

Item # 9-3B

**City of Carson City
Agenda Report**

Date Submitted: March 5, 2010

Agenda Date Requested: March 18, 2010
Time Requested: Consent

To: Mayor and Supervisors
From: Purchasing and Contracts

Subject Title: Action to determine that Contract No. 0910-171 is a contract for the services of a professional engineer, professional land surveyor or registered architect; that the selection was made on the basis of the competence and qualifications of the engineer, land surveyor or architect for the type of services to be performed and not on the basis of competitive fees; and therefore not suitable for public bidding pursuant to NRS 625.530; and to approve Contract No. 0910-171 with PacificWest Energy Solutions, Inc. to provide Solar Project through September 13, 2010, for a not to exceed cost of \$66,485.00 to be funded from the Capital Project/Solar Project (ARRA) 275-0620-465-78-15 as provided in FY 2009/2010. (Sandy Scott)

Staff Summary: This Contract is to provide professional services for Solar Project. Consultant is to provide project development, design, and construction management for the Public Works Solar Photovoltaic System Project.

Type of Action Requested: (check one)

☐ Resolution ☐ Ordinance
☒ Formal Action/Motion ☐ Other (Specify)

Does This Action Require A Business Impact Statement: ☐ Yes ☒ No

Recommended Board Action: I move to determine that Contract No. 0910-171 is a contract for the services of a professional engineer, professional land surveyor or registered architect; that the selection was made on the basis of the competence and qualifications of the engineer, land surveyor or architect for the type of services to be performed and not on the basis of competitive fees; and therefore not suitable for public bidding pursuant to NRS 625.530; and to approve Contract No. 0910-171 With PacificWest Energy Solutions, Inc. to provide Solar Project through September 13, 2010, for a not to exceed cost of \$66,485.00 to be funded from the Water Capital Fund Account Main Replacement Program. 275-0620-465-78-15 as provided in FY 2009/2010. (Sandy Scott)

Explanation for Recommended Board Action: Pursuant to **NRS 625.530**, staff is requesting the Board of Supervisors declare that this contract is not adapted to award by competitive bidding.

NRS 625.530 Restrictions upon public works. Except as otherwise provided in NRS 338.1711 to 338.1727, inclusive, and 408.3875 to 408.3887, inclusive:

1. The State of Nevada or any of its political subdivisions, including a county, city or town, shall not engage in any public work requiring the practice of professional engineering or land surveying, unless the maps, plans, specifications, reports and estimates have been prepared by, and the work executed under the supervision of, a professional engineer, professional land surveyor or registered architect.

2. The provisions of this section do not:
- (a) Apply to any public work wherein the expenditure for the complete project of which the work is a part does not exceed \$35,000.
 - (b) Include any maintenance work undertaken by the State of Nevada or its political subdivisions.
 - (c) Authorize a professional engineer, registered architect or professional land surveyor to practice in violation of any of the provisions of chapter 623 of NRS or this chapter.
 - (d) Require the services of an architect registered pursuant to the provisions of chapter 623 of NRS for the erection of buildings or structures manufactured in an industrial plant, if those buildings or structures meet the requirements of local building codes of the jurisdiction in which they are being erected.

3. The selection of a professional engineer, professional land surveyor or registered architect to perform services pursuant to subsection 1 must be made on the basis of the competence and qualifications of the engineer, land surveyor or architect for the type of services to be performed and not on the basis of competitive fees. If, after selection of the engineer, land surveyor or architect, an agreement upon a fair and reasonable fee cannot be reached with him, the public agency may terminate negotiations and select another engineer, land surveyor or architect.

[12a:198:1919; added 1947, 797; A 1949, 639; 1943 NCL § 2875.06a]—(NRS A 1967, 953; 1971, 774; 1973, 1700; 1975, 208; 1977, 320; 1983, 807; 1989, 788; 1997, 1055; 1999, 3489; 2001, 2022; 2003, 119)

Applicable Statute, Code, Policy, Rule or Regulation: NRS 625.530

Fiscal Impact: \$66,785.00

Explanation of Impact: Amount of Contract.

Funding Source: Capital Project/Solar Project (ARRA) 275-0620-465-78-15

Alternatives: Provide other direction pursuant to Board Action.

Supporting Material: Contract for Services of Independent Contractor No. 0910-171

Prepared By: Sandy Scott, Purchasing & Contracts Coordinator

Reviewed By:

(Public Works)

Date: 3/9/10

(City Manager)

Date: 3/8/10

(District Attorney)

Date: 3/10/10

(Finance Director)

Date: 3/10/10

Board Action Taken:

Motion: _____

1) _____
2) _____

Aye/Nay

(Vote Recorded By)

**PROFESSIONAL SERVICES AGREEMENT RELATED TO CONSTRUCTION
PROJECTS (Architects, Engineers, and Land Surveyor's)
Contract No. 0910-171
Solar Project**

THIS CONTRACT, made and entered into this 18th day of March, 2010, by and between the City and County of Carson City, a political subdivision of the State of Nevada, hereinafter referred to as the "**CITY**", and PacificWest Energy Solutions, Inc. hereinafter referred to as the "**CONSULTANT**".

W I T N E S S E T H :

WHEREAS, the Purchasing and Contracts Coordinator for the City and County of Carson City is authorized, pursuant to Nevada Revised Statutes Chapter 332 and Carson City Purchasing Resolution #1990-R71, to approve and accept this Contract as set forth in and by the following provisions; and

WHEREAS, it is deemed that the services of **CONSULTANT** for **CONTRACT No. 0910-171 Solar Project** are both necessary and in the best interests of **CITY**; and

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1 REQUIRED APPROVAL:

1.1 This Contract shall not become effective until and unless approved by the Carson City Board of Supervisors.

2 CONTRACT TERM:

2.1 This Contract shall be effective from March 18, 2010, subject to Carson City Board of Supervisors' approval (anticipated to be March 18, 2010) to September 13, 2010, unless sooner terminated by either party as specified in **Section 7 Contract Termination**.

3 NOTICE:

3.1 Unless otherwise specified, termination shall not be effective until thirty (30) calendar days after a party has served written notice of default, or without cause upon the other party. 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 with simultaneous 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.

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For P&C Use Only	
CCBL expires	_____
GL expires	_____
AL expires	_____
PL expires	_____
WC expires	_____

3.1.1 Notice to **CONSULTANT** shall be addressed to:

Robert Cho, P.E., CEM, CMVP
PacificWest Energy Solutions, Inc.
561 Keystone Avenue #300
Reno, Nevada 89503
775-787-6084/FAX 775-473-9095
rcho@pacwestes.com

3.1.2 Notice to **CITY** shall be addressed to:

Carson City Purchasing and Contracts
Sandy Scott, Purchasing and Contracts Coordinator
201 North Carson Street Suite 3
Carson City, Nevada 89701
775-887-2133 extension 30137 / FAX 775-887-2107
SScott@ci.carson-city.nv.us

4 SCOPE OF WORK:

4.1 **CONSULTANT** shall provide and perform the following services set forth in **Exhibit A** attached hereto and incorporated herein by reference for and on behalf of **CITY** hereinafter referred to as the "**SERVICES**".

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

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

4.4 **CONSULTANT** 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. **CONSULTANT** 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. **CONSULTANT** shall be responsible for the professional quality and technical accuracy of all **SERVICES** furnished by **CONSULTANT** to **CITY**.

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

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

4.7 Special Terms and Conditions for Engineers, Architects, and Land Surveyors:

4.7.1 Use of CONSULTANT'S Drawings, Specifications and Other Documents:

4.7.1.1 The drawing, specifications and other documents prepared by **CONSULTANT** for this Contract are instruments of **CONSULTANT'S** service for use solely with respect to this Contract and, unless otherwise provided, **CONSULTANT** shall be deemed the author of these documents and shall retain all common law statutory and other reserved rights, including the copyright.

4.7.1.2 **CITY** shall be permitted to retain copies, including reproducible copies, of **CONSULTANT'S** drawings, specifications, and other documents for information and reference in connection with this Contract.

4.7.1.3 **CONSULTANT'S** drawings, specifications and other documents shall not be used by **CITY** or others without expressed permission of **CONSULTANT**.

4.7.2 Cost Accounting and Audits:

4.7.2.1 If required by **CITY**, **CONSULTANT** agrees to make available to **CITY** within two (2) years after the completion of the **SERVICES** under this Contract, such books, records, receipts, vouchers, or other data as may be deemed necessary by **CITY** to enable it to arrive at appropriate cost figures for the purpose of establishing depreciation rates for the various materials and other elements which may have been incorporated into the **SERVICES** performed under this Contract.

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4.8 CITY Responsibilities:

4.8.1 **CITY** shall make available to **CONSULTANT** all technical data that is in **CITY'S** possession, reasonably required by **CONSULTANT** relating to the **SERVICES**.

4.8.2 **CITY** shall provide access to and make all provisions for **CONSULTANT** to enter upon public and private lands, to the fullest extent permitted by law, as reasonably required for **CONSULTANT** to perform the **SERVICES**.

4.8.3 **CITY** shall examine all reports, correspondence, and other documents presented by **CONSULTANT** upon request of **CITY**, and render, in writing, decisions pertaining thereto within a reasonable time so as not to delay the work of **CONSULTANT**.

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

5 CONSIDERATION:

5.1 The parties agree that **CONSULTANT** will provide the **SERVICES** specified in **Section 4 Scope of Work** and **CITY** agrees to pay **CONSULTANT** the **CONTRACT SUM** based upon time and materials and the attached fee schedule for a not to exceed maximum amount of Sixty Six Thousand Four Hundred Eighty Five Dollars and No Cents (\$66,485.00).

5.2 **CONTRACT SUM** represents full and adequate compensation for the completed **WORK**, 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 **WORK**.

5.3 **CITY** has provided a sample invoice and **CONSULTANT** shall submit its request for payment using said sample invoice.

5.4 Payment by **CITY** for the **SERVICES** rendered by **CONSULTANT** shall be due within thirty (30) calendar days from the date **CITY** acknowledges that the performance meets the requirements of this Contract or from the date the correct, complete, and descriptive invoice is received by **CITY** employee designated on the sample invoice, whichever is the latter date.

5.5 **CITY** does not agree to reimburse **CONSULTANT** for expenses unless otherwise specified.

6 TIMELINESS OF BILLING SUBMISSION:

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6.1 The parties agree that timeliness of billing is of the essence to this Contract and recognize that **CITY** 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 **CITY** no later than the first Friday in August of the same year. A billing submitted after the first Friday in August will subject **CONSULTANT** to an administrative fee not to exceed \$100.00. The parties hereby agree this is a reasonable estimate of the additional costs to **CITY** of processing the billing as a stale claim and that this amount will be deducted from the stale claim payment due to **CONSULTANT**.

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.

7.2 Termination for Nonappropriation:

7.2.1 The continuation of this Contract beyond June 30, 20010 is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the Carson City Board of Supervisors. **CITY** may terminate this Contract, and **CONSULTANT** waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the funding is not appropriated or is withdrawn, limited, or impaired.

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 **CONSULTANT** fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or 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 **CONSULTANT** to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or

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

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

7.3.2.5 If it is found by **CITY** that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by **CONSULTANT**, or any agent or representative of **CONSULTANT**, to any officer or employee of **CITY** 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 **CITY** that **CONSULTANT** has failed to disclose any material conflict of interest relative to the performance of this Contract.

7.4 Time to Correct:

7.4.1 Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in **Section 3 Notice**, and the subsequent failure of the defaulting party within fifteen (15) calendar days of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.

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 paragraph 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;

7.5.1.2 **CONSULTANT** shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by **CITY**;

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

7.5.1.4 **CONSULTANT** shall preserve, protect, and promptly deliver into **CITY** possession all proprietary information in accordance with **Section 23 City Ownership of Proprietary Information**.

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8 REMEDIES:

8.1 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 attorneys' 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. **CITY** may set off consideration against any unpaid obligation of **CONSULTANT** to **CITY**.

9 LIMITED LIABILITY:

9.1 **CITY** will not waive and intends to assert available Nevada Revised Statutes 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 specified in the incorporated attachments. Damages for any **CITY** breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to **CONSULTANT**, for the fiscal year budget in existence at the time of the breach. **CONSULTANT'S** tort liability shall not be limited.

10 FORCE MAJEURE:

10.1 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 As required by AB 483, and NRS 338.155, **CONSULTANT** shall defend, indemnify and hold harmless the **CITY**, and the employees, officers and agents of the public body from any liabilities, damages, losses, claims, actions or proceedings, including without limitation, reasonable attorneys' fees, to the extent that such liabilities, damages, losses, claims, actions or proceedings are caused by the negligence, errors, omissions, recklessness or intentional misconduct of the **CONSULTANT** or the employees or agents of the **CONSULTANT** in the performance of the contract. 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 paragraph.

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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.

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 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 other contracting party, except as to the results of the work, and not as to the means by which the services are accomplished.

12.2 It is mutually agreed that **CONSULTANT** is associated with **CITY** 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. **CONSULTANT** 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 **CITY** whatsoever with respect to the indebtedness, liabilities, and obligations of **CONSULTANT** or any other party.

12.4 **CONSULTANT** shall indemnify and hold **CITY** harmless from, and defend **CITY** against, any and all losses, damages, claims, costs, penalties, liabilities, expenses arising out of or

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incurred in any way because of, but not limited to, **CONSULTANT'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 **CONSULTANT** nor its employees, agents, or representatives shall be considered employees, agents, or representatives of **CITY**.

13 INSURANCE REQUIREMENTS:

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

13.2 **CONSULTANT** shall not commence work before: (1) **CONSULTANT** has provided the required evidence of insurance to Carson City Purchasing and Contracts, and (2) **CITY** has approved the insurance policies provided by **CONSULTANT**.

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

13.4 Insurance Coverage:

13.4.1 **CONSULTANT** shall, at **CONSULTANT'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 **CITY**, the required insurance shall be in effect prior to the commencement of work by **CONSULTANT** and shall continue in force as appropriate until the latter of:

13.4.1.1 Final acceptance by **CITY** of the completion of this Contract; or

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

13.4.2 Any insurance or self-insurance available to **CITY** shall be in excess of and non-contributing with any insurance required from **CONSULTANT**. **CONSULTANT'S** insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by **CITY**, **CONSULTANT** shall provide **CITY** with renewal or replacement evidence of insurance no less than thirty (30) calendar days before the expiration or replacement of the

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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 **CONSULTANT** has knowledge of any such failure, **CONSULTANT** shall immediately notify **CITY** and immediately replace such insurance or bond with an insurer meeting the requirements.

13.5 General Requirements:

13.5.1 Certificate Holder: Each liability insurance policy shall list Carson City c/o Carson City Purchasing and Contracts, 201 N. Carson Street Suite 3, Carson City, NV 89701 as a certificate holder.

13.5.2 Additional Insured: By endorsement to the general liability insurance policy evidenced by **CONSULTANT**, The City and County of Carson City, Nevada, its officers, employees and immune contractors shall be named as additional insureds for all liability arising from this Contract.

13.5.3 Waiver of Subrogation: Each liability insurance policy shall provide for a waiver of subrogation as to additional insureds.

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

13.5.5 Deductibles and Self-Insured Retentions: Insurance maintained by **CONSULTANT** shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by **CITY**. Such approval shall not relieve **CONSULTANT** from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$5,000 per occurrence, unless otherwise approved by **CITY**.

13.5.6 Policy Cancellation: Except for ten (10) calendar days notice for non-payment of premium, each insurance policy shall be endorsed to state that; without thirty (30) calendar days prior written notice to Carson City Purchasing and Contracts, the policy shall not be canceled, non-renewed or coverage and /or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mail to Carson City Purchasing and Contracts, 201 N. Carson Street Suite 3, Carson City, NV 89701.

13.5.7 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 acceptable to the State 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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13.5.8 **Evidence of Insurance:** Prior to commencement of work, **CONSULTANT** must provide the following documents to Carson City Purchasing and Contracts, 201 North Carson Street Suite 3, Carson City, NV 89701:

13.5.8.1 **Certificate of Insurance:** The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to Carson City Purchasing and Contracts to evidence the insurance policies and coverages required of **CONSULTANT**.

13.5.8.2 **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 Purchasing and Contracts to evidence the endorsement of **CITY** as an additional insured per Subsection 13.5.2.

13.5.8.3 **Schedule of Underlying Insurance Policies:** If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlyer Schedule from the Umbrella or Excess insurance policy may be required.

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

14 **COMMERCIAL GENERAL LIABILITY INSURANCE:**

14.1 Minimum Limits required:

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

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

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

14.2 Coverage shall be on an occurrence basis and shall be at least as broad as ISO 1996 form CG 00 01 (or a substitute form providing equivalent coverage); and shall cover liability arising from premises, operations, independent contractors, completed operations, personal

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injury, products, civil lawsuits, Title VII actions and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

15 BUSINESS AUTOMOBILE LIABILITY INSURANCE:

15.1 Minimum Limit required:

15.1.1 One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage

15.2 Coverage shall be for "any auto", including owned, non-owned and hired vehicles. The policy shall be written on ISO form CA 00 01 or a substitute providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

16 PROFESSIONAL LIABILITY INSURANCE:

16.1 Minimum Limit required: One Million Dollars (\$1,000,000.00)

16.2 Retroactive date: Prior to commencement of the performance of this Contract

16.3 Discovery period: Three (3) years after termination date of this Contract.

16.4 A certified copy of this policy may be required.

17 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:

17.1 **CONSULTANT** shall provide workers' compensation insurance as required by Nevada Revised Statutes Chapters 616A through 616D inclusive and Employer's Liability insurance with a minimum limit of \$500,000 each employee per accident for bodily injury by accident or disease.

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

18 BUSINESS LICENSE:

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18.1 **CONSULTANT** shall not commence work before **CONSULTANT** has provided a copy of his Carson City business license to Carson City Purchasing and Contracts.

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

19 COMPLIANCE WITH LEGAL OBLIGATIONS:

19.1 **CONSULTANT** 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 **CONSULTANT** to provide the goods or services of this Contract. **CONSULTANT** will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of **CONSULTANT** in accordance with Nevada Revised Statutes 361.157 and 361.159. **CONSULTANT** agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. **CITY** may set-off against consideration due any delinquent government obligation.

20 WAIVER OF BREACH:

20.1 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.

21 SEVERABILITY:

21.1 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.

22 ASSIGNMENT/DELEGATION:

22.1 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 **CITY**, such offending portion of the assignment shall be void, and shall be a breach of this Contract. **CONSULTANT** shall neither assign, transfer nor delegate any rights, obligations or duties under this Contract without the prior written approval of **CITY**.

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23 CITY OWNERSHIP OF PROPRIETARY INFORMATION:

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

23.2 **CITY** shall be permitted to retain copies, including reproducible copies, of **CONSULTANT'S** drawings, specifications, and other documents for information and reference in connection with this Contract.

23.3 **CONSULTANT'S** drawings, specifications and other documents shall not be used by **CITY** or others without expressed permission of **CONSULTANT**.

24 PUBLIC RECORDS:

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

25 CONFIDENTIALITY:

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

26 FEDERAL FUNDING:

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26.1 In the event federal funds are used for payment of all or part of this Contract:

26.1.1 **CONSULTANT** certifies, by signing this Contract, 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, § 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.

26.1.2 **CONSULTANT** and its subcontractors 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 thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

26.1.3 **CONSULTANT** 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).

27 LOBBYING:

27.1 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:

27.1.1 Any federal, state, county or local agency, legislature, commission, counsel or board;

27.1.2 Any federal, state, county or local legislator, commission member, counsel member, board member, or other elected official; or

27.1.3 Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.

**28 DUN AND BRADSTREET DATA UNIVERSAL NUMBERING SYSTEM AND
CENTRAL CONTRACT REGISTRATION:**

28.1 **CONSULTANT** is required to have a Dun and Bradstreet Data Universal Numbering Systems (D-U-N-S) number and is to be registered through the Central Contractor Registration

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(CCR). A D-U-N-S number can be requested at <http://fedgov.dnb.com/webform> and created in one business day. A D-U-N-S number and Tax Identification Number are required before a Contractor can register through CCR. Registration with CCR can be done at <http://ccr.gov>

29 ALL IRON, STEEL AND MANUFACTURED GOODS USED IN CONSTRUCTION:

29.1 All iron, steel and manufactured goods used in construction, alteration, repair or maintenance of the public work project under this contract must be produced in the United States in accordance with the American Reinvestment and Recovery Act of 2009. The Contractor shall provide evidence to Carson City that all construction materials comply with this requirement. Exceptions may only be granted with prior written permission from the Carson City Planning Division and only after the Planning Division has received permission from the Secretary of the U.S. Department of Environmental Protection under the condition that (1) the requirement is inconsistent with public interest; (2) those goods are not reasonably available or produced in sufficient quantity in the U.S.; (3) or the use of the goods will increase the project cost by more than twenty-five percent (25%).

30 DAVIS-BACON ACT WAGE:

30.1 Pursuant to section 1606 of the American Reinvestment and Recovery Act of 2009, the Davis-Bacon Act wage rules apply to this project.

31 GENERAL WARRANTY:

31.1 **CONSULTANT** warrants that all services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications as set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.

32 PROPER AUTHORITY:

32.1 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. **CONSULTANT** acknowledges that this Contract is effective only after approval by the Carson City Board of Supervisors and only for the period of time specified in this Contract. Any services performed by **CONSULTANT** before this Contract is effective or after it ceases to be effective are performed at the sole risk of **CONSULTANT**.

33 ALTERNATIVE DISPUTE RESOLUTION:

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33.1 Pursuant to NRS 338.150, public body charged with the drafting of specifications for a public work shall include in the specifications a clause requiring the use of a method of alternative dispute resolution before initiation of a judicial action if a dispute arising between the public body and the contractor engaged on the public work cannot otherwise be settled. Therefore, in the event that a dispute arising between **CITY** and **CONTRACTOR** cannot otherwise be settled, **CITY** and **CONTRACTOR** agree that, before judicial action may be initiated, **CITY** and **CONTRACTOR** will submit the dispute to non-binding mediation. **CITY** shall present **CONTRACTOR** with a list of three potential mediators. **CONTRACTOR** shall select one person to serve as the mediator from the list of potential mediators presented by **CITY**. The person selected as mediator shall determine the rules governing the mediation.

34 GOVERNING LAW; JURISDICTION:

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

35 ENTIRE CONTRACT AND MODIFICATION:

35.1 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 and approved by the Carson City Board of Supervisors.

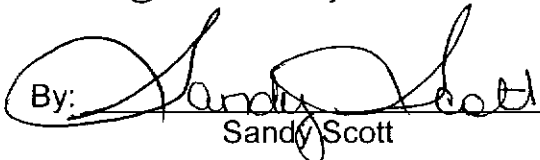
**PROFESSIONAL SERVICES AGREEMENT RELATED TO CONSTRUCTION
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36 ACKNOWLEDGMENT AND EXECUTION:

36.1 In witness whereof, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

CARSON CITY

Finance Director
Attn: Sandy Scott, Purchasing &
Contracts Coordinator
201 North Carson Street Suite 3
Carson City, Nevada 89701
Telephone: 775-283-7137
Fax: 775-887-2107
SScott@ci.carson-city.nv.us

By:  _____

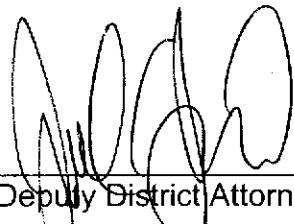
Sandy Scott

DATED 3/9/10 _____

CITY'S LEGAL COUNSEL

Neil A. Rombardo, District Attorney

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

By:  _____

Deputy District Attorney

DATED 3/9/10 _____

CITY'S ORIGINATING DEPARTMENT

BY: Andrew Burnham, Director
Carson City Public Works Department
3505 Butti Way
Carson City, NV 89701
Telephone: 775-887-2355
Fax: 775-887-2112
ABurnham@ci.carson-city.nv.us

By:  _____

Andy Burnham

DATED 3/9/10 _____

**PROFESSIONAL SERVICES AGREEMENT RELATED TO CONSTRUCTION
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Robert Cho deposes and says: That he is the **CONSULTANT** or authorized agent of the **CONSULTANT**; that he has read the foregoing Contract; and that he understands the terms, conditions, and requirements thereof.

CONSULTANT

BY: Robert Cho, P.E., CEM, CMVP

TITLE: President

FIRM: PacificWest Energy Solutions, Inc.

CARSON CITY BUSINESS LICENSE #: 10-27095

Address: 561 Keystone Avenue #300

City: Reno **State:** Nevada **Zip Code:** 89503

Telephone: 775-787-6084/ **Fax #:** 775-473-9095

E-mail Address: rcho@pacwestes.com

(Signature of **CONSULTANT**)

DATED _____.

STATE OF _____)
_____) **ss**
County of _____)

Signed and sworn (or affirmed) before me on this _____ day of _____, 2010,
by _____.

(Signature of Notary)

(Notary Stamp)

**PROFESSIONAL SERVICES AGREEMENT RELATED TO CONSTRUCTION
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SAMPLE INVOICE

Invoice Number: _____
Invoice Date: _____
Invoice Period: _____

Vendor Number: _____
PacificWest Energy Solutions, Inc.
561 Keystone Avenue #300
Reno, Nevada 89503

Invoice shall be submitted to:

Carson City Public Works
Attn: Karen White
3505 Butti Way
Carson City NV 89701

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

**PROFESSIONAL SERVICES AGREEMENT RELATED TO CONSTRUCTION
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CONTRACT ACCEPTANCE AND EXECUTION:

The Board of Supervisors for Carson City, Nevada at their publicly noticed meeting of March 18, 2010 approved the acceptance of **CONTRACT No. 0910-171**. Further, the Board of Supervisors authorizes the Mayor of Carson City, Nevada to set his hand to this document and record his signature for the execution of this contract in accordance with the action taken.

CARSON CITY, NEVADA

ROBERT L. CROWELL, MAYOR

DATED this 18th day of March, 2010.

ATTEST:

ALAN GLOVER, CLERK-RECORDER

DATED this 18th day of March, 2010.

December 8, 2009

Public Works Solar Photovoltaic System Professional Services Proposal

Client:

City of Carson City
Public Works Department
3505 Butti Way
Carson City, Nevada 89701

Price:

\$66,485

Scope of Services:

Professional services to include Project Development, Construction Management, and Commissioning.

This proposal is comprised of the following items:

1. **Project Development & Design** \$33,655
2. **Construction Management** \$21,490
3. **Commissioning** \$11,340
4. **Project Development & Construction Schedule**
5. **General Conditions & Exclusions**
6. **Fee Schedule**

1. Project Development & Design

PacificWest to provide the following services:

- ◆ Provide main oversight and lead project development services and design process
- ◆ Perform utility bill analysis and data modeling
- ◆ Conduct site audits and the following as needed:
 - Take electrical spot measurements, install/retrieve data loggers, process data as needed
 - Take solar readings and site preliminary systems
 - Review building structural constraints
 - Develop list of feasible facility installations based on site findings
 - Perform analysis of solar photovoltaic systems and determine savings potential
 - Develop scope of work & preliminary pricing
 - Develop scope of work for M&V/Commissioning activities
 - Develop preliminary Project Cash Flow
- ◆ Review applicable permit/rebate requirements and assess potential associated risk
- ◆ Initiate applicable permit/rebate application process
- ◆ Provide Detailed Design and Construction Drawings for an optimized design for the Public Works Truck Shed estimated at 50-100KW AC Solar Photovoltaic System with

the following items as needed:

- Conceptual Design – Preliminary panel layouts, counts, sizes, inverter capacity & layout
- Design Development – Final equipment specifications, performance ratings, mounting specifications
- Construction Documents – Equipment Schedules, Single Line Diagrams, Three Line Diagrams as needed, Structural Calculations as needed, Mounting Diagrams, Energy Calculations
- ◆ Develop detailed final project scope of work
- ◆ Provide initial construction schedule with critical path items
- ◆ Prepare bid packages including Client specifications and approved scope of work
 - Ensure construction schedules with time constraints included in bid packages
- ◆ Conduct bid process and contractor proposal review
- ◆ Conduct Request For Information (RFI) process and obtain submittals from contractors
- ◆ Assist Client in contractor selection, award, and contract negotiations
- ◆ Provide Investment Grade Audit Report & update document set at project close
- ◆ Review Investment Grade Audit Report and make revisions as necessary
- ◆ Assist Client with Energy Efficiency & Conservation Block Grant quarterly reporting requirements documentation

2. Construction Management

PacificWest to provide the following services:

- ◆ Provide assistance with project oversight and construction management process
- ◆ Provide construction schedule with progress updates on a monthly basis
- ◆ Conduct customer information & project update meetings on a regular interval TDB
- ◆ Assist with all contracts, work orders, purchases orders, change orders, and work flow processes to ensure timely and budgeted cost delivery
- ◆ Complete applicable permit and rebate applications upon design completion
- ◆ Assist with daily construction activities and communication (PacificWest to provide up to 4 days of site visits/supervision throughout project construction)
- ◆ Ensure work by all Contractors are provided in accordance to local codes and safety requirements
- ◆ Assist in utility interconnection activities with contractor
- ◆ Develop punch list and project close out activities
- ◆ Coordinate inspections
- ◆ Obtain substantial completion and project finalization documentation upon project completion and punch list checkout
- ◆ Coordinate Client training & operations and maintenance manuals provided by Contractor

3. Commissioning

PacificWest to provide the following services:

- ◆ Provide main oversight and lead commissioning process
- ◆ Develop measurement & verification (M&V) plan
- ◆ Review M&V plan with Client
- ◆ Incorporate revisions
- ◆ Implement start up and testing procedure
- ◆ Develop Commissioning Analysis & Report
- ◆ Develop corrective punchlist
- ◆ Coordinate final inspections
- ◆ Obtain Certificate of Completion

4. Project Development & Construction Schedule

Please see attached Project Development & Construction Schedule.

5. General Conditions & Exclusions

General Conditions & Exclusions as noted:

- ◆ This proposal expires (30) days from the date of this proposal.
- ◆ Any alteration or deviations from the above specifications involving extra cost of material or labor will be executed upon written orders for same and will become an extra charge over the sum mentioned in this contract.
- ◆ Client Appointed Engineering Manager or Project Manager Shall Provide Oversight & All Appropriate Approvals.
- ◆ PacificWest does not guarantee or warrant construction pricing, bids, schedules, incentive/rebate payment, or calculated savings amounts pertaining to the consulting scope of Services.

6. Fee Schedule

PacificWest Energy Solutions typical fee schedule has been provided below.

PROFESSIONAL SERVICES FEE SCHEDULE

PERSONNEL	
Senior Energy Engineer/Construction Manager	\$165 Per Hour
Energy Engineer	\$125 Per Hour
Energy Analyst	\$95 Per Hour
CAD Designer	\$85 Per Hour
Auditor (Data Collection)	\$75 Per Hour
Administrative Assistant (Reports)	\$60 Per Hour

CONSTRUCTION MANAGEMENT FEE SCHEDULE

SERVICES	Payment (%)
Design Coordination	3.0 – 6.0%
Engineered Design	5.0 – 8.0%
Construction Management	5.0 – 10.0%
Commissioning	2.0 – 4.0%