

**CONSTRUCTION AGREEMENT**  
**NV Cares Campus Phase 3 Project**  
**GMP 2**

THIS AGREEMENT (also herein referred to as "Contract"), is made and entered into this 11th day of, April 2023, by and between Washoe County, a political subdivision of the State of Nevada, acting through the Washoe County Commissioners hereinafter called "OWNER" and Clark Sullivan Constructors, Inc., dba Clark/Sullivan Construction, a General Contractor, Nevada State License No. 12997 (A & B) 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 "NV Cares Campus Phase 3 GMP 2", prepared by the Department of Community Services, which is attached hereto and incorporated herein 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 (482 calendar days or 69 weeks) 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 one thousand 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 **\$28,274,566.00**. This sum is to be paid in the manner and under the conditions hereinbefore specified.

<b>NV Cares Campus Phase 3 Project GMP 2</b>	
Cost of the Work ( <i>excluding General Conditions</i> )	\$24,416,519.00
CMAR's General Conditions Cost	\$764,140.00
CMAR Fee (Profit and Overhead)	\$1,133,130
Builders Risk	\$84,824
General Liability	\$197,922
P & P Bond NV	\$167,191
CMAR's Contingency 3%	\$ 755,420
Owner's Contingency 3%	\$ 755,420
<b>Total Guaranteed Maximum Price (GMP)</b>	<b>\$28,274,566</b>

SAVINGS SPLIT

	<u>Owner</u>	<u>CMAR</u>
Percentage Split of CMAR's Contingency Savings	85%	15%
Percentage Split of Owner's Contingency Savings	100%	0%
Percentage Split of Other Allowances	100%	0%

CMAR contingency shall be used first for any project changes that are not part of the Contract and/or identified in the Contract Documents.

**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**

This Agreement and the documents described in this Article 7 constitute the Parties' entire understanding concerning the subject matter of this Agreement and these understandings supersede all prior oral or written understandings or discussions of any kind relating to this subject matter. No modification or amendment to this Agreement shall be binding upon the Parties unless the same is in writing and signed by the respective parties hereto.

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

1. AGREEMENT
2. DRAWINGS - WASHOE COUNTY CARES CAMPUS – PHASE 3 DATED NOVEMBER 8, 2022
3. DRAWINGS – WASHOE COUTNY CARES CAMPUS – PHASE 3 DEMO 4<sup>TH</sup> ST. DATED NOVEMBER 8, 2022
4. DRAWINGS – WASHOE COUTNY CARES CAMPUS – PHASE 3 DEMO 1800 THRELKEL ST. DATED NOVEMBER 8, 2022
5. SPECIFICATIONS/PROJECT MANUAL – WASHOE COUNTY CARES CAMPUS PHASE 3, PROJECT NO: 21011.30 DATED: NOVEMBER 8, 2022, VOLUME 1 DIVISION 00-14
6. SPECIFICATIONS/PROJECT MANUAL – WASHOE COUNTY CARES CAMPUS PHASE 3, PROJECT NO: 21011.30 DATED: NOVEMBER 8, 2022, VOLUME 2 DIVISION 22-33
7. NV CARES CAMPUS PHASE 3 GMP 2
8. PERFORMANCE AND COMPLETION BOND
9. LABOR AND MATERIAL PAYMENT BOND
10. EXHIBIT A - INDEMNIFICATION AND INSURANCE SPECIFICATIONS
11. EXHIBIT B - CMAR GENERAL CONDITIONS OF THE CONTRACT
12. EXHIBIT C – ORANGE BOOK 2012 VERSION
13. EXHIBIT D - DAVIS BACON DECISION - NUMBER NV20220040 DATED: 12/16/2022 OR NV PREVAILING WAGE DECISION DATED OCTOBER 1, 2022, WHICH EVERYONE IS HIGHER
14. EXHIBIT E – NV PREVAILING WAGE 2022\_2023
15. EXHIBIT F - FEDERAL FUNDS CERTIFICATIONS
16. EXHIBIT G – CONTRACT PROVISIONS FOR CONTRACTS UNDER FEDERAL AWARDS
17. EXHIBIT H – SECTION 3 CLAUSES
18. EXHIBIT I – SECTION 3 HUD 24 CFR Part 75

**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**

This project is subject to both NRS Chapter 338 and Federal Davis-Bacon requirements. Nevada prevailing wage rates are published by State of Nevada Office of the Labor Commissioner. Federal

Davis-Bacon 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, 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 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 is 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; and 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 the LCP Tracker website.

#### **Article 10 Compliance with Federal Law, Regulations and Executive Orders**

Federal financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal laws, regulations, and executive orders, including requirements established in OMB's 2 CFR 200 and with provisions of 28 CFR applicable to grants and cooperative agreements. Exhibit J - Washoe County's Contract Provisions for Contracts under Federal Awards is incorporated as part of this Agreement.

#### **Article 11 Public Records**

Pursuant to NRS 239.010, information or documents received may be open to public inspection and copying. The County will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests. Contractor shall allow full access of all documents, paper and records that are directly pertinent to the contract to Washoe County and auditors representing Washoe County.

#### **Article 12. Period of Retention**

All books, records, reports, and statements relevant to this Agreement must be retained a minimum of 5 years, as this project is Federally funded. The retention period runs from the date of payment for the relevant goods or services by the County, or from the date of termination of this Agreement, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

#### **Article 13. 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. Exhibit A 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.

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.

Washoe County will not waive and intends to assert all NRS Chapter 41 defenses and liability limitations in all cases. Contract liability of both parties shall not be subject to exemplary or punitive damages. To the extent applicable actual Agreement damages for any breach shall be limited by NRS 353.260 and NRS 354.626.

#### **Article 14. 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 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 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 16. 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. 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.



## **EXHIBIT A**

### **PUBLIC WORKS CONSTRUCTION INDEMNIFICATION AND INSURANCE SPECIFICATIONS FOR CMAR WASHOE COUNTY CARES CAMPUS PHASE 3**

#### **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**

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 Indemnites 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 Indemnites 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 Indemnites 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 **\$2,000,000** 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 Indemnitees 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.