

# OWNER-CMAR CONSTRUCTION AGREEMENT

This Owner-CMAR Construction Agreement, between Washoe County, hereinafter referred to as "Owner", and MWH Constructors and KG Walters (MWH & KGW) the Construction Manager at Risk, hereinafter referred to as "CMAR", is entered into as of the following date:

Execution Date: \_\_\_\_\_

## **Project Identification**

Project Name: South Truckee Meadows Water Reclamation Facility 2020 Expansion Project  
(GMP#3C) Early Equipment Procurement Package

Contract No: WR860109

Labor Commission PWP No.: WA-2022-312

## **Owner**

Washoe County Community Service Department  
1001 East Ninth Street  
Reno, Nevada 89512

## **CMAR**

MWH & KGW, a Joint Venture  
370 Interlocken Blvd,  
Suite 400, Broomfield,  
CO 80021

## **ARTICLE 1 GUARANTEED MAXIMUM PRICE**

For supplying the equipment and services required by this Agreement and the other Contract Documents, the Owner will pay and the CMAR shall accept a total sum (Guaranteed Maximum Price) not to exceed:

The CMAR's Guaranteed Maximum Price (GMP) for the entire Work associated on the referenced Project:

1) Subcontracted Bid Package	
S-3C-01 Electrical, Instrumentation and Controls	\$ 2,661,541.00
2) Supplier Procurement Packages	
P-3C-01 Open Web Steel Joist	\$ 238,190.00
P-3C-04 Vertical Mixers	\$ 1,023,274.00
P-3C-05 Turbo Blowers	\$ 754,797.00
P-3C-06 Rotary Blowers	\$ 524,422.00
P-3C-07 Grit Assembly	\$ 878,249.00
P-3C-08 Submersible Horizontal Propeller Pumps	\$ 205,174.00
P-3C-09 Fine Bubble Diffusers	\$ 535,947.00
3) CMAR General Conditions	\$ 58,895.00

4) CMAR's Profit and OH (13% Cost of the Work)	\$ 894,464.00
5) CMAR's Bonds and Insurance	\$ 154,329.00
5) CMAR's Contingency	\$ 26,380.00
6) CMAR's Contingency Fee, Bonds, and Insurance	\$ 4,020.00
7) Owner's Allowance	\$ 1,732,916.00
8) Owner's Contingency	\$ 100,000.00
<b>Total Guaranteed Maximum Price</b>	<b>\$ 9,792,598.00</b>

<u>Savings Split</u>	<u>Owner</u>	<u>CMAR</u>
Percentage Split of Value Engineering Opportunities	75%	25%
Percentage Split of CMAR's Contingency Savings	75%	25%
Percentage Split of Owner's Contingency	100%	0%
Percentage Split of Owner's Allowance	100%	0%

## **ARTICLE 2 INCORPORATED DOCUMENTS**

**The Owner and the CMAR mutually agree that the following documents comprise Contract Documents and are incorporated into and made a part of this Agreement by reference:**

- 1) CMAR Work Release Request, dated April 20, 2022
- 2) General Conditions of the Contract of the Construction Contract
- 3) Supplemental General Conditions of the Construction Contract
- 4) Drawings:
  - a) 90% STMWRF 2020 Expansion Project, Volumes 6 and 7, by Jacobs (January 2022)
- 5) Details:
  - a) 90% STMWRF 2020 Expansion Project, Volumes 8 and 9, by Jacobs (January 2022)
- 6) Specifications:
  - a) 90% STMWRF 2020 Expansion Project, Volumes 1 through 5, by Jacobs (January 2022)
- 7) Addenda
- 8) Change Orders
- 9) SRF Requirements

## **ARTICLE 3 CONTRACT TIME**

The CMAR shall commence the work on the Project as directed by the Owner in a written Notice to Proceed. There will be two Notice to Proceeds associated with this agreement, one for administrative purposes and one for construction purposes. After the referenced date of commencement, all work shall be completed in conjunction with GMP 4, as stipulated in Notice to Proceed of GMP 4 and subject to liquidated damages there in.

Calendar Days: as noted in GMP 4

#### **ARTICLE 4 LIQUIDATED DAMAGES**

The CMAR agrees that time is of the essence of this Agreement and further agrees to satisfactorily complete the Work in accordance with the Contract Documents and achieve Substantial Completion within the specified contract time plus any adjustments to the Contract Time resulting from approved Change Orders, and failing to do so, agrees to pay, not as a penalty but as liquidated damages, the sum stipulated below for each calendar day in excess of the Contract Time stipulated in this Agreement. Upon Substantial Completion, liquidated damages will not be assessed on the date of Substantial Completion provided the CMAR completes all punch-list work within the time limit stipulated in the Certificate of Substantial Completion. Liquidated damages shall resume if the CMAR does not complete all punch-list work within the time limit stipulated in the Certificate of Substantial Completion. Liquidated Damages shall be Owner's sole and exclusive remedy for all losses based upon, arising from or relating to CMAR's failure to meet Substantial Completion.

Liquidated Damages: as noted in GMP 4

#### **ARTICLE 5 AGREEMENT MODIFICATIONS**

This Agreement constitutes the entire agreement between the parties and may be modified only by a written Change Order executed by the parties. This agreement is for GMP 3c only and a separate agreement will be entered into for subsequent phases of the project.

#### **ARTICLE 6 AGREEMENT TERMS AND CONDITIONS**

The term Work includes all labor, materials, services, shop drawings, equipment, tools, transportation, power, water, permanent and temporary utilities, connections, provisions for safety, and all incidental and other things necessary to produce the finished construction as described by the Contract Documents.

The CMAR agrees to provide all labor materials, equipment, tools and services necessary, and to do everything required by this Agreement and by the Contract Documents, as necessary to complete all Work required for the Project.

#### **ARTICLE 7 CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE**

The Contract Documents form the agreement between the Owner and the CMAR and are comprised of the documents listed in Article 2 herein. The Contract Documents are complementary and what is required by anyone shall be as binding as if required by all.

In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents are to prevail in the following order:

- a. Written Amendments and Change Orders
- b. This OWNER-CMAR Construction Agreement
- c. Supplemental Conditions, Specification 00 73 01
- d. General Conditions, Specifications 00 72 13
- e. Final GMP Proposal - CMAR Work Release Request #XXXX
- f. Construction Specifications (Volume 1 of 3)
- g. Construction Details (Volume 3 of 3)
- h. Construction Drawings (Volume 2 of 3)
- i. All other Contract Documents

**ARTICLE 8 EXAMINATION OF CONTRACT DOCUMENTS**

Execution of this Agreement by the CMAR shall constitute the representation by the CMAR that he has examined the contents of the Contract Documents, including, but not limited to, the General Conditions of the Contract, that he has read and understands the same, and specifically agrees to be bound thereby.

**ARTICLE 9 PROGRESS PAYMENT**

On or about the first of each month, the Contractor shall make and certify an estimate of the amount and fair value of the work done, and may apply for partial payment therefore. The Contractor shall revise the estimate as the Owner may direct. Whenever the monthly estimate, after approval, shows that the value of the work completed during the previous month exceeds one percent (1%) of the total contract price, the Owner will process a pay request. The Owner will thereupon cause the amount therein to be paid to the Contractor. Such certification of work performed will authorize payment in an amount equal to the value of the Work completed less any sums that may be retained by the Owner.

Pursuant to NRS 338.515, Owner shall retain 5 percent (5%) of such estimated value of the Work done as part security for the fulfillment of the Contract until fifty percent (50%) of the Work required by the contract has been performed. When fifty percent (50%) of the Work has been completed to the satisfaction of the Owner, one-half (1/2) of the amount retained by Owner will be paid to Contractor. Thereafter, if in the opinion of the Owner, satisfactory progress is being made, Owner shall retain up to two and a half percent (2.5%) from monthly progress payments as part security for the fulfillment of the Contract until the Work required by the contract has been completed. No partial payment shall be made when, in the judgment of the Owner, the Work is not being diligently prosecuted by the Contractor. The amount of payments withheld as provided herein shall be retained for a period of thirty (30) days from the date of filing of the Notice of Completion.

Owner shall pay to Contractor at the end of each quarter this Agreement is in effect, interest for the quarter on the amount withheld at a rate to be determined by Owner in accordance with NRS 338.515. If the amount due the Contractor pursuant to this provision for any quarter is less than Five Hundred Dollars (\$500.00), the Owner may withhold the interest until: (1) the end of a subsequent quarter after which the amount of interest due is Five Hundred Dollars (\$500.00) or more; (2) the end of the fourth consecutive quarter for which no interest has been paid to the Contractor; or (3) the final payment is due under the Agreement, whichever occurs first.

Contractor shall pay the Subcontractors progress payments and pay interest on amounts retained from said progress payments in accordance with the provisions of NRS 338.510 through NRS 338.535.

In accordance with NRS 244.320 and NRS 354.626, if, in any subsequent fiscal year, the County determines not to appropriate or budget funds for the purposes specified in this Contract, or the County determines that it is required to amend previous appropriations or budgeted amounts to eliminate or reduce funding the purposes in this Contract, this Contract will be terminated without penalty, charge, or sanction.

**ARTICLE 10 FINAL PAYMENT**

When the Work and all requirements of the Contract Documents are fully and satisfactorily completed, the Owner will pay to the CMAR a final payment consisting of the remaining unpaid balance of the Contract Sum due the CMAR. The acceptance of the final payment by the CMAR shall constitute a full and final release and waiver of all CMAR claims and rights

of claim against the Owner relating or pertaining to the Work.

Acceptance of the final payment by the CMAR shall terminate the Owner-CMAR Construction Agreement after which time the applicable terms and conditions for Warranties and Insurance shall continue to apply. The CMAR indemnification obligation continues after final payment.

#### **ARTICLE 11 PREVAILING WAGE RATES**

This project is subject to both NRS Chapter 338 and Federal Davis Bacon requirements. Nevada 2020 prevailing wage rates are published by State of Nevada Office of the Labor Commissioner. Federal Davis-Bacon 2020 wage rates are published by Department of Labor. The highest wage between the Nevada prevailing wage determination and Davis-Bacon prevailing wage determination shall be paid. Contractor shall forfeit, as a penalty to the Owner, not less than \$20 nor more than \$50 for each calendar day or portion thereof that each workman employed:

- Is paid less than the designated rate for any work done under the contract, by the contractor or any subcontractor under it.
- Is not reported to the labor commission and the Owner.

In addition, Contractor shall use LCP Tracker, software provided by County, to submit accurate records showing the name, occupation and actual per diem wages and benefits paid to each workman employed by it in connection with this project. The records shall be open to inspection by the Owner, its officers and agents and at all reasonable hours.

Contractor must submit certified payrolls electronically into the County's contracted payroll tracking system "LCP Tracker." This requirement will apply to every lower tier subcontractor and vendor required to provide certified payroll reports by NRS 338.010 to 338.090 inclusive. The County will set up the project in the system, however it's the responsibility of the Prime to add subcontractors. Obtain access to the LCP Tracker system no later than the date employees start work on the project. Ensure subcontractors have access to the LCP Tracker system for the reporting of payrolls no later than the date the subcontractor's employees start work on the project. Associated fees are paid for by the County. Information regarding options for interface software and training is available on LCP Tracker website.

#### **ARTICLE 12 APPRENTICESHIP UTILIZATION ACT**

Under NRS 338, this project is a public work that requires use of the apprentices. All contractors must comply with NRS 338.01165 for this project, unless modification, waiver or exemption applies.

#### **ARTICLE 13 PERFORMANCE AND PAYMENT BONDS**

The Contractor agrees that it will before this Contract becomes effective, furnish the Owner a Faithful Performance Bond and a Labor and Material Payment Bond, furnished by a company or companies acceptable to the Owner, each in an amount equal to one hundred percent (100%) of the total Contract sum.

The Faithful Performance Bond shall be conditioned that the Work under the Contract shall be performed in accordance with the Specifications and terms of this Agreement and shall guarantee the Work for a period of one (1) year.

Labor and Material Payment Bond shall be conditioned to provide and secure payment for all material, provisions, provender and supplies, teams, trucks and other means of transportation used in, or upon or about the Work and for any labor done thereon.

**ARTICLE 14 STATUTORY REQUIREMENTS**

The CMAR agrees to all terms and conditions of the Nevada Revised Statutes (NRS) and the Nevada Administrative Code (NAC), including without limitation, NRS Chapter 338 and NAC 338 as they may apply to this Agreement and to the work performed under this Agreement and agrees to comply with all such applicable portions of the NRS and the NAC.

**ARTICLE 15 INFORMATION ACCESS**

The books, records, documents, and accounting procedures and practices of the CMAR relevant to this Agreement shall be subject to inspection, examination and audit by the Owner for a period of four years.

**ARTICLE 16 ASSIGNMENT RIGHTS**

This Contract is not assignable by either party.

**ARTICLE 17 TERMINATION**

This Agreement may be amended or terminated by mutual written consent of the parties hereto. The Owner, however, specifically reserves the right at any time to terminate this Agreement for convenience seven calendar days after having served the CMAR with a written notice of termination.

Further, Owner reasonably believes that funds can be obtained sufficiently to make all payments during the term of this Agreement. If Owner does not allocate funds to continue the function performed by the CMAR under this Agreement, this Agreement shall be terminated when appropriated funds expire, without penalty, charge or sanction to Owner.

Upon termination, for other than a breach of this Agreement by the CMAR, the Owner shall make payments to the CMAR of all fees due but unpaid for services or work completed to the satisfaction of the Owner as of the time of the notice of termination. The making of such payments by the Owner shall constitute a complete release of all the responsibilities of the Owner under the terms of this Agreement. The CMAR waives any claim for overhead and profit on the services or work remaining at the time of termination.

**ARTICLE 18 OWNERSHIP AND USE OF DOCUMENTS**

Any drawings, reports, studies, photographs, negatives, or other documents prepared by the CMAR in the performance of his obligations under this Agreement shall be the exclusive property of the Owner and all such materials shall be remitted to the Owner by the CMAR upon completion, termination, or cancellation of this Agreement. The CMAR shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of the CMAR's obligations under this Agreement, without the prior written consent of the Owner.

**ARTICLE 19 INDEPENDENT CONTRACTOR**

By their signatures, the parties agree the CMAR is an independent contractor, is not a County employee, has the right to perform services for others during the term of this agreement, shall be responsible for withholding of income taxes, and responsible for providing industrial insurance coverage as required by law and Article 16 of this Agreement.

Consistent with the CMAR's independent contractor status, CMAR shall not be entitled to the benefits of County employment including, but not limited to, participation in group insurance plans which may be available to County employees, participation in or contribution to the Public Employees Retirement System, accumulation of vacation leave or sick leave, or unemployment compensation coverage, or any other County employment benefit.

## **ARTICLE 20 LEGAL ACTIONS**

This Agreement shall be construed and interpreted according to the laws of the State of Nevada without resort to conflict of laws principles. Any action brought by either party arising out of or related to this Agreement shall be brought in a court located in Washoe County.

## **ARTICLE 21 DISPUTE RESOLUTION**

In the event of a dispute between the Owner and the CMAR that cannot be resolved satisfactorily between the parties, third party mediation shall be commenced and concluded utilizing a mediator acceptable to the Owner and the CMAR prior to pursuing arbitration. Fees for mediation shall be shared equally between the Owner and the CMAR. In the event of arbitration, the prevailing party shall be entitled to an award of attorney's fees and costs.

## **ARTICLE 22 INDEMNIFICATION AND LIMITS ON LIABILITY, PUNITIVE DAMAGES**

To the fullest extent permitted by law, the CMAR shall defend, indemnify, and hold harmless the Owner, the Design Consultant, and the agents and employees of all of them from and against all claims, damages, losses, and expenses, including, but not limited to attorneys' fees arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) but only to the extent caused by the acts or omissions of the CMAR, a Subcontractor, a supplier, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph.

Owner will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. Contract liability shall not be subject to punitive damages. To the extent applicable actual Agreement damages for any breach shall be limited by NRS 354.626.

## **ARTICLE 23 FAIR EMPLOYMENT PRACTICES**

In connection with the performance of work under this Agreement, the CMAR agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation, gender identity or expression, age. Such agreement shall include, but not be limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. As used in this article, sexual orientation means having or being perceived as having an orientation for heterosexuality, homosexuality, or bisexuality. Sexuality and gender identity or expression means a gender-related identity, appearance, expression, or behavior of a person, regardless of the person's assigned sex at birth.

The CMAR further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

Any violation of such provision by the CMAR shall constitute a material breach of this Agreement.

#### **ARTICLE 24 SEVERABILITY**

If any provision of this Agreement is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the parties shall, if possible, agree on a legal, valid, and enforceable substitute provision that is as similar in effect to the deleted provision as possible. The remaining portion of the Agreement not declared illegal, invalid, or unenforceable shall, in any event, remain valid and effective for the term remaining unless the provision found illegal, invalid, or unenforceable goes to the essence of this Agreement.

#### **ARTICLE 25 CROSS CUTTER**

Contractor shall comply with all regulations and requirements as noted in the attached Federal Crosscutter documents. Including the following acknowledgment of the A.I.S. requirements:

The Contractor acknowledges to and for the benefit of the County and the Nevada Division of Environmental Protection (the "State") that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund that have statutory requirements commonly known as "American Iron and Steel;" that requires all of the iron and steel products used in the project to be produced in the United States ("American Iron and Steel Requirement") including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the County for the funding of its project, the County and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.



**ARTICLE 26      CONSEQUENTIAL DAMAGES**

Pursuant to NRS 338.445(2)(d) consequential damages may not be awarded in any action arising from this contract.

**WASHOE COUNTY**

\_\_\_\_\_  
Chair  
Washoe County Commission

ATTEST:

\_\_\_\_\_  
Janis Galassini, Washoe County Clerk

**CONSTRUCTION MANAGER AT RISK:**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF NEVADA      )  
  ) SS:  
COUNTY OF WASHOE    )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me, a Notary Public, \_\_\_\_\_, who acknowledged to me that he/she executed the foregoing Agreement.

\_\_\_\_\_  
Notary Public

## **INSURANCE EXHIBIT**

### **PUBLIC WORKS CONSTRUCTION INDEMNIFICATION AND INSURANCE SPECIFICATIONS FOR CMAR SOUTH TRUCKEE MEADOWS WATER RECLAMATION FACILITY 2020 EXPANSION PROJECT Early Equipment Procurement Package**

#### **INTRODUCTION**

COUNTY has established specific indemnification, insurance, and safety requirements for public works construction contracts to help assure that reasonable insurance coverage is purchased and safe working conditions are maintained. Indemnification and hold harmless clauses are intended to assure that CONTRACTOR accepts and is able to pay for the loss or liability related to its activities.

BIDDERS' ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW. IT IS HIGHLY RECOMMENDED THAT BIDDERS CONFER WITH THEIR RESPECTIVE INSURANCE CARRIERS OR BROKERS TO DETERMINE IN ADVANCE OF BID SUBMISSION THE AVAILABILITY OF INSURANCE CERTIFICATES AND ENDORSEMENTS AS PRESCRIBED AND PROVIDED HEREIN. IF THERE ARE ANY QUESTIONS REGARDING THESE INSURANCE REQUIREMENTS, IT IS RECOMMENDED THAT THE AGENT/BROKER CONTACT THE COUNTY RISK MANAGER DIRECTLY AT (775) 328-2665. IF ANY APPARENT LOW BIDDER FAILS TO COMPLY STRICTLY WITH THE INSURANCE REQUIREMENTS, THAT BIDDER MAY BE DISQUALIFIED FROM AWARD OF THE CONTRACT.

#### **INDEMNIFICATION AGREEMENT**

CONTRACTOR agrees to hold harmless, indemnify, and defend COUNTY, its officers, agents, employees, and volunteers from any loss or liability, financial or otherwise resulting from any claim, demand, suit, action, or cause of action based on bodily injury including death or property damage, including damage to CONTRACTOR'S property or injury to CONTRACTOR'S employee, caused by any action, either direct or passive, the omission, failure to act, or negligence on the part of CONTRACTOR, its employees, agents, representatives, or Subcontractors arising out of the performance of work under this Agreement by CONTRACTOR, or by others under the direction or supervision of CONTRACTOR.

CONTRACTOR must either defend COUNTY or, upon determination that the work performed by CONTRACTOR was negligent in any manner or that CONTRACTOR failed to perform any duty set forth in this Agreement, pay COUNTY'S costs related to the investigation and defense of any claim, demand, action, or cause of action.

If COUNTY'S personnel are involved in defending such actions, CONTRACTOR shall reimburse COUNTY for the time spent by such personnel at the actual cost incurred by COUNTY for such services.

In determining the nature of the claim against COUNTY, the incident underlying the claim shall determine the nature of the claim, notwithstanding the form of the allegations against COUNTY.

#### **GENERAL REQUIREMENTS**

Prior to the commencement of any work or services under this Agreement and thereafter upon renewal or replacement of each required coverage, CONTRACTOR shall purchase and maintain insurance of the types and limits described below. Coverage shall insure against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by CONTRACTOR, its subcontractor, or their employees, agents, or representatives. The cost of all such insurance shall be included in the CONTRACTOR'S bid.

## **INDUSTRIAL (WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY) INSURANCE**

It is understood and agreed that there shall be no Industrial Insurance coverage provided for CONTRACTOR or any Subcontractor by COUNTY. CONTRACTOR agrees, as a precondition to the performance of any work under this Agreement and as a precondition to any obligation of the COUNTY to make any payment under this Agreement to provide COUNTY with a certificate issued by an insurer in accordance with NRS 616B.627 and with certificates of an insurer showing coverage pursuant to NRS 617.210 for CONTRACTOR and all subcontractors.

CONTRACTOR shall maintain workers' compensation and employer's liability insurance meeting the statutory requirements of the State of Nevada, including but not limited to NRS 616B.627 and NRS 617.210. The employer's liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

If CONTRACTOR or Subcontractor is unlicensed and is a sole proprietor, coverage for the sole proprietor must be purchased and evidence of coverage must appear on the Certificate of Insurance. Such requirement may be waived for a sole proprietor who does not use the services of any employees, subcontractors, or independent contractors and completes an Affirmation of Compliance pursuant to NRS 616B.627(2).

It is further understood and agreed by and between COUNTY and CONTRACTOR that CONTRACTOR shall procure, pay for, and maintain the above mentioned industrial insurance coverage at CONTRACTOR'S sole cost and expense.

Should CONTRACTOR be self-funded for Industrial Insurance, CONTRACTOR shall so notify COUNTY in writing prior to the signing of this Agreement. COUNTY reserves the right to approve said retentions, and may request additional documentation, financial or otherwise, for review prior to the signing of this Agreement.

Upon completion of the project, CONTRACTOR shall, if requested by COUNTY, provide COUNTY with a Final Certificate for itself and each Sub showing that CONTRACTOR and each Sub had maintained Industrial Insurance by paying all premiums due throughout the entire course of the project.

CONTRACTOR waives all rights against COUNTY, its elected officials, officers, employees and agents, for recovery of damages to the extent these damages are covered by the workers compensation and employer's liability or commercial umbrella liability insurance obtained by Tenant pursuant to this agreement. CONTRACTOR shall obtain an endorsement equivalent to WC 00 03 13 to affect this waiver.

## **COMMERCIAL GENERAL LIABILITY**

CONTRACTOR shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than **\$2,000,000** each occurrence. If such CGL insurance contains a general aggregate limit, it shall be increased to equal twice the required occurrence limit or revised to apply separately to this project or location.

CGL insurance shall be written on ISO occurrence form CG 00 01 04 13 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage, or damage to the named insured's work.

COUNTY and any other Indemnitees listed in the INDEMNIFICATION section of this Agreement shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 07/04 and CG 20 37 07/04 or a substitute providing equivalent coverage, and under the commercial umbrella, if any.

This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to COUNTY or any other Indemnitees under this Agreement

The status of COUNTY as an insured under a CGL obtained in compliance with this agreement shall not restrict coverage under such CGL with respect to the escape of release of pollutants at or from a site owned or occupied by or rented or loaned to COUNTY.

CONTRACTOR waives all rights against COUNTY and any other Indemnitees listed in the INDEMNIFICATION section of this Agreement for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained pursuant to this agreement. CONTRACTOR's insurer shall endorse CGL policy to waive subrogation against COUNTY with respect to any loss paid under the policy.

**Continuing Completed Operations Liability Insurance.** Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella liability insurance, both applicable to liability arising out of CONTRACTOR's completed operations, with a limit of not less than **\$2,000,000** each occurrence for at least **3** years following substantial completion of the work.

- a. Continuing CGL insurance shall be written on ISO occurrence form CG 00 01 04 13 (or a substitute form providing equivalent coverage) and shall, at minimum, cover liability arising from products- completed operations and liability assumed under an insured contract
- b. Continuing CGL insurance shall have a products-completed operations aggregate of at least two times the each occurrence limit.
- c. Continuing commercial umbrella coverage, if any, shall include liability coverage for damage to the insured's completed work equivalent to that provided under ISO form CG 00 01.

**Electronic Data Liability Insurance.** If project involves work that may affect or interrupt electronically stored or transmitted data, CONTRACTOR shall maintain electronic data liability insurance applicable to the Project and insuring against liability arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data. This coverage shall be maintained with a limit of liability of not less than **\$1,000,000**.

Organizations contracting for work that may create a risk of damage to their electronically stored data may require that CONTRACTOR maintain coverage of this kind.

**Railroad Protective Liability Insurance.** For any construction or demolition work within fifty (50) feet of a railroad, CONTRACTOR shall maintain Railroad Protective Liability insurance on behalf of and in the name of the railroad, as named insured, with a limit of **\$6,000,000** per occurrence or higher limit if required by the railroad. CONTRACTOR shall also ensure that any exclusions pertaining to the indemnification of a railroad are removed from its CGL policy or that ISO form CG 24 17 (Contractual Liability-Railroads Endorsements) is included in the coverage.

## **COMMERCIAL AUTOMOBILE LIABILITY**

CONTRACTOR shall maintain automobile liability and, if necessary, commercial umbrella liability insurance with a limit of not less than **\$2,000,000** each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos).

Coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 25, or a substitute form providing equivalent liability coverage for all owned, leased, hired (rented) and non-owned vehicles (as applicable). COUNTY may agree

to accept auto liability for non-owned and hired (rented) vehicles under the CGL if CONTRACTOR does not own or operate any owned or leased vehicles.

CONTRACTOR waives all rights against COUNTY, its officers, employees and volunteers for recovery of damages to the extent these damages are covered by the automobile liability or commercial umbrella liability insurance obtained by CONTRACTOR pursuant to this Agreement.

In lieu of a separate Business Auto Liability Policy, COUNTY may agree to accept Auto Liability covered in the General Liability Policy, if CONTRACTOR does not have any owned or leased automobiles and non-owned and hired auto liability coverage is included.

If project involves the transport of hazardous wastes or other materials that could be considered pollutants, CONTRACTOR shall maintain pollution liability coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) shall be provided, and, if applicable, the Motor Carrier Act endorsement (MCS 90) shall be attached.

CONTRACTOR waives all rights against COUNTY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the business auto liability or commercial umbrella liability insurance obtained by Contractor pursuant to this agreement.

#### **CONTRACTORS PROFESSIONAL LIABILITY INSURANCE**

If applicable (as determined by COUNTY), CONTRACTOR shall maintain professional liability insurance applying to liability for a professional, error, act, or omission arising out of the scope of the CONSULTANT'S services provided under this Agreement with a limit of not less than **\$2,000,000** each claim and annual aggregate. CONSULTANT shall maintain professional liability insurance during the term of this Agreement and, if coverage is provided on a "claims made" or "claims made and reported" basis, shall maintain coverage or purchase an extended reporting period for a period of at least **3** years following the termination of this Agreement.

#### **CONTRACTORS POLLUTION LIABILITY INSURANCE**

If applicable (as determined by COUNTY), Contractor shall maintain in force for the full period of this contract insurance covering losses caused by pollution incidents that arise from the operations of CONTRACTOR described under the scope of services of this contract.

Coverage shall apply to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims. The policy of insurance affording these required coverages shall be written in an amount of at least **\$2,000,000** per claim, with an annual aggregate of at least **\$2,000,000**.

COUNTY and any other Indemnitees listed in the INDEMNIFICATION section of this Agreement shall be included as additional insureds under CONTRACTOR's pollution liability insurance.

If coverage as required herein is written on a claims-made basis, CONTRACTOR warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of five (5) years beginning from the time that work under the contract is completed.

If the scope of services as defined in this contract includes the disposal of any hazardous or nonhazardous materials from the job site, CONTRACTOR must furnish to COUNTY evidence of pollution liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting waste under this contract. Coverage certified to the Owner under this section must be maintained in minimum amounts of \$5,000,000 per loss, with an

annual aggregate of at least \$5,000,000.

### **PROPERTY INSURANCE**

Before the start of work, CONTRACTOR shall obtain and maintain in force property insurance upon the entire Project. Such insurance shall be written on a completed value form and in an amount equal to the initial contract sum plus 10%. The insurance shall apply on replacement cost basis.

The insurance as required in this section shall name as insureds COUNTY, CONTRACTOR, and all subcontractors and sub-subcontractors in the work.

The insurance as required in this section shall cover the entire work at the site identified herein including reasonable compensation for architects' services and expenses made necessary by an insured loss. Insured property shall include portions of the work located away from the site but intended for use at the site and shall also cover portions of the work in transit. The policy shall cover the cost of removing debris, including demolition as may be made legally necessary by the operation of any law, ordinance, or regulation.

CONTRACTOR shall purchase and maintain equipment breakdown/boiler and machinery insurance required by the contract documents or by law, covering insured objects during installation, testing and until final acceptance by COUNTY. This insurance shall name as insureds COUNTY, CONTRACTOR, and all subcontractors and sub-subcontractors in the work.

The insurance shall, at a minimum, cover the causes of loss insured under the ISO special causes of loss form (CP 10 30) and shall be endorsed as needed to provide full coverage for loss or damage from collapse (including collapse resulting from design error as well as damage resulting from defective design, workmanship or material), earthquake and earth movement, flood and water damage.

CONTRACTOR shall be responsible for any deductible amounts and coinsurance penalties.

CONTRACTOR AND COUNTY waive all rights against each other and each of their subcontractors, sub-subcontractors, officers, directors, agents, and employees, for recovery for damages caused by fire and other perils to the extent covered by builders risk insurance purchased pursuant to this agreement, or any other property insurance applicable to the work. This insurance shall remain in effect until final acceptance by COUNTY. Partial occupancy or use of any public building shall not commence until CONTRACTOR has secured the consent of the insurance company or companies providing the coverage required in this paragraph.

### **DEDUCTIBLES AND SELF-INSURED RETENTIONS**

Any deductibles or self-insured retentions must be declared to and approved by the COUNTY Risk Management Division. COUNTY reserves the right to request additional documentation, financial or otherwise, prior to giving its approval of the deductibles and self-insured retention and prior to executing the underlying agreement. Any changes to the deductibles or self-insured retentions made during the term of this Agreement or during the term of any policy, must be approved by the COUNTY Risk Manager prior to the change taking effect.

**OTHER INSURANCE PROVISIONS** The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages
  - a. COUNTY, its officers, agents, employees, and volunteers are to be included as insureds as respects damages and defense arising from: activities performed by or on behalf of CONTRACTOR, including the insured's general supervision of CONTRACTOR; products and completed operations of

CONTRACTOR; premises owned, occupied, or used by CONTRACTOR; or automobiles owned, leased, hired, or borrowed by the CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to the additional insureds nor shall the rights of the additional insureds be affected by the insured's duties after an accident or loss.

- b. CONTRACTOR'S insurance coverage shall be primary insurance as respects COUNTY, its officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, employees, or volunteers shall be excess of CONTRACTOR'S insurance and shall not contribute with it in any way.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to COUNTY, its officers, agents, employees, or volunteers.
- d. If CONTRACTOR'S liability policies do not contain the standard ISO separation of insureds condition, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

## 2. All Coverages

All policies shall provide for and include endorsements confirming that at least thirty (30) days' written notice will be provided to COUNTY prior to the cancellation or non-renewal of any insurance required under this Agreement. An exception may be included to provide at least ten (10) days' written notice if cancellation is due to non-payment of premium. For each policy or if any insurers cannot provide endorsements meeting this requirement, CONTRACTOR shall ultimately be responsible to provide notice to COUNTY as soon as practicable upon receipt of any notice of cancellation, non-renewal, reduction in required limits or other material change in the insurance required under this Agreement.

## ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a Best's rating of no less than A-: VII. COUNTY, with the approval of the Risk Manager, may accept coverage with carriers having lower Best's ratings upon review of financial information concerning CONTRACTOR and insurance carrier. COUNTY reserves the right to require that CONTRACTOR'S insurer be a licensed and admitted insurer in the State of Nevada or meet any applicable state and federal laws and regulations for non-admitted insurance placements.

## VERIFICATION OF COVERAGE

CONTRACTOR shall furnish COUNTY with certificates of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth herein and with original endorsements affecting coverage required by this exhibit. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. **All certificates and endorsements are to be addressed to the specific COUNTY contracting department and be received and approved by COUNTY before work commences.** Copies of applicable policy forms or endorsements confirming required additional insured, waiver of subrogation and notice of cancellation provisions are required to be provided with any certificate(s) evidencing the required coverage. COUNTY reserves the right to require complete certified copies of all required insurance policies at any time.

## SUBCONTRACTORS

CONTRACTOR shall include all Subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to all of the requirements stated herein and shall include the COUNTY and any other Indemnites listed in the INDEMNIFICATION section of this Agreement as additional insureds under their commercial general liability subject to the same requirements stated

herein and without requiring a written contract or agreement between each of the additional insureds and any sub-consultant or sub-contractor.

### **MISCELLANEOUS CONDITIONS**

1. CONTRACTOR shall be responsible for and remedy all damage or loss to any property, including property of COUNTY, caused in whole or in part by CONTRACTOR, any Subcontractor, or anyone employed, directed, or supervised by CONTRACTOR.
2. Nothing herein contained shall be construed as limiting in any way the extent to which CONTRACTOR may be held responsible for payment of damages to persons or property resulting from its operations or the operations of any Subcontractors under it.
3. In addition to any other remedies COUNTY may have if CONTRACTOR fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, COUNTY may, at its sole option:
  - a. Purchase such insurance to cover any risk for which COUNTY may be liable through the operations of CONTRACTOR under this Agreement and deduct or retain the amount of the premiums for such insurance from any sums due under the Agreement;
  - b. Order CONTRACTOR to stop work under this Agreement and/or withhold any payments which become due CONTRACTOR here under until CONTRACTOR demonstrates compliance with the requirements hereof; or,
  - c. Terminate the Agreement.
4. If CONTRACTOR fails to furnish the required certificate or fails to maintain the required insurance as set forth herein, COUNTY shall have the right, but not the obligation, to purchase said insurance at CONTRACTOR's expense.
5. Any waiver of CONTRACTOR's obligation to furnish such certificate or maintain such insurance must be in writing and signed by an authorized representative of COUNTY. Failure of COUNTY to demand such certificate or other evidence of full compliance with these insurance requirements or failure of COUNTY to identify a deficiency from evidence that is provided shall not be construed as a waiver of CONTRACTOR's obligation to maintain such insurance, or as a waiver as to the enforcement of any of these provisions at a later date.

### **SAFETY PROGRAM**

CONTRACTOR shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work.

CONTRACTOR shall take all necessary precautions for the safety of, and shall provide all necessary protection to prevent damage, injury, or loss to:

1. All employees on the work site and all other persons who may be affected thereby.
2. All the work, materials, and equipment to be incorporated therein, whether in storage on or off the site.
3. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

CONTRACTOR shall comply with all applicable laws, ordinances, rules, regulations, and others of any public



authority having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss. He shall erect and maintain, as required by existing conditions and progress on the work, all necessary safeguards for safety and protection, including posting danger signs, other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent utilities. CONTRACTOR shall comply with OSHA'S Hazard Communication Standards.

CONTRACTOR shall designate a responsible member of its organization at the site whose duty shall be the prevention of accidents. This person shall be CONTRACTOR'S superintendent unless otherwise designated in writing by CONTRACTOR to the Owner and the Engineer.