of Nevada or federal funds that may arise (including those that the CTA pays, becomes liable to pay, or becomes liable to repay) as a direct result of the **CONTRACTOR's** non-compliance with this Section.

16. 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.

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17. 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 nonenforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

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

19. CTA 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 **CONTRACTOR** (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of **CTA** and all such materials shall be delivered into **CTA** possession by **CONTRACTOR** upon completion, termination, or cancellation of this Contract. **CONTRACTOR** shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of **CONTRACTOR'S** obligations under this Contract without the prior written consent of **CTA**. Notwithstanding the foregoing, **CTA** shall have no proprietary interest in any materials licensed for use by **CTA** that are subject to patent, trademark or copyright protection.

20. PUBLIC RECORDS:

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

21. CONFIDENTIALITY:

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

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,

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council or board.

23. GENERAL WARRANTY:

CONTRACTOR 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. **CONTRACTOR** acknowledges that this Contract is effective only for the period of time specified in this Contract. Any SERVICES performed by **CONTRACTOR** before this Contract is effective or after it ceases to be effective is performed at the sole risk of **CONTRACTOR**.

25. 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. **CONTRACTOR** consents and agrees to the jurisdiction of the courts of the State of Nevada located in Carson City, Nevada for enforcement of this Contract.

26. 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 **CTA** and **CONTRACTOR** 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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27. 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:

CTA

Carson City Cultural & Tourism Authority Board Chairman
c/o: Chris Kipp, Operations Manager
Carson City Cultural & Tourism Authority
716 North Carson Street, Suite 100
Carson City, Nevada 89701
Telephone: 775-283-7682
ckipp@visitcarsoncity.com

CTA'S LEGAL COUNSEL

Carson City District Attorney

I have reviewed this Contract and approve as to its legal form.

By: _____
Mike Jones, CCCTA Chairman

By: _____
Deputy District Attorney

Dated _____

Dated _____

CONTRACTOR will not be given authorization to begin work until this Contract has been signed by Carson City Culture & Tourism Authority

BY: David Peterson
CCCTA Executive Director

Acct# 740-7201-450.03-49

By: _____

Dated _____

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

CONTRACTOR

BY: ROB GAEDTKE

TITLE: President and CEO

FIRM: KPS3

CARSON CITY BUSINESS LICENSE #: 19-00033371

Address: 500 RYLAND ST STE 300

City: RENO **State:** NV **Zip Code:** 89502-1677

Telephone: 775-686-7439

E-mail Address: rob@kps3.com

(Signature of Contractor)

DATED _____

STATE OF _____)

)ss

County of _____)

Signed and sworn (or affirmed before me on this _____ day of _____, 2019.

(Signature of Notary)

(Notary Stamp)

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SAMPLE INVOICE

Invoice Number: _____

Invoice Date: _____

Invoice Period: _____

Invoice shall be submitted to:

Carson City Culture & Tourism Authority
Attn: Chris Kipp
716 N. Carson St., Suite 100
Carson City NV 89701-4080

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