

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

THIS AGREEMENT is entered into between Washoe County, a political subdivision of the State of Nevada (“County”) and Gerhardt & Berry Construction Inc. (“Consultant”), collectively (the “Parties”).

WITNESSETH:

WHEREAS, County desires to engage Consultant to render certain consulting services in Support of the “**South Truckee Meadows Wastewater 2020 Expansion Project Exploration Services**” (the “Project”); and

WHEREAS, County requires certain professional services in connection with the Project, as described in Exhibit “A”, Scope of Work (the “Services”); and

WHEREAS, Consultant represents that it is duly qualified, ready, willing and able to provide the Services by virtue of its education, training and experience; and

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

ARTICLE 1 - EFFECTIVE DATE

The effective date of this Agreement shall be September 14, 2021.

CONSULTANT shall begin performance of services as provided herein upon notice to proceed and shall complete all Services identified in Exhibit A, Scope of Work in accordance with the Standard of Care as set forth in Article 5 herein no later than December 31, 2021, unless this Agreement is terminated sooner in accordance with its terms.

ARTICLE 2 - SERVICES TO BE PERFORMED BY CONSULTANT

Consultant agrees to perform and complete all Services identified in Exhibit A, Scope of Work under this Agreement, and any amendment thereto in accordance with the Standard of Care as set forth in Article 5 herein. Consultant shall be responsible for the quality, technical accuracy, completeness and coordination of all reports, information, specifications and other items and services furnished under this Agreement and any amendments hereto. County reserves the right to inspect, comment on, and request revision of, all Services identified in Exhibit A and any amendments thereto performed by Consultant prior to acceptance, and Consultant warrants that such Services shall be fit and sufficient for the purposes expressed in, or reasonably inferred from, this Agreement and any amendments hereto.

Failure to provide major deliverables, including, but not limited to, Services identified in Exhibit A, Scope of Work, shall constitute a material breach of this Agreement unless waived in writing by the County.

ARTICLE 3 - COMPENSATION

3.1 Compensation for Services

For Services defined in Section 1 above, Consultant’s compensation shall be determined on a time and material basis, in accordance with the Fee Schedule described in Exhibit “A”, which is attached hereto and incorporated by reference as part of the Agreement, and shall not exceed the sum of **\$107,285.19**. Consultant shall satisfy its obligations hereunder without additional cost or expense to County during the term of this Agreement other than the heretofore stated compensation and the fee schedule described in Exhibit A. The Fee Schedule may be renegotiated at the end of one (1) year upon request by either the

County or the Consultant. The actual costs charged for the work by Consultant in accordance with this provision shall be full compensation to Consultant for all Services and duties required by the Scope of Work, including, but not limited to: costs of supplies, facilities and equipment; costs of labor and services of employees, consultants and sub-consultants engaged by Consultant; travel expenses, telephone charges, typing, duplicating, costs of insurance, and all items of general overhead. Consultant shall submit billings on a monthly basis.

3.2 Compensation for Additional Services

If County requests Consultant to perform additional services, other than those required to be performed under Services identified in Exhibit A, Scope of Work, the cost of such additional services shall be determined prior to commencing additional work. All additional services and amount of payment must be authorized in writing by County prior to commencing any work for such services.

3.3 Methods and Times of Payment

Consultant shall submit to County monthly progress invoices indicating the number of hours each employee provided services and other allowed direct expenses. Payment to Consultant for work on the Project shall be made within forty-five (45) days after receipt and approval of Consultant's invoice, said approval not to be unreasonably withheld. Payment by County of invoices or requests for payment shall not constitute acceptance by County of work performed on the Project by Consultant. No penalty shall be imposed upon the County for payment(s) received by Consultant after forty-five days.

3.4 Dispute of Work

County shall notify Consultant in writing within thirty (30) days of receipt of the work, or portion of work, which is not approved. For work, or portions of the work, which are unapproved, the County and Consultant shall develop a mutually acceptable method to resolve the dispute within thirty (30) days of receipt by the Consultant of notice from the County. If the County and Consultant cannot reasonably agree to remedy the dispute of unapproved work within the thirty-day period, the work shall be terminated or suspended per Article 12.

ARTICLE 4 - TIME SCHEDULE FOR COMPLETION

The Services identified in Exhibit A, Scope of Work on the Project shall be diligently performed and be completed no later than December 31, 2021. Consultant shall be granted time extensions for items within the phases of the Project in writing by County if the time schedules cannot be met because of delays beyond Consultant's reasonable control, including, but not limited to, County's failure to furnish information, or to approve or disapprove Consultant's work promptly. Consultant will provide to County a monthly report including a schedule identifying progress or work completed, problems or difficulties being encountered, work to be initiated during the following month and other useful information. This report will be submitted on the first day of each month and will be in a format suitable for submittal to other interested agencies. Consultant's failure to submit promptly the monthly progress report may cause delay in payment from the County.

ARTICLE 5 - STANDARD OF CARE

Consultant shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily provided under similar circumstances and Consultant shall, at no cost to County, re-perform services which fail to satisfy the foregoing standard of care provided that Consultant is notified in writing by County of the deficiency within six (6) months of performance of the deficient

Services. Such re-performed Services may include, but not be limited to, correcting errors and omissions, or any other deficiencies in designs, drawings, specifications and reports. County reserves the right to inspect, comment on, and request revision of, all Services performed by Consultant prior to acceptance, and Consultant warrants that Services shall be fit and sufficient for the purposes expressed in and intended by this Agreement and any amendments thereto. Failure to provide Services or re-performed Services in accordance with the foregoing standard of care shall constitute a material breach of this Agreement unless waived by the County. Review and approvals by County do not relieve Consultant of its responsibilities under this Article. Except as is otherwise provided for in this Article, the re-performance of Services is the Consultant's entire responsibility and the County's exclusive remedy for Services rendered or to be rendered hereunder, and no additional warranties, guarantees or obligations are to be implied.

ARTICLE 6 - OPINIONS OF COST AND SCHEDULE

Since Consultant has no control over the cost of labor, materials, equipment or services furnished by others, including over any other consultants', subcontractors', or vendors' methods of determining prices, or over competitive bidding or market conditions, Consultant's cost estimates shall be made on the basis of qualification and experience.

Since Consultant has no control over the resources provided by others to meet contract schedules, Consultant's forecast schedules for completion of Services shall be established based on generally acceptable schedules for and performance standards of similarly situated professionals qualified and experienced to perform the Services. Consultant cannot and does not guarantee that proposals, bids or actual project costs will not vary from its cost estimates or that actual schedules will not vary from its forecast schedules.

ARTICLE 7 - INDEPENDENT CONTRACTOR

Consultant undertakes performance of the Services as an independent contractor, is not entitled to benefits provided to employees of the County, is solely responsible for federal taxes and social security payments applicable to money received for services herein provided and understands the County will file an IRS Form 1099 for all payments made to Consultant. Consultant shall be wholly responsible for the methods of performance. County shall have no right to supervise the methods used by Consultant. County shall have the right to observe such performance. Consultant shall work closely with County in performing Services under this Agreement.

ARTICLE 8 - PERMITS AND LICENSES

Consultant shall procure the permits, certificates, and licenses necessary to allow Consultant to perform the Services. Consultant shall not be responsible for procuring permits, certificates, and licenses required for any construction unless such responsibilities are specifically assigned to Consultant in Exhibit A, Scope of Services.

ARTICLE 9 - COUNTY'S RESPONSIBILITY

County shall provide any information authorized by law in its possession that is requested by Consultant and is necessary to complete the Project. County shall assist Consultant in obtaining access to public and private lands so Consultant can perform the Services. County shall examine all studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by Consultant and shall render decisions pertaining thereto within a reasonable time so as not to delay the work of Consultant.

ARTICLE 10 - REUSE OF DOCUMENTS

All documents, including computer files, drawings, specifications, and computer software, prepared by Consultant pursuant to this Agreement are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by County or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by Consultant for the specific purpose intended will be at County's sole risk and without liability or legal exposure to Consultant; and County shall indemnify and hold harmless Consultant against all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting from such reuse. Any such verification or adaptation will entitle Consultant to further compensation at rates to be agreed upon by County and Consultant.

Copies of all documents, including reports, computer files, drawings, specifications, and computer software, prepared by Consultant pursuant to this agreement will be provided to the County in electronic format accompanied by the appropriate documentation necessary to catalog them in the context of this project.

When transferring data in electronic media format, Consultant makes no representation as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by Consultant at the beginning of the Project.

Because the data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. Consultant shall not be responsible to maintain documents stored in electronic media format after acceptance by County.

ARTICLE 11 - TERMINATION OR EXTENSION OF CONTRACT

Either Party may terminate this Agreement by written notice to the other Party if the other Party is in material breach or default of any provision of this Agreement and does not remedy such breach or default, or provide satisfactory evidence that such default will be expeditiously remedied, within thirty (30) days after being given such notice. In the event of such termination, County shall pay Consultant for all Services satisfactorily performed to the date of termination.

County, in its sole discretion, shall have the right to terminate this Agreement or suspend performance thereof for County's convenience upon written notice to Consultant, and Consultant shall terminate or suspend performance of services within thirty (30) days on a schedule acceptable to County. In the event of termination or suspension for County's convenience, County shall pay Consultant for all Services performed in accordance with the terms of this Agreement.

In the event that the County's governing body fails to appropriate or budget funds for the purposes specified in this Agreement, or that the County's governing body has been required, in its sole judgment, to amend previous appropriations or budgeted amounts to eliminate or reduce funding for the purposes of this Agreement, this Agreement shall be terminated without penalty, charge, or sanction.

ARTICLE 12 - NONDISCLOSURE OF PROPRIETARY INFORMATION

Consultant shall consider all information provided by County to be proprietary unless such information is available from public sources, was known to Consultant prior to the execution of this Agreement, was received by Consultant from a third-party source not under any obligation of confidentiality to the County, or is required by law or ordered to be disclosed in a regulatory or judicial proceeding. Consultant shall not publish or disclose proprietary information for any purpose other than the performance of the Services without the prior written authorization of County or in response to legal process or as required by the regulations of public entities.

ARTICLE 13 - NOTICE

Any notice, demand, or request required by or made pursuant to this Agreement shall be deemed properly made if personally delivered in writing on the date of delivery, or, if deposited in the United States mail, postage prepaid, to the address specified below, three days after the date of mailing:

To County:

David Solaro, Director
Washoe County Community Services
1001 East 9th Street
Reno, NV 89512

To Consultant:

Greg Gerhardt
Gerhardt & Berry Construction, Inc.
PO Box 51749
Sparks, NV 89435

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Consultant and County.

ARTICLE 14 - UNCONTROLLABLE FORCES

Neither County nor Consultant shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to uncontrollable forces the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid and is not reasonably foreseeable at the time of entering into this Agreement. The term "uncontrollable forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the control of the non-performing party. It includes, but is not limited to, fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, inability to procure permits, licenses, or authorizations from any state, local, or federal agency or person for any of the supplies, materials, accesses, or services required to be provided by either County or Consultant under this Agreement, strikes, work slowdowns or other labor disturbances, and judicial restraint. Consultant shall be paid for services performed prior to the delay plus related costs incurred attributable to the delay.

Neither Party shall, however, be excused from performance if nonperformance is due to uncontrollable forces which are removable or remediable nor which the non-performing Party could have, with reasonable dispatch removed or remedied. The provisions of this Article shall not be interpreted or construed to require Consultant or County to prevent, settle, or otherwise avoid a strike, work slowdown, or other labor action. The non-performing Party shall upon being prevented or delayed from performance by an uncontrollable force, immediately give written notice to the other Party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

ARTICLE 15 - GOVERNING LAW-VENUE

Nevada law governs this Agreement and all adversarial proceedings arising out of this Agreement or arising out of planning or constructing the Project outlined in Article 2 – Services to be Performed by Consultant. Venue for all adversarial proceedings arising out of this Agreement or arising out of planning or constructing the Project outlined in Article 2 – Services to be Performed by Consultant shall be in state district court in Washoe County, Nevada.

ARTICLE 16 - MISCELLANEOUS

16.1 Nonwaiver

A waiver by either County or Consultant of any breach of this Agreement shall not be binding upon the waiving Party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

16.2 Severability

If any provision of this Agreement is determined to be illegal, invalid, or unenforceable, the provision shall be deleted and 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 determined to be 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 17 - INTEGRATION AND MODIFICATION

This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by each of the Parties. Unless otherwise specified in writing, if there is any inconsistency between the terms of this Agreement and any other agreement between the Parties, the terms of this Agreement shall control.

In the event of any conflict between the documents that make up this Agreement, the documents will prevail in the following order: the Agreement for Professional Consulting Services Agreement, Insurance Exhibit, and then any other agreement / exhibits.

ARTICLE 18 - SUCCESSORS AND ASSIGNS

County and Consultant each binds itself and its directors, officers, partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives of such other party, in respect to all covenants, agreements, and obligations of this Agreement.

ARTICLE 19 - ASSIGNMENT

Neither County nor Consultant shall assign, sublet, or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the other, except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Consultant from employing such independent

consultants, associates, and subcontractors, as he may deem appropriate to assist him in the performance of the Services hereunder.

ARTICLE 20 - THIRD PARTY RIGHTS

Nothing herein shall be construed to give any rights or benefits to anyone other than County and Consultant.

ARTICLE 21 – INDEMNIFICATION AND INSURANCE

Washoe County has established specific indemnification and insurance requirements for agreements/contracts with consultants, engineers, and architects to help assure that reasonable insurance coverage is maintained. Indemnification and hold harmless clauses are intended to assure that consultants accept and are able to pay for the loss or liability related to their activities. Exhibit “B” Insurance Specifications is included by reference. All conditions and requirements identified in this exhibit shall be completed prior to the commencement of any work under this Agreement.

ARTICLE 22 – LIMITED LIABILITY

County will not waive and intends to assert available defenses and limitations contained in Chapter 41 of the Nevada Revised Statutes. Contract liability of both parties shall not be subject to punitive damages. Actual damages for the County’s breach of this Agreement shall never exceed the amount of funds that have been appropriated for payment under this Agreement, but not yet paid, for the fiscal year budget in existence at the time of the breach.

ARTICLE 23 - ORGANIZATION’S CERTIFICATION

Consultant, its principals and agents, to the best of its knowledge and belief:

- a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or state department or agency;
- b) Have not within a three year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in (ii) above;
- d) Have not within a three-year period preceding this Agreement had one or more public transactions (Federal, State, or local) terminated for cause or default; and
- e) Understand that a false statement on this certification may be grounds for rejection or termination of this Agreement. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

IN WITNESS WHEREOF, the parties have executed this Agreement.

WASHOE COUNTY:

CONSULTANT:

Dated this ___ day of _____, 2021

Dated this ___ day of _____, 2021

By _____
Chair,
Washoe County Commission

By _____
Greg Gerhardt
Gerhardt & Berry Construction, Inc.

August 23, 2021

Megan Sizelove, PE
Washoe County Engineering & Capital Project Division
1001 E Ninth St – Bldg. A
Reno, NV 89512

Dear Ms. Sizelove,

Gerhardt & Berry Construction (G&B) was asked by Dylan Menes of Washoe County to utilize hydro-excavation and open cut excavation methods to locate numerous utilities at the South Truckee Meadows Water Reclamation Facility (STMWRF) at 8500 Alexander Lake Rd. in Reno, NV. The site is planning an expansion and the goal is for G&B to locate each utility, note its depth, identify the type of pipe or conduit installed, in some cases get the outside diameter and to work with HDR to get all the pipes surveyed prior to backfilling.

Initially, G&B planned on approximately two weeks of potholing as there were going to be other contractors on site performing similar scopes; however, not all of the utilities were located in that timeframe, and has been asked to continue working for approximately two additional weeks.

Please feel free to contact me with any questions regarding this scope of work.

Sincerely,

Timothy Trudell
Gerhardt & Berry Construction

#1110-21

DAILY EXTRA WORK REPORT

CONTRACT: STMWRF Potholing DATE: 8/20/2021

DESCRIPTION OF WORK: NOT TO EXCEED ESTIMATE TO COMPLETE POTHOLING EFFORTS W/ BADGER DAYLIGHTING AND G&B'S CREW
2 WEEKS W/ G&B - 1 WEEK WITH BADGER

(LABOR)	NAME	CLASS	HOURS	REG RATE	HOURS	OT RATE	AMOUNT
1	T BRIGHT	F	80	\$ 75.00	5	\$ 112.50	\$ 6,562.50
2	H MARTINEZ	O	80	\$ 60.00	5	\$ 90.00	\$ 5,250.00
3	D NORRIS	L	80	\$ 50.00	5	\$ 75.00	\$ 4,375.00
4	C ANDERSEN	L	80	\$ 50.00	5	\$ 75.00	\$ 4,375.00
5	J IGLESIAS	L		\$ 50.00		\$ 75.00	\$ -
6	T TRUDELL	PM		\$ 100.00		\$ 150.00	\$ -
7	R PRINCE	T		\$ 45.00		\$ 67.50	\$ -
8							\$ -
9							\$ -
10							\$ -

11	ADD LINES 1 THRU 10				SUBTOTAL		\$ 20,562.50
12	LABOR SURCHARGE	@		12.50%	OF LINE 11		
13	UNEMPLOYMENT TAXES	@		6.20%	OF LINE 11		
14	FICA/MEDICARE	@		7.65%	OF LINE 11		
15	SIIS	@		8.8062%	OF LINE 11		
16	TOTAL LINES 11 THRU 15				SUBTOTAL		\$ 20,562.50
17	MARKUP	@	0%		OF LINE 16		\$ -
18	ADD LINES 16 AND 17 = TOTAL COST OF LABOR				TOTAL		\$ 20,562.50

(EQUIPMENT)	DESCRIPTION	HOURS	RATE	HOURS	OT RATE	AMOUNT
19	CAT 420 BACKHOE	80	\$ 60.00			\$ 4,800.00
20	TRANSPORT	6	\$ 135.00			\$ 810.00
21	WORK TRUCK W/ TOOLS (2EA @ \$25/HR)	80	\$ 50.00			\$ 4,000.00
22	SUPERDUMP HAUL TRUCK	8	\$ 130.00			\$ 1,040.00
23						\$ -
24	CAT 305.5 MINI EX	80	\$ 80.00			\$ 6,400.00
25	5YD DUMP TRUCK	80	\$ 50.00			\$ 4,000.00
26						\$ -
27						\$ -
28						\$ -
29						\$ -
30						\$ -
31						\$ -
32						\$ -
33						\$ -

34	ADD LINES 19 THRU 33				SUBTOTAL		\$ 21,050.00
35	MARKUP	@	0%		OF LINE 34		\$ -
36	ADD LINES 34 AND 35 = TOTAL COST OF EQUIPMENT				TOTAL		\$ 21,050.00

(MATERIALS)	DESCRIPTION	RATE	TAX	AMT	TOTAL	AMOUNT
37	1 BADGER DAYLIGHTING	\$ 10,000.00		\$ 10,000.00	\$ 10,000.00	\$ 10,000.00
38	(\$250/HR - 5 DAYS)			\$ -	\$ -	\$ -
39				\$ -	\$ -	\$ -
40	32 CY PEA GRAVEL	\$ 14.00	\$ 1.16	\$ 15.16	\$ 485.03	\$ 485.03
41	16 CY TYPE II BASE	\$ 8.50	\$ 0.70	\$ 9.20	\$ 147.24	\$ 147.24
42	16 CY CLASS A BEDDING SAND	\$ 7.50	\$ 0.62	\$ 8.12	\$ 129.92	\$ 129.92
43				\$ -	\$ -	\$ -
44				\$ -	\$ -	\$ -
45				\$ -	\$ -	\$ -
46				\$ -	\$ -	\$ -
47				\$ -	\$ -	\$ -

48	ADD LINES 37 THRU 47				SUBTOTAL		\$ 10,762.19
49	MARKUP	@	0%		OF LINE 48		\$ -
50	ADD LINES 48 AND 49 = TOTAL COST OF MATERIALS				TOTAL		\$ 10,762.19

51	ADD LINES 18, 36, AND 50 = TOTAL COST LABOR, EQUIPMENT, AND MATERIAL						\$ 52,374.69
52	CONTRACTORS MARKUP	@	10%		OF LINE 51		\$ 5,237.47
53	ADD LINES 51 AND 52 = TOTAL THIS REPORT				TOTAL		\$ 57,612.15

APPROVED: _____ DATE: _____ BY: _____

EXHIBIT B

**PUBLIC WORKS CONSTRUCTION
INDEMNIFICATION AND INSURANCE SPECIFICATIONS
SOUTH TRUCKEE MEADOWS WATER RECLAMATION FACILITY (STMWRF)
POTHOLING**

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.

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

CONTRACTOR shall purchase Industrial Insurance, General Liability, Automobile Liability, Property Insurance and Professional Insurance as described below. The cost of such insurance shall be included in the CONTRACTOR'S bid.

INDUSTRIAL 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.

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.

MINIMUM LIMITS OF INSURANCE

CONTRACTOR shall maintain limits no less than:

1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, the general aggregate limit shall be increased to equal twice the required occurrence limit or revised to apply separately to each project or location.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage covering "Any Auto". No aggregate limits may apply.
3. Professional Errors and Omissions as required by Risk Manager: \$ N/A.

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. CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, or non-renewed by either CONTRACTOR or by the insurer, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to COUNTY except for nonpayment of premium.

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 on the Insurance Commissioner's approved but not admitted list.

VERIFICATION OF COVERAGE

CONTRACTOR shall furnish COUNTY with certificates of insurance 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.** 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.

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. 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,
 - b. Terminate the Agreement.

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.