



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
100 N. Carson Street
Carson City, Nevada 89701-4717
Telephone (775) 684-1100
Fax (775) 684-1108
WEBSITE: <http://ag.state.nv.us/>
E-Mail: aginfo@ag.state.nv.us

FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

August 6, 2001

George N. Benesch, Esq.
Post Office Box 3498
Reno, Nevada 89505-3498

Re: Joint Powers Agreement Between the Carson Water Subconservancy District,
Nevada, and Alpine County, California

Dear Mr. Benesch:

On behalf of the Attorney General, and pursuant to NRS 277.140, I have reviewed the enclosed *Joint Powers Agreement Between the Carson Water Subconservancy District, Nevada, and Alpine County, California*, and find that it is in proper form and is compatible with the laws of the State. I would respectfully suggest, however, that a signature line be added for the Attorney General's "approval as to form and legal compatibility." I am therefore returning the form for amendment and will promptly sign and return it once the change is made.

Please call on me if you have any questions or concerns.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: Thomas M. Patton
THOMAS M. PATTON
First Assistant Attorney General
(775) 684-1116

TMP:GHT:py

NEON AGENCY

Agency Agreement

August 7, 2017

Carson Water Subconservancy District (“**CWSD**” hereafter) and NEON Agency (“**NEON**” hereafter) hereby enter into an agreement whereby NEON will develop a Carson River Healthy Watershed Marketing and Outreach press and media campaign to promote Watershed-Literacy for CWSD in accordance with and subject to the following terms and conditions:

1) **ASSIGNMENT**

NEON’s assignment shall relate to the following product(s) or service(s):

Develop and launch a creative Carson River Healthy Watershed Marketing/Outreach campaign that supports targeted, action-oriented, message delivery methods. See **Exhibit A**: Scope of Work

2) **SAFEGUARDING OF PROPERTY**

NEON shall take all reasonable precautions to safeguard any of CWSD’s property entrusted to our custody or control, but in the absence of negligence on our part or willful disregard by NEON for CWSD’s property rights, NEON shall not be responsible for any loss, damage, destruction, or unauthorized use by others of any such property.

3) **INDEMNITIES**

(a) To the fullest extent permitted by law NEON shall indemnify, hold harmless and defend, not excluding the CWSD's right to participate, the CWSD from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of NEON, its officers, employees and agents.

(b) CWSD will indemnify and hold NEON harmless with respect to any claims or actions instituted by third parties which result from the use by NEON of material furnished by CWSD or where material created by NEON is substantially changed by CWSD. Information or data obtained by NEON from CWSD to substantiate claims made in advertising shall be deemed to be "materials furnished by CWSD."

(c) In the event of any proceeding against CWSD by any regulatory agency or in the event of any court action or self-regulatory action challenging any advertising prepared by NEON, NEON shall assist in the preparation of the defense of such action or proceeding and cooperate with CWSD and CWSD’s attorneys. CWSD will reimburse NEON any out-of-pocket costs NEON may incur in connection with any such action or proceeding.

(d) Neither party waives any right or defense to indemnification that may exist in law or equity.

4) **INSURANCE**

Unless otherwise required in this Agreement, the CWSD and NEON shall, during the performance of the services as provided herein, maintain insurance of the types and amounts specified, and with insurers satisfactory to the other party as follows:

- (a) Comprehensive General Liability including \$1,000,000 per occurrence for bodily injury and property damage; \$1,000,000 Products/Completed Operations Aggregate; \$1,000,000 General Aggregate over all interests.
- (b) Comprehensive Automobile Liability including coverage for owned, non-owned, and hired vehicles: \$1,000,000 Bodily Injury, \$1,000,000 Property Damage.
- (c) NEON shall name CWSD as an additional insured and deliver a certificate to CWSD.

5) **TERM OF AGREEMENT**

- (a) The term of this Agreement will commence on the date of the last signature, and will continue in full force and effect until 12/31/2018, unless extended by written agreement of the parties.
- (b) In the event of termination of this Agreement, the rights, duties and responsibilities of NEON shall continue in full force during the period of notice.

6) **PERFORMANCE**

Should NEON fail to perform any of the services provided for in section 2 above, CWSD shall notify NEON of such non-performance and allow thirty (30) days for NEON to remedy the performance. If the performance has not been satisfied within thirty days, CWSD may withhold payment only for the services not performed in accordance with this Agreement.

7) **SUPPLEMENTS TO AGREEMENT**

The following Exhibits are an integral part of this Agreement:

- (a) Exhibit A: Scope of Work
- (b) Exhibit B: Compensation and Payment
- (c) Exhibit C: Hourly and Overhead Rate Structure

8) **INDEPENDENT CONTRACTOR**

NEON acknowledges that it is furnishing the services contemplated by this Agreement hereto as an independent contractor, and not as an employee or agent of CWSD or any of its affiliates.

9) **OWNERSHIP**

Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under this Agreement), or any other documents or drawings, prepared or in the course of preparation by NEON (or its subcontractors) in performance of its obligations under this Agreement shall be the exclusive property of CWSD and all such materials shall be delivered into CWSD's possession by NEON upon completion, termination, or cancellation of

this Agreement. NEON shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of NEON's obligations under this Agreement without the prior written consent of CWSD. Notwithstanding the foregoing, CWSD shall have no proprietary interest in any materials licensed for use by the State that are subject to patent, trademark, or copyright protection.

10) **AGREEMENT TERMINATION**

- (a) Termination Without Cause. Any discretionary or vested right of renewal notwithstanding, this Agreement may be terminated upon written notice by mutual consent of both parties, or unilaterally by either party without cause.
- (b) Cause Termination for Default or Breach. A default or breach may be declared with or without termination. This Agreement may be terminated by either party upon written notice of default or breach to the other party as follows:
 - (1) If NEON fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Agreement within the time requirements specified in this Agreement or within any granted extension of those time requirements; or
 - (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 NEON to provide the goods or services required by this Agreement is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
 - (3) If NEON becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or
 - (4) If CWSD materially breaches any material duty under this Agreement and any such breach impairs NEON's ability to perform; or
 - (5) If it is found by CWSD that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by NEON, or any agent or representative of NEON, to any officer or employee of CWSD 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
 - (6) If it is found by CWSD that NEON has failed to disclose any material conflict of interest relative to the performance of this Agreement.
- (c) Time to Correct. Termination upon declared default or breach may be exercised only after service of formal written notice as specified in Section 17, Notices, and the subsequent failure of the defaulting party within fifteen (15) calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.
- (d) Winding Up Affairs Upon Termination. In the event of termination of this Agreement for any reason, the parties agree that the provisions of this Section survive termination:
 - (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 Agreement. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;

- (2) NEON shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the CWSD;
- (3) NEON shall execute any documents and take any actions necessary to effectuate an assignment of this Agreement if so requested by the CWSD;
- (4) NEON shall preserve, protect and promptly deliver into CWSD possession all proprietary information in accordance with Section 10, Ownership of Proprietary Information.

11) **RIGHTS UPON TERMINATION**

- (a) Upon termination of this Agreement, NEON shall transfer, assign and make available to CWSD or CWSD's representative, all property and materials in their possession or control belonging to and paid for by CWSD, subject, however, to any rights of third parties of which NEON has informed CWSD.
- (b) NEON also agrees to give all reasonable cooperation toward transferring, with approval of third parties in interest, all contracts and other arrangements with advertising media or others for advertising space, facilities and talent, and other materials yet to be used, and all rights and claims thereto and therein, upon being duly released from the obligation thereof. CWSD recognize that talent contracts with members of certain labor unions or guilds generally cannot be assigned except to signatories to the collective bargaining agreements governing the services rendered by such talent.
- (c) Upon termination, no rights or liabilities shall arise out of this relationship, regardless of any plans which may have been made for future advertising, except that any non-cancelable contracts made on CWSD authorization and still existing at termination hereof, which contracts were not or could not be assigned by NEON to CWSD or someone designated by CWSD, shall be carried to completion by NEON and paid for by CWSD in the manner described in Exhibit B.

12) **BREACH REMEDIES.**

Failure of either party to perform any obligation of this Agreement shall be deemed a breach. Except as otherwise provided for by law or this Agreement, 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 but not limited to actual damages. If the court awards reasonable attorney's fees to the prevailing party, reasonable shall be deemed \$125 per hour.

13) **PUBLIC RECORDS**

Pursuant to NRS 239.010, information or documents received from NEON may be open to public inspection and copying. CWSD has a legal obligation to disclose such information unless a particular record is made confidential by law or a common law balancing of interests. NEON may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that NEON thereby agrees to indemnify and defend CWSD for honoring such a designation. The failure to so label any document that is released by CWSD shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

14) **CONFIDENTIALITY**

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

15) **FEDERAL FUNDING**

It is understood federal funds are being used for payment of all or part of this Agreement:

- (a) NEON certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R pt. 67, Section 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.
- (b) NEON and its subcontracts shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted there under contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.
- (c) NEON and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)

16) **NOTICES**

Any notice pursuant to this Agreement must be given by registered mail or by hand delivery. It will be deemed given on the day of mailing or, in case of hand delivery on the day of delivery.

If to CWSD:

Carson Watershed Subconservancy District
777 E William Street, Suite 110 A
Carson City, NV 89701

If to NEON:

NEON Agency c/o Randy Pease
1065 Sharon Way
Reno, NV 89509

17) **FORCE MAJEURE**

Neither party shall be held responsible for any delay or failure in performance of any part of this Agreement to the extent such delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, act of God, or other similar causes beyond its control and without the fault or negligence of the delayed or non-performing party. The affected party will notify the other party in writing within ten (10) days after the beginning of any such cause that would affect its performance. Notwithstanding, if a party's performance is delayed for a period exceeding thirty (30) days from the date the other party receives notice under this paragraph, the non-affected party will have the right, without any liability to the other party, to terminate this Agreement.

18) **HEADINGS**

Headings in this Agreement are for convenience only, and are not intended to be used in interpreting or construing the terms, covenants, and conditions of this Agreement.

19) **ENTIRE AGREEMENT**

This Agreement constitutes the whole agreement between the parties with respect to the subject matter contained herein, and there are no terms other than those contained herein. No modification or amendment of this Agreement shall be valid unless in writing and signed by the parties hereto.

20) **SEVERABILITY**

Each provision of this Agreement shall be considered separable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable, or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Letter that are valid, enforceable and legal.

21) **GOVERNING LAW**

This Agreement shall be interpreted in accordance with the laws of the State of Nevada pertaining to contracts made and performed entirely therein. If the above accords with CWSD’s understanding and agreement, kindly indicate CWSD consent hereto by signing in the place provided below.

Accepted and Agreed on behalf of:
Carson Water Subconservancy District

Accepted and Agreed on behalf of:
NEON Agency

Signature *Date*

By: Edwin D. James
Title: General Manager

Signature *Date*

By: Randy Pease
Title: President, Managing Director

EXHIBIT A

Scope of Work:

The Carson River Healthy Watershed Marketing/Outreach Campaign is the main outreach portion of CWSD's Watershed-Literacy Program (WLP). The WLP aims to increase community knowledge of watershed issues and encourage actions that reduce nonpoint source pollution (polluted run-off); ultimately leading to water quality improvements.

Context and Background:

1. Watershed-Literacy Project Objectives and Goals

The Watershed-Literacy survey (2015) provided baseline information about watershed resident's knowledge allowing CWSD to target Environmental Education (EE) efforts. The Carson River Coalition's (CRC) vision is: "A Carson River watershed community that believes their behavior impacts watershed wellness and applies their knowledge to act in ways that benefit the watershed as a whole." Thus, improving water quality and reducing Nonpoint Source (NPS) pollution in the Watershed.

2. Watershed-Literacy Implementation Phase III Goals:

(a) Implement suggested actions under Objectives 1, 4-6 in the Watershed-Literacy Action Plan (WLAP) (2015).

Objective 1. Determine how existing programs address main messages and reach target audiences.

Objective 4. Create new and/or modify existing messages and programs. Develop new partnerships that will enhance existing programs and fill identified gaps (in survey analysis).

Objective 5. Conduct a watershed-wide media campaign to increase basic understanding of watershed concept main themes based on gap analysis. Focus on particular audience groups (adult public, youth, and policy/decision makers) using specific messages for particular topics. Messages should be developed using the seven main driving forces.

Objective 6. Implement an on-line interactive Stewardship Pledge that tracks commitments to activities that indicate behavior change.

(b) Create and initiate a creative "Healthy Watershed Campaign" that supports targeted, action-oriented, message delivery methods. The campaign will provide actions that residents can take to improve the health of the Carson River Watershed.

3. Healthy Watershed Campaign

NEON is responsible for creating and communicate informative, engaging, and compelling print, radio, television, social media/online advertisements, brochures, educational materials, public service announcements, and other campaign materials. CWSD will be the lead contact agency, and will coordinate involvement with our broader CRC-EE partners.

4. NEON is tasked to

(a) Develop a focused and market tested outreach "Healthy Watershed" media campaign based on the concepts and recommendations developed in the Watershed-Literacy Action Plan, Watershed-Literacy survey results, Marketing and Communications Plan, the 2016 EE Roundtable, and other relevant research.

- (b) Work with CWSD, our Environmental Education (EE) partners and CRC Education Working Group, NEON will use their expertise to create and test taglines, message content, graphical elements, Public Service Announcements (PSA) (radio and video) and a web interface (including a basic stewardship pledge) for the Healthy Watershed Campaign.
- (c) Work with CWSD, our EE partners, and our CRC Education Working Group NEON will develop and plan a fully interactive stewardship pledge (per Objective 6 of the Watershed-Literacy Action Plan). NEON will be responsible for working with CWSD and the CRC Education Working Group on overall planning of the approach to the pledge and for implementing the initial/basic phase.
- (d) Work with CWSD, our EE partners, and our CRC Education Working Group NEON will develop an overarching campaign brand/tagline, and a minimum of three additional focused messages that tier from the overarching campaign.
 - i) Consensus based on the EE Roundtable on an overarching theme is: "**Connect** our community's **health** and quality of life to the health of their **watershed**." Key words are connection, health, water.
 - ii) Consensus on three initial messages in the campaign that tier from this overarching theme:
 - 1) The Carson River and its watershed is the source of drinking water.
 - 2) Reducing runoff from your property can improve water quality
 - 3) Protect the floodplain from future development
- (e) Target particular areas/audiences per background materials outlined in (a) using various media types (e.g. newspapers, internet, social media, ad space, PSAs (video and voice), Environmental Education partners, point of sale advertising, or other measurable promotional materials). Taglines and graphics will be used to engage audiences to act to improve water quality and the health of the watershed.
- (f) Bring their independent expert knowledge and ideas to spread education and outreach messages through low or no-cost channels to reach as many Carson River Watershed residents, business owners and property owners as possible. This campaign will also include two stakeholder and community awareness events in 2018.
- (g) Create assets and deliverables that may include:
 - i) Overarching Campaign Logo
 - ii) Market tested taglines for overarching campaign and three sub-campaigns
 - iii) Video TV PSAs in English and Spanish
 - iv) Adaption of Floodplains as Community Assets PSAs/training videos with Campaign Tagline, etc.
 - v) Radio PSA
 - vi) Social media design and content integration into existing sites (Facebook and CWSD website).
 - vii) Point of sale advertising media content for co-branding
 - viii) Webpage banners for co-branding on partner websites
 - ix) Other media content (newspaper articles/ads, brochures, etc.)
 - x) On-line overarching Stewardship Pledge planned and Phase 1 implementation
 - xi) Coordination of initial media buy
 - xii) Implement relevant portions of Carson River Marketing and Communication Strategy 2016 (Targeted audience recommendations)
 - xiii) Initial implementation of determined Healthy Watershed Campaign

(h) CWSD may, at any time prior to the completion of the Work, direct, in writing, any changes to the Work, including but not limited to the revision of the Work's scope, time period, or schedule of performance. NEON shall perform such changes to the Work as directed by CWSD in writing and shall be paid for such Work at rates established by the Agreement.

5. Proposed Timeline/Schedule

| | |
|---|--------------------------|
| Staff authorized to proceed by CWSD Board of Directors: | August 16, 2017 |
| Work with CWSD and Stakeholders on campaign creation and assets | August 2017-January 2018 |
| Campaign Reveal to Stakeholders and Initial KickOff | February-March 2018 |
| Media Buy/Blitz | April – October 2018 |
| Media Evaluation | October 2018 |
| Completion no later than: | November 3, 2018 |

EXHIBIT B

CONSIDERATION

1. NEON shall bill CWSD at rates set forth in Exhibit C: Hourly/Overhead Rate Structure for meetings, design, public relations, production and creative work. Media Buys and Production Studio Time shall be billed at cost.
2. NEON will be allowed to collect a 15% discount from Media outlets and production studios. In the event a Media Outlet or Production Studio does not offer a discount, 15% will be billed to CWSD for those services. Billing shall occur monthly, and payment is due NET 30 days. Commission from the media to NEON is not to exceed 15% of gross media placement cost. Should a media vendor offer NEON a commission percentage greater than 15% of gross cost, the difference between the higher commission percentage and the 15% commission will be returned to the CWSD.
3. The budget for this Agreement is between \$40,000 and \$50,000 including staffing for creative, message testing, production, advertising, media buys, printing costs and event promotion.
4. Total consideration is not to exceed \$50,000, unless CWSD approves additional funding in writing.

EXHIBIT C

HOURLY AND OVERHEAD RATE STRUCTURE

1. NEONs hourly billing rate shall be \$100 per man-hour for all work performed, minus media buying (as outlined in Section 2 of Exhibit B).
2. Billing rate includes \$75 per man-hour for labor, plus \$25 per man-hour for overhead (taxes, insurance and benefits).