

## **AGREEMENT FORM**

### **South Truckee Meadows Water Reclamation Facility Biosolids Facilities Project**

THIS AGREEMENT (also herein referred to as "Contract"), is made and entered into this 9th day of December, 2014, by and between Washoe County, a political subdivision of the State of Nevada, acting through the Washoe County Commissioners hereinafter called "Owner" and K.G. Walters Construction Co., Inc., a General Contractor, Nevada State License No. 17383 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 "**SOUTH TRUCKEE MEADOWS WATER RECLAMATION FACILITY – BIOSOLIDS FACILITIES PROJECT**", prepared by CH2M HILL, INC.

#### **Article 2. Time of Completion**

The Work shall be Substantially Complete within 480 days from the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 540 days after the date when the Contract Times commence to run.

Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified above, plus any extensions thereof allowed in accordance with Article 11 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner Two Thousand Five Hundred Dollars (\$2,500) for each calendar day that expires after the time specified herein for Substantial Completion until the Work is Substantially Complete.

After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner Two Thousand Five Hundred Dollars (\$2,500) for each calendar day that expires after the time specified herein for completion and readiness for final payment until the Work is completed and ready for final payment.

#### **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.

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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 certificate will authorize payment in an amount equal to the value of the work completed less any sums that may be retained by the Owner.

The Owner shall retain ten percent (10%) of such estimated value of the work done as part security for the fulfillment of the Contract and shall pay monthly to the Contractor, while carrying on the work the balance not retained, after deducting therefrom all previous payments. 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.

**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

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Owner, the amounts as set forth in the Bid Proposal. 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 he will before this Contract becomes effective, furnish the Owner a Performance and Completion 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 Performance and Completion 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.

The 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, and are fully a part of the Contract as if hereto repeated:

1. ADVERTISEMENT FOR BIDS
2. INSTRUCTIONS TO BIDDERS
3. BID FORM
4. BID BOND
5. LIST OF SUBCONTRACTORS SUBMITTED WITH BID
6. LIST OF SUBCONTRACTORS TO BE SUBMITTED WITHIN 2 HOURS OF BID OPENING
7. LOCAL PREFERENCE AFFIDAVIT
8. AFFIDAVIT OF NON-COLLUSION
9. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS
10. LIST OF PROPOSED EQUIPMENT MANUFACTURERS
11. AGREEMENT FORM
12. PERFORMANCE AND COMPLETION BOND
13. LABOR AND MATERIAL PAYMENT BOND
14. GENERAL CONDITIONS
15. SUPPLEMENTARY CONDITIONS
16. TECHNICAL SPECIFICATIONS
17. ADDENDA 12, 13
18. DRAWINGS Prepared by CH2M HILL, INC., titled "South Truckee Meadows Water Reclamation Facility – Biosolids Facilities Project" dated September 2014.
19. Geotechnical Interpretive Report for Biosolids Facilities Project, South Truckee Meadows Water Reclamation Facility, dated August 2014.
20. ANY VALIDLY EXECUTED CHANGE ORDER, DIRECTIVES OR AMENDMENTS HERETO

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**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 or age. Such agreements shall include, but not be limited 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. Veteran's Preference**

Contractor agrees to give preference as provided in NRS 338.130. 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 10. Prevailing Wage Rates**

Contractor agrees that he shall pay the prevailing wage rates in effect at the time of the Bid and comply with NRS 338.

In addition, Contractor shall keep accurate records showing the name, occupation and actual per diem wages and benefits paid to each workman employed by him 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 11. 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. Specific requirements are included in the Supplementary Conditions, SC-6.02.C.

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 12. 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.

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

WASHOE COUNTY



Chairman  
Board of County Commissioners

ATTEST:



Nancy Parent, Washoe County Clerk



CONTRACTOR

By: 

Title: 

Date: 

STATE OF NEVADA           )  
  ) SS:  
COUNTY OF                 )

On this \_\_\_\_ day of \_\_\_\_\_, 2014, personally appeared before me, a Notary Public, \_\_\_\_\_, who acknowledged to me that he/she executed the foregoing Agreement.

\_\_\_\_\_  
NOTARY PUBLIC

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT****CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

County of Sonoma )On January 12, 2015 before me, Suzette Ransom, Notary Public,  
Date Here Insert Name and Title of the Officerpersonally appeared Walt Johnson  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Suzette Ransom  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**Title or Type of Document: Agreement Form Document Date: 12/9/2014

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

☐ Corporate Officer — Title(s): \_\_\_\_\_☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

☐ Corporate Officer — Title(s): \_\_\_\_\_☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

**Attachment 1****INSURANCE SPECIFICATIONS FOR USE WITH  
PUBLIC WORKS CONSTRUCTION AGREEMENTS****INTRODUCTION**

WASHOE 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.

IF THERE ARE ANY QUESTIONS REGARDING THESE INSURANCE REQUIREMENTS, IT IS RECOMMENDED THAT THE CONTRACTOR'S AGENT/BROKER CONTACT THE COUNTY RISK MANAGER DIRECTLY AT (775) 328-2071. IF ANY APPARENT LOW BIDDER FAILS TO COMPLY STRICTLY WITH THE INSURANCE REQUIREMENTS, THAT BIDDER MAY BE DISQUALIFIED FROM AWARD OF THE CONTRACT.

**INDEMNIFICATION AGREEMENT**

CONTRACTOR agrees to hold harmless, indemnify, and defend COUNTY (hereinafter to include the Department of Water Resources), 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 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, or the omission, failure to act, or negligence during CONTRACTOR'S completed operations.

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. CONTRACTOR shall reimburse COUNTY for the time spent by such personnel at the 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, and Property Insurance as specified in the bidding requirements. The cost of such insurance shall be included in the CONTRACTOR'S bid.

## INDUSTRIAL INSURANCE (WORKERS' COMPENSATION)

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 (industrial injury) and NRS 617.210 (occupational disease).

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.

## 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 ADDITIONAL INSURED'S 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 COUNTY, its officers, employees, or volunteers.
- 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.

## 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.

## 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.

### **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.

## 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.