

**CONSTRUCTION AGREEMENT**  
**NNPH TB Clinic Project**  
**GMP 1**

THIS AGREEMENT (also herein referred to as "Contract"), is made and entered into this 19th day of, November 2024, by and between Washoe County, a political subdivision of the State of Nevada, acting through the Washoe County Commissioners hereinafter called "OWNER" and Plenium Builders, Inc., 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 "NNPH TB Clinic Project - GMP 1", prepared by the Community Services Department, 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 (365 calendar days or 52 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 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 **\$8,278,961.00**. This sum is to be paid in the manner and under the conditions hereinbefore specified.

<b>NNPH TB Clinic Project GMP 1</b>	
Cost of the Work ( <i>excluding General Conditions</i> )	\$6,315,741
CMAR's General Conditions Cost	\$1,047,205
NEGOTIATED CMAR OVERHEAD w/overhead, profit, General Liability and P & P Bond	\$378,677
Builders Risk	\$62,092
CMAR's Contingency 3%	\$234,111
Owner's Contingency 3%	\$241,135
<b>Total Guaranteed Maximum Price (GMP)</b>	<b>\$8,278,961</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 – NNPH TB CLINIC 100% CONSTRUCTION DOCUMENTS DATED SEPTEMBER 10, 2024
3. SPECIFICATIONS/PROJECT MANUAL – NNPH TB CLINIC 100% CONSTRUCTION SPECIFICATIONS DATED: SEPTEMBER 10, 2024
4. PROJECT ENGINEERING – NNPH TB CLINIC ENGINEERING CALCULATIONS DATED: SEPTEMBER 10, 2024
5. NNPH TB CLINIC – GMP 1 PROPOSAL PACKAGE
6. PERFORMANCE AND COMPLETION BOND
7. LABOR AND MATERIAL PAYMENT BOND
8. EXHIBIT A - INDEMNIFICATION AND INSURANCE SPECIFICATIONS
9. EXHIBIT B - CMAR GENERAL CONDITIONS OF THE CONTRACT
10. EXHIBIT C – ORANGE BOOK 2012 VERSION 8
11. EXHIBIT D - DAVIS BACON GENERAL DECISION - NUMBER NV20240040 DATED: 08/23/2024 OR NV PREVAILING WAGE DECISION DATED OCTOBER 1, 2023 (See Exhibit E), WHICH EVER IS HIGHER
12. EXHIBIT E – STATE OF NEVADA 2024 PREVAILING WAGE RATES – WASHOE COUNTY REGION – DATED OCTOBER 1, 2023
13. EXHIBIT F - FEDERAL FUNDS CERTIFICATIONS
14. EXHIBIT G – CONTRACT PROVISIONS FOR CONTRACTS UNDER FEDERAL AWARDS
15. EXHIBIT H – SECTION 3 CLAUSES

**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.

**Article 18. Survival of Terms**

All terms of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, and limitations of liability.

**Article 19. Non-Assignable**

This Agreement is not assignable without the advanced written approval of both Parties.

**Article 20. No Third Party Beneficiaries**

This Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their respective successors and permitted assigns and nothing in this Agreement, express or implied, is intended to or shall confer upon any Person other than the parties and their respective successors and permitted assigns any legal or equitable right, benefit, or remedy of any nature under or by reason of this Agreement.

**Article 21. Independent Contractor Status and Certification**

Contractor understands and agrees it is an independent contractor for all purposes. Consistent with that independent contractor status, Contractor affirms and agrees it is not a County employee, and thereby

waives any and all claims for itself and any employees or subcontractors or other agents of any kind to benefits otherwise provided to employees of the County, including but not limited to: medical, dental, other personal insurance; retirement benefits, unemployment benefits, and liability or worker's compensation insurance. Contractor understands and agrees they are solely responsible, individually, for federal taxes and social security payments applicable to money received for services herein and that the County will file an IRS Form 1099 for all payments made to Contractor. Finally, as an independent contractor, Contractor agrees County shall not hire, supervise, or pay any assistants to help Contractor; Contractor has the right to perform services for other during the term of this Agreement; and Contractor shall not be assigned a work location on County premises.

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

**WASHOE COUNTY**

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

ATTEST:

\_\_\_\_\_  
Washoe County Clerk

**CONTRACTOR**

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

STATE OF NEVADA            )  
  ) ss.  
COUNTY OF WASHOE        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me a Notary Public in and for the County of Washoe, State of Nevada, personally appeared \_\_\_\_\_, known to me to be the person described in and who executed the foregoing instrument, and who acknowledged to me that he/she executed the same freely and voluntarily and for the uses and purposes therein mentioned.

\_\_\_\_\_  
Notary Public