

AGREEMENT

Washoe County Parks - Water Storage Tank Reconditioning PWP# WA-2024-183

THIS AGREEMENT (also herein referred to as "Contract"), is made and entered into this ___ 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 Farr Construction Corporation dba Resource Development Company, a General Contractor, Nevada State License No. 0075026 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 “**Washoe County Parks - Water Storage Tank Reconditioning**”, prepared by the Department of Community Services, which is incorporated herein by reference as one of the Contract Documents identified in Article 7.

Article 2. Time of Completion

The Work to be performed under this Agreement shall be completed within 210 calendar days of the "Notice to Proceed". Should the Contractor fail or refuse to complete the work within that time, along with any authorized extensions of time, there shall be deducted from monies due it, not as a penalty, but as liquidated damages, the sum of Five Hundred Dollars (\$500.00) for each additional calendar day required to complete the work.

Article 3. Progress Payments

On or about the first of each month, the Contractor shall make and certify an estimate of the amount and fair value of the work done, and may apply for partial payment therefore. The Contractor shall revise the estimate as the Owner may direct. Whenever the monthly estimate, after approval, shows that the value of the work completed during the previous month exceeds one percent (1%) of the total contract price, the Owner will process a pay request. The Owner will thereupon cause the amount therein to be paid to the Contractor. Such certification of work performed will authorize payment in an amount equal to the value of the Work completed less any sums that may be retained by the Owner.

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

The amount of payments withheld as provided herein shall be retained for a period of thirty (30) days from the date of filing of the Notice of Completion.

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

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

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

Article 4. Acceptance and Final Payment

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

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

Article 5. The Contract Sum

The Owner shall pay the Contractor, as full compensation for furnishing all materials and labor and doing all the Work in strict accordance with the Specifications and to the satisfaction of the Owner, the amount of **\$404,212.00**. This sum is to be paid in the manner and under the conditions hereinbefore specified.

Article 6. Performance and Payment Bonds

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

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

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

Article 7. The Contract Documents

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

1. INSTRUCTIONS TO BIDDERS
2. BID SCHEDULE
3. BID SUMMARY
4. BID BOND
5. PRIME CONTRACTOR FORM
6. AGREEMENT
7. LOCAL PREFERENCE BIDDING AFFIDAVIT
8. TWO HOUR ONE PERCENT LIST OF RESPONSIBLE TRADES
9. AFFIDAVIT OF NON-COLLUSION
10. LABOR AND MATERIAL PAYMENT BOND
11. PERFORMANCE AND COMPLETION BOND
12. EXHIBIT A – PUBLIC WORKS CONSTRUCTION/INDEMNIFICATION & INSURANCE SPECIFICATIONS
13. EXHIBIT B – SAMPLE CONSTRUCTION AGREEMENT
14. EXHIBIT C – IMPROVEMENT PLANS
15. EXHIBIT D – TECHNICAL SPECIFICATIONS
16. EXHIBIT E – 2024 PREVAILING WAGE RATES
17. EXHIBIT F – 2012 STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION, REVISION 8.
18. EXHIBIT G – NDEP PERMITS
19. EXHIBIT H – LEAD BASE PAINT TEST RESULTS

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. 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

In the event that the Contract sum is One Hundred Thousand Dollars or more, Contractor agrees that he shall pay the prevailing wage rates in effect at the time of the bid and comply with NRS 338. The Contractor shall forfeit, as a penalty to the Owner, not less than \$20 nor more than \$50 for each calendar day or portion thereof that each workman employed:

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

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

Article 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. Attachment 1 is included by reference. All conditions and requirements identified in this Attachment shall be completed prior to the commencement of any work under this Agreement.

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

Article 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.

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 13. 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 14. Severability

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

Article 15. 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.

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

EXHIBIT A

INSURANCE, HOLD HARMLESS AND INDEMNIFICATION REQUIREMENTS FOR PROFESSIONAL ENGINEERING SERVICES WATER TANK REFURBISHING PROJECT

INDEMNIFICATION

ENGINEER Liability

As respects acts, errors or omissions in the performance of ENGINEER services, ENGINEER agrees to indemnify and hold harmless COUNTY, its officers, agents, employees, and volunteers from and against any and all claims, demands, defense costs, or liability to the extent caused by ENGINEER'S negligent acts, errors or omissions in the performance of its ENGINEER services under the terms of this agreement.

ENGINEER further agrees to defend COUNTY and assume all costs, expenses and liabilities of any nature to which COUNTY may be subjected as a result of any claim, demand, action or cause of action to the extent arising out of the negligent acts, errors or omissions of ENGINEER or its Sub-ENGINEER in the performance of their ENGINEER services under the Agreement.

General Liability

As respects all acts or omissions which do not arise directly out of the performance of ENGINEER services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, ENGINEER agrees to indemnify, defend (at COUNTY'S option), and hold harmless COUNTY, its officers, agents, employees, and volunteers from and against any and all claims, demands, defense costs, or liability arising out of any acts or omissions of ENGINEER while acting under the terms of this agreement; excepting those which arise out of the negligence of COUNTY.

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

COUNTY requires that ENGINEER purchase Industrial Insurance (Workers' Compensation), General and Auto Liability, and ENGINEER'S Professional Liability Insurance as described below against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work here under by ENGINEER, its agents, representatives, employees or Sub-ENGINEERS. The cost of all such insurance shall be borne by ENGINEER.

INDUSTRIAL INSURANCE

It is understood and agreed that there shall be no Industrial Insurance coverage provided for ENGINEER or any Sub-ENGINEER by COUNTY. ENGINEER 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 NRS 617.210.

If ENGINEER or Sub-ENGINEER 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 616B627.

Should ENGINEER be self-funded for Industrial insurance, ENGINEER shall so notify COUNTY in writing prior to the signing of any agreement. COUNTY reserves the right to approve said retentions and may request additional documentation, financial or otherwise for review prior to the signing of any agreement.

MINIMUM LIMITS OF INSURANCE

ENGINEER shall maintain coverages and limits no less than:

- 1. General Liability: \$2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, the general aggregate limit shall be increased to equal twice the required occurrence limit or revised to apply separately to this project or location.
- 2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. No aggregate limit may apply.
- 3. ENGINEER Professional Liability: \$1,000,000 per claim and as an annual aggregate. Premium costs incurred to increase ENGINEER'S insurance levels to meet minimum contract limits shall be borne by the ENGINEER at no cost to the COUNTY.

ENGINEER will maintain professional liability insurance during the term of this Agreement and for a period of three (3) years from the date of substantial completion of the project. In the event that ENGINEER goes out of business during the term of this Agreement or the three (3) year period described above, ENGINEER shall purchase Extended Reporting Coverage for claims arising out of ENGINEER'S negligent acts, errors and omissions committed during the term of the Professional Liability Policy.

Should COUNTY and ENGINEER agree that higher ENGINEER Coverage limits are needed warranting a project policy, project coverage shall be purchased and the premium for limits exceeding the above amount shall be borne by COUNTY. COUNTY retains the option to purchase project insurance through ENGINEER'S insurer or its own source.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved by the COUNTY Risk Management Division prior to the start of work under this Agreement. 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 Coverages
 - a. COUNTY, its officers, agents, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of ENGINEER, including the insured's general supervision of ENGINEER; products and completed operations of ENGINEER; or premises owned, occupied or used by ENGINEER. The coverage shall contain no special limitations on the scope of protection afforded to the additional insureds, nor shall the rights of the additional insured be affected by the insured's duties after an accident or loss.

b. ENGINEER'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, agents, employees or volunteers shall be excess of ENGINEER'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. ENGINEER'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.

e. ENGINEER'S insurance coverage shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits below that specified herein except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to COUNTY except for nonpayment of premium.

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 ENGINEER and insurance carrier. COUNTY reserves the right to require that the ENGINEER'S insurer be a licensed and admitted insurer in the State of Nevada, or on the Insurance Commissioner's approved but not admitted list.

VERIFICATION OF COVERAGE

ENGINEER 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. The certificates are to be on forms approved by COUNTY. *All certificates and endorsements are to be addressed to the specific COUNTY contracting department and be received and approved by COUNTY before work commences.* COUNTY reserves the right to require complete, certified copies of all required insurance policies, at any time.

SUB-ENGINEERS

ENGINEER shall include all Sub-ENGINEERS as insureds under its policies or furnish separate certificates and endorsements for each Sub-ENGINEER. Sub-ENGINEER shall be subject to all of the requirements stated herein.

MISCELLANEOUS CONDITIONS

1. ENGINEER shall be responsible for and remedy all damage or loss to any property, including property of COUNTY, caused in whole or in part by ENGINEER, any Sub-ENGINEER, or anyone employed, directed or supervised by ENGINEER.
2. Nothing herein contained shall be construed as limiting in any way the extent to which ENGINEER may be held responsible for payment of damages to persons or property resulting from its operations or the operations of any Sub-ENGINEERS under it.
3. In addition to any other remedies COUNTY may have if ENGINEER 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 ENGINEER to stop work under this Agreement and/or withhold any payments which become due ENGINEER here under until ENGINEER demonstrates compliance with the requirements hereof;
- b. Terminate the Agreement.