

INFORMATION FOR THE May 24, 2017  
TONOPAH TOWN BOARD MEETING

# 10

AGENDA ITEM:

Discussion, deliberation and possible action to approve APTUS Architecture's proposal for a scope of work in connection with the Visitor Center building proposed at the Pocket Park

PETITIONER: (Include Name, Address, Phone Number, E-mail)

Chris Mulkerns, Administrative Manager  
Joe Westerlund, Utility Manager  
P.O. Box 151  
Tonopah, NV 89049  
775.482.6336/6643

BACKGROUND OF ACTION ITEM REQUESTED:

The Board has discussed this proposed capital project during budget workshops and as a part of their five year capital improvement plan. See attached proposal.

FISCAL IMPACT:

If approved, to be funded from Town Administration - Professional Fees

Please note: Due to posting requirements, all agenda items must be turned in by 12:00 noon five working days (Wednesday) prior to the day of the scheduled meeting or by 12:00 noon six working days (Tuesday of the prior week ) if a holiday falls prior to the meeting.

**NOTE: (The days in parentheses are for regular scheduled Town Board meetings which fall on the second and fourth Wednesday of each month)**

In order to facilitate the review and consideration of an agenda item presented to the Tonopah Town Board, please include all documents or any relevant material or information with your request.

Chris Mulkerns  
Signature (required)

5/17/17  
Date

Request taken by: Pat Gill

5.17.17  
Date



Visitor's Center  
Proposal for Professional Services  
Town of Tonopah

5.17.17

LAS VEGAS  
LONG BEACH  
CHICAGO

**aptus**

May 17, 2017

Ms. Chris Mulkerns  
**Town Of Tonopah**  
PO Box 151  
Tonopah, Nevada 89049

**Visitor's Center**

Re:  
Professional Services Agreement

Dear Ms. Mulkerns:

APTUS is pleased to submit this proposal for professional services for the above project. I trust you will find this proposal meets your expectations and is specific to your needs. Thank you for the opportunity to work with you on this project.

**Project Understanding**

- A. The project location is as follows:
  - 1. New structure to be located within the existing park at the NW corner of Main Street and Oddie Avenue.
- B. The project program is as follows:
  - 1. New 12'x12' visitor center building structure, not a pre-fabricated structure, within the existing park.
  - 2. Exterior character to look similar in appearance as the existing firehouse.
  - 3. Provide large windows on at least three sides.
  - 4. Video monitor for visitor information. Owner to provide data connection if required.
  - 5. Interior and exterior lighting.
  - 6. Connect to the existing electrical stubbed to the site.
  - 7. Provide a self contained through the wall HVAC unit.
  - 8. Aptus will make one trip to site during the design period.
- C. The design team will provide professional services to produce the following deliverables:
  - 1. Schematic Design Documents.
  - 2. Zoning Submission Documents.
  - 3. Construction Documents.
  - 4. Bidding Phase Services.
  - 5. Construction Phase Services.
- D. Approvals required are the following:
  - 1. Town of Tonopah.
  - 2. Building Permit.
  - 3. Zoning.

## Design Team

Based upon our understanding of the project, we propose to provide the following Design Team members:

### Professional Services provided:

Architecture / Interiors  
Structural Engineer  
Electrical / Mechanical Engineer

### Team Member:

Aptus  
Heatly Engineering  
MSA Consulting Engineers

### Services provide by the owner, if required:

Civil Engineer  
Landscape Architect  
Geotechnical Services  
Third Party Inspections

*The following services will be required to complete the above scope per Phase indicated:*

### Schematic Design

- A. Arrange and conduct a kick-off meeting with owner and design team. Establish an understanding of the owner's needs, budget, schedule and aesthetic character for the project.
- B. Field verify and document existing conditions.
- C. Obtain and review as-built drawings (CAD or hard copy).
- D. Prepare preliminary code, accessibility, and zoning analysis.
- E. Prepare preliminary concept plans, elevations and materials for review by owner.
- F. Review preliminary plans and material selections with owner and document changes and comments. Incorporate comments.
- G. Revise preliminary plans and elevations for review by owner.
- H. Review revised plans and material selections with owner and document changes and comments. Incorporate comments.
- I. Issue drawings to consultants for preliminary engineering.
- J. Coordinate and prepare final schematic design package.
- K. Review schematic design package with owner. Obtain owner approval prior to starting next phase.
- L. Prepare drawings for zoning submittal.

### Zoning Submittal

- A. Assist owner in preparing the application material required for the submittal to the local zoning authority. This material may include:
  1. Design Review Package
  2. Any Waivers or Variances
  3. Justification Letter and required forms.
- B. Prepare deliverables, per local zoning authority standards – deliverables include:
  1. Site Plan, black/white.
  2. Landscape Plan, black/white.
  3. Floor Plan, black/white.
  4. Exterior Elevations, black/white and color.
  5. Materials Board.
- C. Owner will hire separate representation for all required meetings

## Construction Documents

- A. Review approved design with owner and contractor for preliminary pricing and value engineering options. Incorporate comments and proceed with the completion of the Contract Documents.
- B. Update and finalize code and accessibility analysis.
- C. Issue drawings to consultants for updated and finalized engineering.
- D. Finalize plans, elevations, sections, details, schedules and sheet specifications.
- E. Coordinate and prepare final construction documents package.
- F. Review final construction documents with owner and others as required.
- G. Incorporate comments and prepare completed and coordinated documents for plans check and bidding.

## Plans Check

- A. Provide sealed drawings for plans check submittal.
- B. Make any changes required by municipality immediately and resubmit.

## Bidding

- A. Provide documents to the owner for bidding.
- B. Respond to any questions, issue addenda.
- C. Review bids with owner.

## Construction Phase Services

- A. Respond to RFIs from the general contractor.
- B. Review shop drawings and submittals.
- C. Make one on-site observation to verify that the project is being constructed in conformance with the contract documents.
- D. Review project at substantial completion and prepare punch-list of deficiencies.

## Schedule

The following is a time frame for the completion of the scope of work phases. All durations are in calendar days / weeks.

Phase	Duration
Schematic Design / Zoning Submittal	4 weeks
Construction Documents	2 weeks
Construction Phase Services	2 months

**Professional Fee**

Our proposed professional service fees for the above-listed phases of work are as follows plus normal reimbursable expenses:

**Architecture / Engineering**

Schematic Design / Zoning Submittal:	3,000
Construction Documents:	3,000
Bidding	500
Construction Phase Services:	1,500
<b>Total</b>	<b>\$ 8,000</b>

**Other Services, if Required or Requested:**

1. Additional trip charge per visit: \$500
2. We will add a 10% mark-up to any fees paid by APTUS.

Invoices will be issued on a monthly schedule according to the percentage of work completed and will be due and payable within thirty (30) days of the date posted on the invoice.

**Assumptions**

This proposal has been prepared using the following assumptions:

1. If express plans check is required, it will be billed per hourly rates.
2. All utilities servicing the area have adequate capacity for the new development needs.
3. Charges or fees required by governmental agencies and/or utility companies are the responsibility of the owner.
4. Owner will provide digital site plan and topography.
5. Owner will provide as-built drawings of existing buildings and other site conditions.
6. Owner will procure geotechnical services, if required.
7. Owner will procure representation in the zoning approval process.

Ms. Mulkerns, please don't hesitate to call if you have any questions regarding this proposal. We thank you for reviewing this proposal and hope we have the opportunity to work with you on this important project.

Respectfully submitted,



R. Brandon Sprague, AIA

Owner

date

Attachments: General Terms & Conditions  
117.016

## GENERAL TERMS AND CONDITIONS

**1. Standard of Care.** The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project in accordance with the degree of care and skill ordinarily exercised by other architects currently practicing under similar circumstances in the State of Nevada.

**2. Timeliness.** The Owner and Architect are aware that many factors outside the Architect's control may affect the Architect's ability to complete the services to be provided under this proposal. The Architect will perform these services with reasonable diligence and expediency consistent with sound professional practices. The Owner agrees that the Architect is not responsible for damages arising directly or indirectly from any delays for causes beyond the Architect's control. For purposes of this proposal, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters; fires, riots, war or other emergencies or acts of God; acts of terrorism or acts of a public enemy, whether actual or threatened, an epidemic, quarantine or other causes similar to those enumerated or beyond the parties' control; failure of any government agency to act in a timely manner; failure of performance by the Owner or the Owner's contractors or consultants; or discovery of any hazardous substances or differing site conditions.

**3. Existing Conditions.** If this Project involves the remodeling and/or rehabilitation of an existing structure or structures, the Owner shall furnish, at the Owner's expense, all information, requirements, reports, data, surveys and instructions required by this proposal, including but not limited to, existing drawings and as-built surveys. The Architect may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof. If the Project involves the remodeling and/or rehabilitation of the existing structure, the Owner agrees to furnish such additional consultant(s) as may be reasonably required to address, evaluate and, as necessary, remediate previously unknown, existing conditions that should not have been reasonably discovered by the Architect in the exercise of its standard of care. Furthermore, inasmuch as the remodeling and/or rehabilitation of the existing structure requires that certain assumptions be made by the Architect regarding existing conditions, and because some of these assumptions may not be verifiable without the Owner's expending substantial sums of money or destroying otherwise adequate or serviceable portions of the structure, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Architect, its officers, directors, employees and consultants (collectively, Architect) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to the discovery of or lack of discovery of existing conditions and/or as otherwise associated with the remodeling and/or rehabilitation of the existing structure aspect of the Project, when such conditions could not have been reasonably discovered by the Architect, and excepting those damages, liabilities or costs attributable to the negligence and willful misconduct by the Architect.

**4. Owner's Responsibilities.** The Owner shall: (a) provide full information in a timely manner regarding requirements for and limitations on the Project, (b) render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services, (c) provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's Instruments of Service, and (d) furnish tests, inspections, and/or the services of other consultants when such tests, inspections, or services are requested by the Architect and are reasonably required by the scope of the Project. The aforementioned services, information, inspections and tests shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof.

**5. Responsibility for Construction Cost.** Evaluations of the Owner's Project budget, the preliminary estimate of Construction Cost and detailed estimates of Construction Cost, if any, shall be prepared by the Owner's cost estimator or contractor. The Owner may request that the Architect review and comment upon the proposed budget and estimates. However, The Owner understands that the review and comments by the Architect represent the Architect's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's Project budget or from any estimate of Construction Cost or evaluation prepared by the Owner's cost estimator or contractor and/or comments regarding the same by the Architect.

**6. Instruments of Service.** Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect to this Project. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights. Architect will grant to the Owner a nonexclusive license to reproduce the Architect's Instruments of Service solely for purposes of constructing, using and maintaining the Project, provided that the Owner complies with all contractual obligations, including prompt payment of all sums when due. The Owner shall not use the Instruments of Service for future additions or alterations to this Project or for other projects, unless the Owner obtains the prior written agreement of the Architect and the Architect's consultants. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.



**7. General Dispute Resolution.**

- a. **Mediation.** Except as provided for in Section 8 below, any claim, dispute or other matter in question arising out of or related to this proposal shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. Unless the parties mutually agree otherwise, such mediation shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon.
- b. **Arbitration.** Except as provided for in Section 8 below, claims, disputes and other matters in question between the parties that are not resolved by mediation may be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect.

**8. Fee Dispute Arbitration.** All disputes concerning payment of Architect's fees for services rendered shall be arbitrated in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA"), provided that the following special rules shall apply to such arbitration: (a) the place of filing, administration, and hearing shall be the office of the AAA nearest to the Project, or if the parties mutually agree, another ADR service provider; (b) there shall be a single arbitrator, appointed in accordance with the AAA's procedures; (c) the arbitrator's decision shall be based solely upon written submissions by the parties unless the arbitrator determines, after reviewing such submissions, that a hearing is required; (d) such hearing may be held by conference call and, in any event, will not extend for more than four hours, allocated between the parties in such proportions as the arbitrator may determine; and (e) the arbitrator shall render his decision within five (5) business days after the later of his receipt of all written submissions or the date of the hearing. This decision shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. If such decision includes a determination that the disputed amount shall be paid by the Owner in whole or in part, the Owner shall pay such amount within five (5) business days after its receipt of the arbitrator's decision.

**9. Waiver of Consequential Damages.** To the fullest extent permitted by law, neither Owner nor Architect, their respective officers, directors, partners, employees, contractors or consultants shall be liable to the other for, or shall make any claim for, any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this proposal. This mutual waiver of consequential damages shall include, but is not limited to the loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty.

**10. Termination/Suspension.** This proposal may be terminated by either party upon not less than seven (7) days' written notice should the other party fail substantially to perform in accordance with the terms of this proposal through no fault of the party initiating the termination. In addition, this proposal may be terminated by the Owner upon not less than seven (7) days' written notice to the Architect for the Owner's convenience and without cause. In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with reimbursable expenses then due.

If the Owner fails to make payments to the Architect in accordance with this proposal, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this proposal. If the Architect elects to suspend services, prior to suspension of services, the Architect shall give seven (7) days' written notice to the Owner. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

**11. No Third Party Beneficiaries.** Nothing contained in this proposal shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect. The Architect's services under this proposal are being performed solely for the Owner's benefit, and no other party or entity shall have any claim against the Architect because of this proposal or the performance or nonperformance of services hereunder.

**12. Hazardous Materials.** The Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

**13. Limitation of Liability.** In recognition of the relative risks and benefits of the Project to both the Owner and the Architect, the risks have been allocated such that the Owner agrees, to the fullest extent permitted by law, to limit the liability of the Architect to the Owner for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Architect to the Owner shall not exceed the Architect's insurance coverage available at the time of settlement or judgment. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

**14. Sole Corporate Remedy.** It is intended by the parties to this proposal that the Architect's services in connection with the Project shall not subject the Architect's individual shareholders, employees, officers or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary contained herein, except in the event of fraud, the Owner agrees that as the Owner's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against APTUS Architecture, Inc. and not against any of the individual shareholders, employees, officers or directors.

**15. Indemnification.** Architect agrees, to the fullest extent permitted by law, to indemnify and hold the Owner harmless from any claims, damages, liability, or costs (including reasonable attorneys' fees and costs of defense) to the proportionate extent that such claims are caused by Architect's negligent acts, errors or omissions or willful misconduct. Such indemnity obligation shall only apply to the extent such claims are determined by a court of competent jurisdiction to have been caused by the negligence or willful misconduct of Architect. This indemnity obligation shall not apply to the extent said claims arise out of, pertain to, or relate to the negligence of Owner or Owner's other agents, other servants, or other independent contractors, including the contractor, subcontractors of contractor or other consultants of Owner, or others who are directly responsible to Owner, or for defects in design or construction furnished by those persons.

The Owner agrees, to the fullest extent permitted by law, to indemnify and hold Architect harmless from any claims, damages, liability, or costs (including reasonable attorneys' fees and costs of defense) to the extent caused by the Owner's willful misconduct or negligent acts, errors or omissions and those of its contractors, subcontractors or consultants or anyone for whom the Owner is legally liable.

**16. Insurance.** The Architect agrees to procure and maintain policies of insurance against the following risks to the extent stated:

- a. Comprehensive General Liability Insurance covering the Architect as named insured with not less than the following limits of liability:
  - i. General Aggregate - \$2,000,000.00
  - ii. Bodily Injury - combined single limit of \$1,000,000.00
  - iii. Property Damage - combined single limit of \$1,000,000.00
- b. Valuable Papers Insurance muting the Architect and consultants against loss or destruction of any plans, design, drawings specifications or documents produced or used by the Architect under this proposal in an amount of at least \$100,000.00.
- c. Workers' Compensation Insurance as required in the State of Nevada.
- d. Employer's Liability Insurance coverage in an amount of at least \$1,000,000.00.
- e. Professional Liability Insurance: \$1,000,000.00 (per claim and aggregate). Such coverage is written on a claims-made basis with defense costs and expenses "within limits" (i.e. declining limits policy). The Architect agrees to maintain this insurance for a period of at least four (4) years after Substantial Completion of the Project; provided that such coverage is reasonably available at commercially affordable premiums.
- f. Auto insurance with the following types of limits and coverage, for any auto hired and not owned: Combined single limit \$1,000,000.00.

**17. Miscellaneous.** This proposal shall be governed by the laws of the State of Nevada, and any litigation relating hereto shall take place in Clark County, Nevada. If any term or condition of this proposal shall be held invalid or unenforceable, the remainder of this proposal shall continue valid and enforceable to the fullest extent permitted by law. All provisions of this proposal which by their terms may require performance after cancellation shall survive any such cancellation.

**18. Entire Agreement.** In the event this proposal is fully executed, it will become the final agreement between the parties with regard to the services addressed herein. If this proposal is not fully executed, then the parties agree to negotiate and execute an AIA Document B151 Agreement within sixty (60) days of this proposal. Should the parties be unable to reach an agreement within the sixty (60) days (or any other mutually agreed upon time period), then either party may terminate its services and/or obligations hereunder without further responsibility or liability.

**19. Interest.** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty (30) after the invoice date shall bear interest at the rate of 1.5% per month.

*end of terms & conditions...*