

**AGREEMENT**  
**SWAN LAKE NATURE STUDY AREA REHABILITATION PROJECT**

THIS AGREEMENT (also herein referred to as "Contract"), is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Washoe County, a political subdivision of the State of Nevada, acting through the Washoe County Commissioners hereinafter called "OWNER" and **Aspen Developers Corporation**, a General Contractor, Nevada State License No. 0055758 hereinafter called the "CONTRACTOR".

WITNESSETH:

That the OWNER and the CONTRACTOR, for the consideration hereinafter named, agree as follows:

**Article 1. Scope of Work**

The Contractor shall furnish all of the materials and perform all of the Work described in the Specifications entitled "**Swan Lake Nature Study Area Rehabilitation Project**", prepared by the Department of Community Services, which is incorporated herein by reference as one of the Contract Documents identified in Article 7.

**Article 2. Time of Completion**

The Work to be performed under this Agreement shall be completed within Sixty (60) calendar days of the "Notice to Proceed". Should the Contractor fail or refuse to complete the work within that time, along with any authorized extensions of time, there shall be deducted from monies due it, not as a penalty, but as liquidated damages, the sum of Five Hundred Dollars (\$500.00) for each additional calendar day required to complete the work.

**Article 3. Progress Payments**

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 4. Acceptance and Final Payment**

As soon as practical following the completion of the Work, the Contractor shall make request by letter to the Owner for a final inspection and acceptance of the Work, and if, in Owner's opinion, all provisions of the Specifications and Agreement have been satisfied, Owner will cause a Notice of Completion to be filed with the County Recorder.

At the expiration of thirty (30) calendar days following the filing of the Notice of Completion, final payment shall be made as follows: After deducting all previous payments from the total value of the work, the remaining balance shall be paid, providing that no claims, liens or outstanding debts have been filed against the work, and the contract is not subject to arbitration or litigation between parties. Notwithstanding the expiration of thirty (30) calendar days, the Contractor, upon demand by the Owner, shall submit evidence satisfactory to the Owner that all payrolls, materials, bills, and other indebtedness relating to the work performed, have been paid before final payment is made.

#### **Article 5. The Contract Sum**

The Owner shall pay the Contractor, as full compensation for furnishing all materials and labor and doing all the Work in strict accordance with the Specifications and to the satisfaction of the Owner, the amount of **One Hundred, Fifteen Thousand, Six Hundred and Seventy Nine dollars and ninety-nine cents. (\$115,679.99)**. This sum is to be paid in the manner and under the conditions hereinbefore specified.

#### **Article 6. 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 7. The Contract Documents**

The following is an enumeration of the Contract Documents, which are fully incorporated by reference as part of the Contract:

- NOTICE TO CONTRACTORS
- SCOPE OF WORK
- BID PROPOSAL
- VENDOR INFORMATION SHEET FOR INVITATION TO BID
- PRIME CONTRACTOR FORM
- PREFERENTIAL BIDDER STATUS AFFIDAVIT (N/A)
- BID BOND
- PRIME & SUBCONTRACTORS 5% List
- AFFIDAVIT OF NON-COLLUSION
- BID SCHEDULE
- TWO HOUR ONE PERCENT LIST OF RESPONSIBLE TRADES
- PUBLIC WORKS CONSTRUCTION/INDEMNIFICATION &  
INSURANCE SPECIFICATIONS (Attachment 1)
- CERTIFICATION REGARDING DEBARMENT AND SUSPENSION (Attachment 2)
- CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY (Attachment 3)
- CERTIFICATION OF RESTRICTIONS ON LOBBYING (Attachment 4)

**Article 8. Nondiscrimination:** In accordance with NRS 338.125, in connection with the performance of Work under this Contract, the Contractor 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, or age. This agreement not to discriminate includes, but is not limited to, decisions with respect to the following: 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. Any violation of such provision by the Contractor shall constitute a material breach of the Contract. Further, Contractor agrees to insert this nondiscrimination provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

**Article 9. Prevailing Wage Rates**

In the event that the Contract sum is Two Hundred Fifty Thousand Dollars or more, Contractor agrees that he shall pay the prevailing wage rates in effect at the time of the bid and comply with NRS 338. The 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:

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

In addition, Contractor shall keep 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.

#### **Article 10. Indemnification/Hold Harmless**

Washoe County has established specific indemnification and insurance requirements for agreements/contracts with Contractors to help assure that reasonable insurance coverage is maintained. Indemnification and hold harmless clauses are intended to assure that Contractors accept and are able to pay for the loss liability related to their activities. Attachment 1 is included by reference. All conditions and requirements identified in this Attachment shall be completed prior to the commencement of any work under this Agreement.

If this provision is not complied with, the Contract shall be void, and any failure or refusal to comply with this provision shall render the Contract void.

#### **Article 11. Termination**

In addition to other provisions of this Agreement, Owner has the right to terminate the Agreement without cause at any time upon giving Contractor seven (7) days notice in writing. In the event the Agreement is terminated by Owner in accordance with this provision, Owner agrees to pay Contractor for all Work satisfactorily completed and for materials installed prior to the date of termination.

In the event that no funds or insufficient funds are appropriated and budgeted or are otherwise unavailable by any means whatsoever in any fiscal year for payments due under this Contract, Owner will immediately notify Contractor of such occurrence and this Contract shall terminate on the last day of the fiscal year for which appropriations were received, without penalty or expense to County of any kind whatsoever, except the portions of payments herein agreed on for which funds shall have been appropriated and budgeted or are otherwise available.

#### **Article 12. 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 1 - Scope of Work. Venue for all adversarial proceedings arising out of this Agreement or arising out of planning or constructing the Project outlined in Article 1 - Scope of Work shall be in state district court in Washoe County, Nevada.

#### **Article 13. Severability**

If any provision of this Agreement is held to be unenforceable, then that provision is to be construed either by modifying it to the minimum extent necessary to make it enforceable or disregarding it. If an unenforceable provision is modified or disregarded in accordance with this Article 14, the rest of the Agreement is to remain in effect as written, and the unenforceable provision is to remain as written in any circumstances other than those in which the provision is held to be unenforceable.

**Article 14. Additional Federal Provisions**

In addition to other provisions of this agreement, Contractor agrees to comply with all applicable Federal provisions as stated in 2 CFR Part 200 Appendix II– Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, including but not limited to:

- 1) Equal Employment Opportunity (41 CFR 60-1.4)
- 2) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)
- 3) Clean Air Act (42 U.S.C. 7401-7671) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387)
- 4) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written

**WASHOE COUNTY**

\_\_\_\_\_  
Marsha Berkbigler, Chair  
Washoe County Commission

ATTEST:

\_\_\_\_\_  
Nancy Parent, Washoe County Clerk

**CONTRACTOR:**

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