

# OWNER-CMAR CONSTRUCTION AGREEMENT

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

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

## **Project Identification**

Project Name: South Truckee Meadows Water Reclamation Facility 2020 Expansion Project (GMP#2a)  
Influent Pump and Screen Replacement Project  
Supply of Enclosed Screw Pumps and Perforated Plate Escalator Screen

Contract No: WR860109

Labor Commission PWP No.: WA-2020-308

## **Owner**

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

## **CMAR**

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

## **ARTICLE 1 GUARANTEED MAXIMUM PRICE**

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

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

1) Supply of the Enclosed Screw Pumps (total of 3)	\$ 887,933
2) Supply of the Perforated Plate Escalator Screen (total of 1)	\$ 202,756
3) CMAR's Overhead and Profit	\$ 130,882
4) CMAR's Bonds and Insurance	\$ 9,380
5) Allowance/Owner's Contingency	\$ 5,332
6) Total Guaranteed Maximum Price	\$ 1,236,283

### **Savings Split**

	<b><u>Owner</u></b>	<b><u>CMAR</u></b>
Percentage Split of Savings	75%	25%
Percentage Split of Owner's Contingency	100%	0%

## **ARTICLE 2 INCORPORATED DOCUMENTS**

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

- 1) CMAR Work Release Request #2, dated July 17, 2020
- 2) General Conditions of the Contract of the Construction Contract
- 3) Supplemental General Conditions of the Construction Contract
- 4) Drawings:
  - a) 90% Influent Pump and Screen Replacement Project, Volume 2 of 3, by Jacobs (May 2020)
- 5) Details:
  - a) 90% Influent Pump and Screen Replacement Project, Volume 3 of 3, by Jacobs (May 2020)
- 6) Specifications:
  - a) 90% Influent Pump and Screen Replacement Project, Volume 1 of 3, by Jacobs (May 2020)
- 7) Addenda
- 8) Change Orders
- 9) SRF Requirements

## **ARTICLE 3 CONTRACT TIME**

The CMAR shall commence the work on the Project as directed by the Owner in a written Notice to Proceed. After the referenced date of commencement, all work shall be completed in conjunction with GMP 2, as stipulated in Notice to Proceed of GMP 2 and subject to liquidated damages there in.

Calendar Days: as noted in GMP 2

## **ARTICLE 4 LIQUIDATED DAMAGES**

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

Liquidated Damages: as noted in GMP 2

## **ARTICLE 5        AGREEMENT MODIFICATIONS**

This Agreement constitutes the entire agreement between the parties and may be modified only by a written Change Order executed by the parties. This agreement is for GMP 2a only and a separate agreement will be entered into for subsequent phases of the project.

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

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

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

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

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

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

- a. Written Amendments and Change Orders
- b. This OWNER-CMAR Construction Agreement
- c. Supplemental Conditions, Specification 00 73 01
- d. General Conditions, Specifications 00 72 13
- e. Final GMP Proposal - CMAR Work Release Request #2, dated July 17, 2020
- f. Construction Specifications (Volume 1 of 3)
- g. Construction Details (Volume 3 of 3)
- h. Construction Drawings (Volume 2 of 3)
- i. All other Contract Documents

## **ARTICLE 8        EXAMINATION OF CONTRACT DOCUMENTS**

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

## **ARTICLE 9        PROGRESS PAYMENT**

On or about the first of each month, the Contractor shall make and certify an estimate of the amount and fair value of the work done, and may apply for partial payment therefore. The Contractor shall revise the estimate as the Owner may direct. Whenever the monthly estimate, after approval, shows that the value of the work completed during the previous month exceeds

one percent (1%) of the total contract price, the Owner will process a pay request. The Owner will thereupon cause the amount therein to be paid to the Contractor. Such certification of work performed will authorize payment in an amount equal to the value of the Work completed less any sums that may be retained by the Owner.

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

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

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

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

#### **ARTICLE 10 FINAL PAYMENT**

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

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

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

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

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

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

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

## **ARTICLE 12 APPRENTICESHIP UTILIZATION ACT**

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

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

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

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

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

## **ARTICLE 14 STATUTORY REQUIREMENTS**

The CMAR agrees to all terms and conditions of the Nevada Revised Statutes (NRS) and the

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

#### **ARTICLE 15 INFORMATION ACCESS**

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

#### **ARTICLE 16 ASSIGNMENT RIGHTS**

This Contract is not assignable by either party.

#### **ARTICLE 17 TERMINATION**

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

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

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

#### **ARTICLE 18 OWNERSHIP AND USE OF DOCUMENTS**

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

#### **ARTICLE 19 INDEPENDENT CONTRACTOR**

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

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

## **ARTICLE 20     LEGAL ACTIONS**

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

## **ARTICLE 21     DISPUTE RESOLUTION**

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

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

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

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

## **ARTICLE 23     FAIR EMPLOYMENT PRACTICES**

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

appearance, expression, or behavior of a person, regardless of the person's assigned sex at birth.

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

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

#### **ARTICLE 24 SEVERABILITY**

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

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

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

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



**ARTICLE 26      CONSEQUENTIAL DAMAGES**

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

**WASHOE COUNTY**

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

ATTEST:

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

**CONSTRUCTION MANAGER AT RISK:**

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

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

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

STATE OF NEVADA      )  
                                         ) SS:  
COUNTY OF WASHOE      )

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

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