

AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2019, by and between the City of Reno and the City of Sparks, hereinafter referred to as the "CLIENT", and Brown and Caldwell, hereinafter referred to as "ENGINEER":

WITNESSETH:

WHEREAS, CLIENT desires to obtain Construction and Engineering Services during the construction of the TMWRF Nitrification Tower 2 Rehabilitation and Improvement Project, hereinafter referred to as "Project";

WHEREAS, public convenience and necessity require the services of a consulting engineer to provide the services required;

WHEREAS, the CLIENT has found ENGINEER qualified and experienced in the performance of said services;

WHEREAS, the CLIENT is desirous of engaging the services of ENGINEER to perform said services; and

NOW, THEREFORE, said CLIENT and said ENGINEER, for the considerations hereinafter set forth, mutually agree as follows:

ARTICLE I - SERVICES

CLIENT agrees to retain and does hereby retain ENGINEER to perform the professional engineering services hereinafter more particularly described, with such services to commence on the date of the execution of this Agreement and to continue until the completion of the work provided for herein.

ENGINEER hereby agrees to perform the professional services as set forth herein and to furnish or procure the use of incidental services, equipment, and facilities necessary for the completion of said engineering services.

ENGINEER has the status of an independent contractor as defined in NRS 333.700 and shall not be entitled to any of the rights, privileges, benefits, and emoluments of either an officer or employee of CLIENT. ENGINEER shall undertake performance of services as independent contractor and shall be wholly responsible for the methods of performance and for their performance.

ENGINEER is subject to NRS 338.010 – 338.090 (prevailing wage) for all covered work.

ARTICLE II - SCOPE OF SERVICES

The Scope of Services is set forth in Exhibit A as attached hereto and incorporated herein by this reference which consists of 5 pages setting forth tasks.

ARTICLE III - COMPENSATION

Payment for the engineering services hereinabove set forth shall be made by the CLIENT to the ENGINEER and shall be considered as full compensation for all personnel, materials, supplies, and equipment used in carrying out the work.

A. Compensation to the ENGINEER shall be on the basis of time and expense as set forth in Exhibit A, and per the rate schedule, which are attached hereto and incorporated herein by this reference.

B. Payments shall be made by the CLIENT based on itemized invoices from the ENGINEER which lists costs and expenses. Such payments shall be for the invoice amount.

C. CLIENT shall pay ENGINEER within 30 days of receipt by CLIENT of ENGINEER's invoice. If CLIENT disputes only portions of an invoice, CLIENT agrees to pay for undisputed items on that invoice within the time provided herein. Payment by CLIENT of invoices or request for payment shall not constitute acceptance by CLIENT of work performed under the Agreement by the ENGINEER.

D. The budget for total charges for services authorized by this Agreement is the not-to-exceed sum of \$751,746.00, and shall not be exceeded without authorization of the CLIENT. The City of Reno's share is the sum of \$515,923.28 and the City of Sparks' share is the sum of \$235,822.72. The budget may be increased by amendment hereto if necessitated by a change in the scope of services which increases the cost of providing the services. ENGINEER is not authorized to provide any additional services beyond the scope of work without having authorized funding pursuant to a written amendment hereto signed by the authorized representative of the governing body.

ARTICLE IV - SCHEDULE OF WORK

ENGINEER will commence the services as described immediately following the Notice to Proceed provided to the ENGINEER by the CLIENT and will proceed with such services in a diligent manner. ENGINEER will not be responsible for delays caused by factors beyond ENGINEER's control and will not be responsible for delays caused by factors which could not reasonably have been foreseen at the time the Agreement was approved.

ARTICLE V - ASSIGNMENT OF AGREEMENT

The ENGINEER SHALL not assign this Contract or any portion of the work without prior written approval of the CLIENT which may be withheld for any reason whatsoever.

ARTICLE VI- OWNER’S RESPONSIBILITY

CLIENT shall provide any information in its possession that is requested by ENGINEER and is necessary to complete the Project. CLIENT shall assist ENGINEER in obtaining access to public and private lands to allow the ENGINEER to perform the work under this Agreement. CLIENT shall examine all studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by the ENGINEER and shall render decisions pertaining thereto within a reasonable time so as not to delay the work of the ENGINEER.

ARTICLE VII - NONDISCLOSURE OF PROPRIETARY INFORMATION

ENGINEER shall consider all information provided by CLIENT to be proprietary unless such information is available from public sources. ENGINEER shall not publish or disclose proprietary information for any purpose other than the performance of the Services without the prior written authorization of CLIENT or in response to legal process or as required by the regulations of public entities.

ARTICLE VIII - NOTICE

Any notice, demand, or request required by or made pursuant to this Agreement shall be deemed properly made if personally delivered in writing or deposited in the United States mail, postage prepaid, to the address specified below:

To ENGINEER:
Ron L. Ablin, P.E.
Vice President
Brown and Caldwell
201 East Washington, Suite 500
Phoenix, AZ 85004

To CLIENT:
John Flansberg, P.E.
Director of Public Works
City of Reno
1 East First Street
Reno, NV 89501
P.O. Box 1900
Reno, NV 89505

John Martini, P.E.
Assistant City Manager
City of Sparks
431 Prater Way
Sparks, NV 89431
PO Box 857
Sparks, NV 89432

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of ENGINEER and CLIENT.

ARTICLE IX - UNCONTROLLED FORCES

Neither CLIENT nor ENGINEER shall be considered to be in default of this Agreement, if delays in or failure of performance shall be due to uncontrollable forces the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid and is not reasonably foreseeable at the time of entering into this Agreement. The term “uncontrollable forces” shall mean any event which results in the prevention or delay of performance by a party of it’s obligations under this Agreement and which is beyond the control of the non-performing party. It includes, but is not limited to, fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, inability to procure permits, licenses, or authorizations from any state, local, or federal agency or personal for any of the supplies, material, accesses, or services required to be provided by either CLIENT or ENGINEER under this Agreement, strikes, work slowdowns or other labor disturbances, and judicial restraint. ENGINEER shall be paid for services performed prior to the delay.

Neither party shall, however, be excused from performance if nonperformance is due to uncontrollable forces, which are removable. The provisions of this Article shall not be interpreted or construed to require ENGINEER or CLIENT to prevent, settle, or otherwise avoid a strike, work slowdown, or other labor action. The non-performing party shall upon being prevented or delayed from performance by an uncontrollable force immediately give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligation of this Agreement.

ARTICLE X- GOVERNING LAW

This Agreement shall be governed by and construed pursuant to the laws of the State of Nevada. In the event suit is commenced hereunder and in accordance with the Dispute Resolution Procedures of Article XXIII, the suit shall be brought in the appropriate court in Washoe County, State of Nevada. In the event of an arbitration or mediation pursuant to Article XXII, such arbitration or mediation shall be held in Reno, Nevada.

ARTICLE XI - SUCCESSORS AND ASSIGNS

CLIENT and ENGINEER each binds itself and their successors, and assigns to the other party to this Agreement and to the successors, and assigns of such other party, in respect to all covenants, agreements and obligations or this Agreement.

ARTICLE XII - ASSIGNMENT

Neither CLIENT nor ENGINEER shall assign, sublet, or transfer any rights under interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the other, except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent

ENGINEER from employing such independent consultants, associates, and subconsultants as she may deem appropriate to assist her in the performance of the Services hereunder.

ARTICLE XIII - INDEMNIFICATION

To the fullest extent permitted by law, ENGINEER shall defend, indemnify and hold harmless CLIENT and its officers, employees and agents (collectively "Indemnitees") from any liabilities, damages, losses, claims, actions or proceedings, including, without limitation, reasonable attorneys' fees, that are caused by the negligence, errors, omissions, recklessness or intentional misconduct of the ENGINEER or employees or agents of the ENGINEER in the performance of this Agreement.

ENGINEER assumes no liability for the negligence or willful misconduct of any indemnitee or other consultants of indemnitee.

ENGINEER'S indemnification obligations for claims involving Professional Liability (claims involving acts, error, or omissions in the rendering of professional services and Economic Loss Only (claims involving economic loss which are not connected with bodily injury or physical damage to property) shall be limited to the proportionate extent of ENGINEER'S negligence or other breach of duty.

If CLIENT's personnel (engineers or other professionals) are involved in defending such legal action, ENGINEER shall also reimburse CLIENT for the time spent by such personnel at the rate charged for such services by private professionals. These provisions shall survive termination of this agreement and shall be binding upon ENGINEER, her legal representatives, heirs, successors and permitted assigns.

If ENGINEER does not so defend the CLIENT and the ENGINEER is adjudicated to be liable, reasonable attorney's fees and costs shall be paid to CLIENT in an amount proportionate to the liability of ENGINEER.

ARTICLE XIV - INTELLECTUAL PROPERTY INDEMNITY

To the fullest extent permitted by law, ENGINEER shall defend, protect, hold harmless, and indemnify CLIENT and the CLIENT'S related Parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by CLIENT in writing. If ENGINEER has reason to believe the use of a required design, process or product is an infringement of a patent, ENGINEER shall be responsible for such loss unless such information is promptly given to CLIENT. This Indemnity Covenant shall survive the termination of this Agreement.

ARTICLE XV – PAYMENT OF TAXES

Any and all Federal, State and local taxes, charges, fees, or contributions required by law to be paid with respect to ENGINEER'S performance of this Agreement (including, without limitation, unemployment insurance, social security, and income taxes).

ARTICLE XVI - INSURANCE

GENERAL REQUIREMENTS

The CLIENT requires that ENGINEER purchase Industrial Insurance, General Liability, and ENGINEER's Errors and Omissions 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 hereunder by the ENGINEER, its agents, representatives, employees or subconsultants. The cost of such insurance shall be borne by ENGINEER unless otherwise agreed.

INDUSTRIAL INSURANCE (WORKERS' COMPENSATION & EMPLOYER'S LIABILITY)

It is understood and agreed that there shall be no Industrial Insurance coverage provided for ENGINEER or any Subconsultant by the CLIENT and in view of NRS 616B.627 and 617.210 requiring that ENGINEER complies with the provisions of Chapters 616A to 616D, inclusive and 617 of NRS, ENGINEER shall, before commencing work under the provision of this Agreement, furnish to the CLIENT a certificate of insurance from the Worker' Compensation Insurer certifying that the ENGINEER and each Subconsultant have complied with the provisions of the Nevada Industrial Insurance Act, by providing coverage for each and every employee, subconsultants, and independent contractors. Should the ENGINEER be self-insured for Industrial Insurance, the CONSULTANT shall so notify the CLIENT and approve written approval of such self-insurance prior to the signing of a Contract. The CLIENT reserves the right to accept or reject a self-insured CONSULTANT and to approve the amount(s) of any self-insured retentions. The ENGINEER agrees that the CLIENT is entitled to obtain additional documentation, financial or otherwise, for review prior to entering into a Contract with the ENGINEER.

Upon completion of the project, the contractor shall provide the CLIENT with a Final Certificate for itself and each Subconsultant which is prepared by the State of Nevada Industrial Insurance System. If the ENGINEER or Subconsultants are unlicensed and are a sole proprietor, coverage for the sole proprietor must be purchased and evidence of coverage must appear on the Certificate of Insurance and Final Certificate.

It is further understood and agreed by and between the CLIENT and ENGINEER that ENGINEER shall procure, pay for, and maintain the above mentioned industrial insurance coverage at the ENGINEER's sole cost and expense.

MINIMUM SCOPE OF LIABILITY INSURANCE

Coverage shall be at least as broad as: *

Commercial General Liability at least as broad as Insurance Services Office Commercial General Liability Coverage "occurrence" form CG OO O1 04 13 or an equivalent form. The Comprehensive General Liability Coverage shall include, but is not limited to, liability coverage arising from premises, operations, independent contractors, products and completed operations, personal and advertising, injury, blanket contractual liability and broad form property damage.

Automobile Coverage at least as broad as Insurance Services Office Business Auto Coverage form CA OO 01 10 13 or an equivalent form covering Automobile Liability Symbol 1 "Any Auto". In lieu of a separate Business Auto Liability Policy, the City may agree to accept Auto Liability covered in the General Liability Policy, if non owned and hired auto liability are included. The ENGINEER shall maintain limits of no less than \$1,000,000 or the amount customarily carried by the contractor, whichever is greater, combined single limit per accident for bodily injury and property damage. No aggregate limit may apply.

The Additional Insured Endorsements for General Liability shall be at least as broad as the unmodified ISO CG 20 10 04 13 and ISO CG 20 37 04 13 endorsements, or equivalent. The certificate shall confirm Excess Liability is following form.

*Coverages may be excluded only with prior approval of the CLIENTS' Risk Managers.

Professional Errors and Omissions Liability applying to all activities performed under this Agreement in a form acceptable to CLIENT. ENGINEER will maintain professional liability insurance during the term of this Agreement and for a period of six (6) years from the date of substantial completion of the project unless waived by the CLIENT. In the event the ENGINEER goes out of business during the term of this Agreement or the six (6) year period described above, ENGINEER shall purchase Extended Reporting coverage for claims arising out of ENGINEER's negligence acts, errors and omissions committed during the term of the Professional Liability Policy.

MINIMUM LIMITS OF INSURANCE

ENGINEER shall maintain limits no less than:

1. **General Liability:** \$2 million minimum combined single limit per occurrence for bodily injury, personal injury and property damage and \$4 million annual aggregate.
2. **ENGINEER's Errors and Omissions Liability:** \$2 million per claim and \$4 million as an annual aggregate during the term of this Agreement and for six years after the completion of the project, with each subsequent renewal having a retroactive date which predates the date of this Agreement. The ENGINEER may purchase project insurance or obtain a rider on her normal policy in an amount sufficient to bring ENGINEER's coverage up to minimum requirements, said additional coverage to be obtained at no cost to the CLIENT. Should the CLIENTS' Risk Managers require project insurance, project insurance shall be purchased and premium costs

shall be borne by the CLIENT. CLIENT retains option to purchase project insurance through the ENGINEER's insurer or through its own source.

DEDUCTIBLES OR SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved by the CLIENT Risk Management Divisions. The CLIENT reserves the right to request additional documentation, financial or otherwise prior to giving its approval of the deductibles or self-insured retention. Any changes to the deductible or self-insured retention made during the term of this Agreement or during the term of any policy, must be approved by the CLIENTS' Risk Managers.

OTHER INSURANCE PROVISIONS

General Liability Coverages

The CLIENT, its officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the ENGINEER including the insured's general supervision of the ENGINEER; products and completed operations of the ENGINEER; or premises owned, occupied or used by the ENGINEER. The coverage shall contain no special limitations on the scope of protection afforded to the CLIENT, its officers, officials, employees or volunteers.

The ENGINEER's insurance coverage shall be primary insurance as respects the CLIENT, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the CLIENT, its officers, officials, employees or volunteers shall be excess of the ENGINEER's insurance and shall not contribute with it in any way.

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the CLIENT, its officers, officials, employees or volunteers.

The 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.

Endorsements for General Liability, Auto, and Excess/Umbrella Liability listing all additional insureds are required. The endorsement for Excess/Umbrella Liability can be accomplished by the ENGINEER'S production of a letter from the insurance company stating that Excess/Umbrella Liability will "follow form."

The 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 except after at least thirty (30) days prior written notice for reasons other than non-payment of premium and at least ten (10) days for non-payment of premium mail has been given to the CLIENT.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with an A.M. Best and Company rating level of A - Class VII or better, or otherwise approved by the CLIENT in its sole discretion. CLIENT reserves the right to require that ENGINEER'S insurer be a licensed and admitted insurer in the State of Nevada, or on the Insurance Commissioner's approved but not admitted lists.

VERIFICATION OF COVERAGE

ENGINEER shall furnish the CLIENT with certificates of insurance, including but not limited to the Certificate of Compliance in NRS 616B.627 and with original endorsements affecting coverage required by this article. 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 and must be countersigned by a duly appointed and licensed agent in this state. The certificates are to be on forms approved by the CLIENT. All certificate and endorsements are to be received and approved by the CLIENT before work commences. The CLIENT reserves the right to require complete, certified copies of all required insurance policies, at any time. ENGINEER can request that confidential information be redacted.

SUBCONSULTANTS

ENGINEERS shall require all subconsultants to be insured on their own or under its policies and shall furnish separate certificates and endorsement for each subconsultant. Coverages for subconsultants shall be subjected to all of the requirements stated herein.

Miscellaneous Conditions

If the ENGINEER or any Subconsultant fails to maintain any of the insurance coverages required, the CLIENT may terminate this Agreement for cause.

ENGINEER shall be responsible for and remedy all damage or loss to any property, including property of CLIENT, caused in whole or in part by the ENGINEER, any subconsultant, or any employee, directed or supervised by ENGINEER, except damage of loss attributable to faulty drawings or specifications.

Nothing herein contained shall be construed as limiting in any way to the extent to which the ENGINEER may be held responsible for payment for damages to persons or property resulting from her operations or the operations of any subconsultant under her.

If ENGINEER's failure to maintain the required insurance coverage results in a breach of this Agreement, CLIENT may purchase the required coverage, and without further notice to ENGINEER, deduct from sums due to ENGINEER any premium cost advanced by CLIENT for such insurance.

ARTICLE XVII - LITIGATION

This Agreement does not require the ENGINEER to prepare for or appear in litigation on behalf of The CLIENT, or as agent of the CLIENT, other than specified herein, except in consideration of additional reasonable compensation.

ARTICLE XVIII - TERMINATION OF WORK

Either party to this Agreement may terminate the Agreement for cause upon giving the other party thirty (30) days prior written notice. Cause may include, failure to perform through no fault of the party initiating the termination. In addition, CLIENT may terminate the Agreement for any one of the following causes: performance by ENGINEER which CLIENT deems unsatisfactory in CLIENT's sole judgment; and CLIENT's lack of funds to complete the work. Cause for ENGINEER may include, failure of CLIENT to make timely payment to ENGINEER without good cause, following a demand for payment.

In addition, CLIENT may terminate any or all of the work covered by this Agreement by notifying ENGINEER in writing. In the event such termination occurs at the conclusion of services pursuant to an executed task order, then ENGINEER shall be entitled to receive compensation for all work satisfactorily completed and performed through the conclusion of that task order. No other changes or costs incurred for services or materials other than pursuant to an executed task order shall be reimbursed by CLIENT pursuant to this Agreement. In the event such termination occurs during the performance of services pursuant to an authorized task order, then ENGINEER and CLIENT shall need to determine what, if any additional services should be performed by ENGINEER in order to close out the work in progress and provide any such unfinished materials to CLIENT. ENGINEER and CLIENT shall agree upon the additional amount of work to be performed following the termination notice and the amount payable by CLIENT for such work. In the event that the parties cannot otherwise agree on the amount to be paid pursuant to this provision, then the matter may be referred to the Dispute Resolution Procedure in ARTICLE XXIII.

In the event the Agreement is terminated by CLIENT for cause, including performance deemed unsatisfactory by CLIENT, or ENGINEER failure to perform, or other cause created by ENGINEER, CLIENT may withhold and offset against any payments otherwise due and/or seek recovery from ENGINEER for amounts already paid, including without limitation: amounts paid for unsatisfactory work or work not done in accordance with this Agreement; value of CLIENT's time spent in correcting the work or problem; any increase in cost resulting from the problem or work; and any other costs which result from such termination. Subject to the terms herein, ENGINEER will be paid for services performed prior to termination.

ENGINEER expressly agrees that this Agreement shall be terminated immediately if for any reason local, federal and/or State Legislature funding ability to satisfy this Agreement is withdrawn, limited, or impaired.

ARTICLE XIX - PROFESSIONAL SERVICES

ENGINEER shall be responsible for the professional quality and technical accuracy of all services furnished by ENGINEER and their subconsultants under this Agreement. Without limiting the effect of any other provision of this Agreement and in addition to any other provision contained herein, ENGINEER shall, without additional compensation, correct or revise any errors or omissions in their services.

ENGINEER and their subconsultants retained pursuant to this Agreement are considered by CLIENT to be skilled in their profession to a degree necessary to perform the services and duties contained in this Agreement, and CLIENT hereby relies upon those skills and the knowledge of ENGINEER and their subconsultants. ENGINEER and their subconsultants shall perform such professional services and duties as contained in this Agreement in conformance to and consistent with the standards generally recognized as being employed by professionals of their caliber in the State of Nevada. ENGINEER makes no warranty, either expressed or implied, as to their findings, recommendations, specifications or professional advice other than as provided herein.

Neither CLIENTS' review, approval, or acceptance of nor payment for any of the professional services or work required under this Agreement shall be construed to operate as a waiver of any of CLIENTS' rights under of this Agreement. The rights and remedies of CLIENT provided for under this Agreement are in addition to any other rights and remedies provided by law.

Project information including but not limited to reports, written correspondence, and verbal reports will be prepared for the use of the CLIENT. The observations, findings, conclusions and recommendation made represent the opinions of the ENGINEER. Reports, records, and information prepared by others will be used in the preparation of the report. The ENGINEER has relied on the same to be accurate and does not make any assurances, representations, or warranties pertaining to the records or work of others, except for its subconsultants, nor does the ENGINEER make any certifications or assurances except as explicitly provided in writing. No responsibility is assumed by the ENGINEER for use of reports for purposes of facility design by others.

ARTICLE XX – PROPERTY: COPYRIGHTS

The ENGINEER shall furnish to the CLIENT all field notes, reports, data, and electronic or magnetic media, and original tracings of all drawings and plans, maps, photographs, and other materials (including, if requested by the Director, design computations, design sketches and review drawings) prepared pursuant to this Contract (hereinafter collectively referred to as "Documents"). The originals of such Documents shall be and remain the property of the CLIENT.

All of such Documents shall be deemed to be "works made for hire" prepared for the CLIENT. The ownership of all copyrights and all rights embodied in the copyrights in or to such Documents shall rest in the CLIENT when any such is subject to copyright. The ENGINEER

agrees that it, nor any of its employees, shall have any right to copyright any of such Documents. The ENGINEER further agrees that neither it nor any of its employees shall exercise any of the rights embodied in the copyrights in or to such Documents, unless authorized to do so by the Reno City Council. The ENGINEER shall place a conspicuous notation upon each Document which indicates that the copyright thereto is owned by the CLIENT.

Should it be finally determined, by a court or to her tribunal of competent jurisdiction, that any of such Documents is not a “works made for hire,” it is agreed that the provisions of this section shall be termed an assignment, sale, and transfer of the copyright in or to such Documents to the CLIENT for the longest term allowed by law. Notwithstanding the foregoing, the ENGINEER may retain copies of such Documents and such copies shall remain the property of the ENGINEER. The ENGINEER shall have the right to use such copies as it may desire, but the ENGINEER may not sell, license, or otherwise market such Documents.

Documents, including drawings and specification prepared by ENGINEER pursuant to this Contract, are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the services provided for the Project or any other project. Any use of completed Documents for other projects and/or any use of uncompleted Documents without specific written authorization from ENGINEER will be at the CLIENT’s sole risk without liability or legal exposure to ENGINEER.

ARTICLE XXI - RIGHTS OF ENGINEERS AND EMPLOYEES

No personnel employed by ENGINEER shall acquire any rights or status in the CLIENT services and ENGINEER shall be responsible in full for payment of its employees, including insurance, deductions, and all the like.

ARTICLE XXII - SERVICES BY CLIENT

It is understood and agreed that the CLIENT shall, to the extent reasonable and practicable, assist and cooperate with the ENGINEER in the performance of ENGINEER’s services hereunder. Such assistance and cooperation shall include, but not necessarily be limited to, environmental approval, right of access to work sites; providing material available from the CLIENT’s files such as maps, As-Built drawings, records, and operation and maintenance information; serving all notices, holding all hearings, and fulfilling legal requirements in connection therewith; and rendering assistance in determining the location of existing facilities and improvements which may be affected by the project.

ARTICLE XXIII - DISPUTE RESOLUTION PROCEDURE

1. If disputes arise under this Agreement, the parties agree to attempt to resolve such disputes through direct negotiations or if such negotiations are not successful, by non-binding mediation conducted in accordance with the rules and procedures to be agreed upon by the parties.

2. The prevailing party in an action to enforce the Agreement shall be entitled to recover its reasonable attorney's fees and costs. It is specifically agreed that a reasonable attorney's fee shall be \$125 per hour.

ARTICLE XXIV - NO UNFAIR EMPLOYMENT PRACTICES

1. In connection with the performance of work under this Agreement, Engineer agrees not to discriminate against any employee or applicant for employment because of race, creed, color, religion, national origin, age, sex, sexual orientation, gender identity, gender expression, veteran status, or any other protected class status applicable under federal, state or local law, rule or regulation. Such Agreement 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.

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

3. Any violation of these provisions by ENGINEER shall constitute a material breach of contract.

4. As used in this Article, sexual orientation means having or being perceived as having an orientation for heterosexuality, homosexuality or bi-sexuality.

ARTICLE XXV - AMERICANS WITH DISABILITIES ACT

1. To the extent applicable for the Project, ENGINEER and its subconsultants shall comply with the terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

ARTICLE XXVI - GENERAL PROVISIONS

1. Integration. This Agreement, including the Exhibits and the Recitals, all of which are true and correct and are incorporated by reference as a part of this Agreement, constitutes the complete and integrated Agreement between the parties with respect to the matters recited herein, and supersedes any prior or contemporaneous written or oral agreements or understandings with respect thereto.

2. Severability. The legality of any provision or portion of this Agreement shall not affect the validity of the remainder.

3. Amendment. This Agreement shall not be modified, amended, rescinded, canceled, or waived, in whole or in part, except by written amendment signed by duly authorized representatives of the parties.

4. No Third Party Benefit. This Agreement is a contract between CLIENT and ENGINEER and nothing herein is intended to create any third party benefit.

5. Governing Law and Jurisdiction. This Agreement shall be administered and interpreted under the laws of the State of Nevada. Any action at law, suit in equity or judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the district courts of the State of Nevada, County of Washoe.

ARTICLE XXVII - DUE AUTHORIZATION

Each party represents that all required authorizations have been obtained to execute this grant and for the compliance with each and every term hereof. Each person signing this Agreement warrants and represents to the other party that he or she has actual authority to execute this Agreement on behalf of the party for whom he or she is signing. A facsimile signature on this Agreement shall be treated for all purposes as an original signature.

Duplicate originals. This Agreement is executed in one duplicate original for each party hereto, and is binding on a party only when all parties have signed and received a duplicate original.

IN WITNESS WHEREOF, CLIENT has caused this Agreement to be executed by the City of Reno and ENGINEER have caused this Agreement to be executed, all as of the day and year first above written.

CITY OF RENO

ATTEST:

By: _____
Hillary L. Schieve, Mayor

By: _____
Ashley D. Turney, Reno City Clerk

CITY OF SPARKS

ATTEST:

By: _____
Ron Smith, Mayor

By: _____
Lisa Hunderman, Acting City Clerk

APPROVED AS TO FORM:

APPROVED S TO FORM:

By: _____
Susan Ball Rothe
Deputy City Attorney

By: _____
Chet Adams
Sparks City Attorney

ENGINEER

By:  _____
Ron L. Ablin, P.E., Vice President

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CITY OF RENO

ATTEST:

By: _____
Hillary L. Schieve, Mayor

By: _____
Ashley D. Turney, Reno City Clerk

CITY OF SPARKS

ATTEST:

By: _____
Ron Smith, Mayor

By: _____
Lisa Hunderman, Acting City Clerk

APPROVED AS TO FORM:

APPROVED S TO FORM:

By: _____
Susan Ball Rothe
Deputy City Attorney

By: _____
Chet Adams
Sparks City Attorney

ENGINEER

By:  _____
Ron L. Ablin, P.E., Vice President



Exhibit A – Scope of Work

City of Reno

Construction Services and Engineering Services During Construction for the Nitrification Tower 2 Rehabilitation and Improvements Project

Truckee Meadows Water Reclamation Facility

May 2, 2019

Project Overview

The following Scope of Work has been prepared by Brown and Caldwell (BC) for the City of Reno (City) to provide construction administration, engineering and inspection services for the Nitrification Tower 2 Rehabilitation and Improvements Project. The project includes the removal and replacement of the Nitrification Tower 2 media, distributor arm, and center column. Nitrification Tower 2 rehabilitation work includes concrete rehabilitation of the walls and structural internals. A temporary pumping station will be installed to provide a temporary bypass of the Nitrification Tower. The work is critical to the Truckee Meadows Water Reclamation Facility's (TMWRF) process performance and discharge requirements. The project includes date-sensitive work and BC will coordinate closely with the City, TMWRF, and the Contractor to help facilitate critical project elements.

The construction contract duration is 18 months and work is anticipated to be performed from June 2019 to December 2020. For the purposes of estimating the CM and inspection effort, the construction project is divided into 3 phases of work. Phase 1 consists of equipment procurement and utility installation and is expected to occur from June 2019 until February 2020. Phase 2 will consist of Nitrification Tower 2 construction including demolition and is expected to occur from March 2020 to August 2020. Phase 3 will consist of Nitrogen Tower 2 commissioning and is expected to occur from September 2020 to December 2020.

The following sections describe the detailed Scope of Work to complete the project.

Task 1.0 Project Management

The Project Management Task includes setting up the project, coordinating with the internal project team, preparing monthly invoices and status reports, monitoring schedule and budget, and maintaining a risk register and decision log. The project management duration is assumed to be approximately 18 months to coincide with the construction contract duration. Upon request, the invoices will include a cover letter no longer than one page in length that briefly describes work completed, percentage of budget expended to date by task, and percentage complete by task.

Task 2.0 Engineering Services During Construction

Sub-Task 2.1 Submittal Review

BC will receive, review, and distribute Contractor submittals. Effort assumes 3 major submittal reviews (media, distributor arm, and temporary pumps) at 32 hours each and 20 product data submittal reviews at 8 hours each. Effort includes hours for a maximum of 10 resubmittals. Senior staff review of all equipment submittals is included as a separate quality control (QC) task. This task assumes that all submittals will be received and distributed electronically in PDF format. BC will maintain a submittal log to track submittal dates and response status.

Deliverables:

- Submittal responses (PDF)

Sub-Task 2.2 RFIs

Task assumes that BC staff will respond to up to 20 formal written requests for information (RFI) with an average effort of 6 hours budgeted per response. BC staff will also respond to up to 10 informal email RFIs with an average of 3 hours budgeted per response. Additional RFIs can be processed with contingency funds or via a scope amendment as directed by the City's Project Manager. BC will maintain an RFI log to track RFI receipt and response dates.

Deliverables:

- Formal RFI responses (PDF)
- Informal RFI responses (e-mail)

Sub-Task 2.3 Design Staff Progress Meetings and Site Visits

BC design staff will participate by phone in weekly progress meetings when deemed appropriate by the Construction Manager or the City. BC assumes progress meetings will occur monthly from the issuance of the Notice to Proceed until January 2020. BC assumes that design staff will participate by phone in up to 30 of the estimated 56 progress meetings. The estimate for this task assumes 1 hour per meeting by up to two BC design staff. If additional site visits are deemed necessary, the additional effort can be provided with contingency funds or via a scope amendment as directed by the City's Project Manager.

Meetings:

- Participate in up to 30 meetings via conference call.

Sub-Task 2.4 Preparation of Design Change Modifications

Design changes may be needed due to unforeseen conditions and minor project changes needed for the benefit of the project. This task assumes preparing up to six design clarifications at an estimated 16 hours each.

Deliverables:

- Design change modifications submitted to the Contractor in PDF format

Sub-Task 2.5 Record Drawings

BC will prepare Record Drawings from the Contractor's as-built drawings, RFI responses, field change notices (FCNs), and quotation requests (QRs). This task assumes the Contractor is producing legible record drawings and recording all changes.

Deliverables:

- Draft and final Record Drawings (PDF)
- Final Record Drawings (CAD)

Task 3.0 Construction Services**Sub-Task 3.1 Construction Management**

BC will provide construction administration services for contract administration, coordination with the Contractor, City, and TMWRF; and change order and claims management. Our Construction Management effort is based on a construction and commissioning duration of 18 months.

BC's construction management services for this task include:

- Conducting and documenting the pre-construction conference.
- Establishing and maintaining Brown and Caldwell's internal document project filing system.
- Monitoring and logging requests for information and submittals.
- Coordinating equipment testing and calibration activities for the Distributor Arm, Media, and Temporary Pumping System.
- Conducting and documenting periodic startup and testing meetings.
- Evaluating the baseline Critical Path Method Schedule that is developed by the Contractor and Monthly CPM schedule updates provided by the Contractor. Provide recommendations regarding delays and associated impact costs. Make recommendations for time extensions.
- Evaluating and recommending appropriate actions on work schedules.
- Processing and monitoring Contractor submittals and RFIs.
- Reviewing and responding to Contractor RFIs (completed in Sub-task 2.2).
- Coordinating facility shutdowns and interfacing with facility operations.
- Documenting and monitoring claims and disputes.
- Evaluating and recommending changes to the work and negotiating price modifications associated with change orders.
- Documenting and monitoring periodic design clarification meetings.

- Developing a corrective items list of work in place and monitoring completion on noted items.
- Issuing corrective items lists and inspecting corrections for acceptability.
- Provide assistance and recommendations for Notice of Project Completion and Acceptance.

This task assumes the following level of effort:

- Average of 8 hours per week for Construction Manager for a duration of 38 weeks (Phase 1 of construction project from June 2019 to Feb. 2020)
- Average of 16 hours per week for the Construction Manager for a duration of 26 weeks (Phase 2 of construction project from March 2020 to Aug. 2020).
- Average of 8 hours per week for the Construction Manager for a duration of 16 weeks (Phase 3 of construction project from Sep. 2020 to Dec. 2020)

Sub-Task 3.2 Inspection and Coordination

BC will provide regular construction inspections and document the status of the work with daily field reports and jobsite photography. This task will also include coordination with City staff, TMWRF staff, and the Contractor. BC will notify the Contractor of noncompliant work items and monitor remedial work associated with nonconforming installations. BC inspectors will participate in monthly reviews of the Contractor's record drawings and document findings. The following effort is assumed for the inspection task:

- Average of 20 hours per week of inspection and coordination for a duration of 12 weeks during the first 38 weeks of the construction project. (Phase 1 of construction project from June 2019 to Feb. 2020).
- Average of 40 hours per week of inspection and coordination for a duration of 26 weeks (Phase 2 of construction project from March 2020 to Aug. 2020).
- Average of 8 hours per week of inspection and coordination for a duration of 16 weeks (Phase 3 of construction project from Sep. 2020 to Dec. 2020).

Deliverables:

- Inspectors Daily Field Reports (PDF) for each day an inspection occurs.

Sub-Task 3.3 Construction Progress Meetings

The Construction Manager will prepare meeting agendas, moderate progress meetings, and prepare meeting notes of key discussion items and decisions. Meetings will include updated logs for submittals, RFIs, potential change orders, force account spending, and coordination with TMWRF operations and maintenance activities. Four (4) hours of effort per progress meeting is assumed for the Construction Manager. BC assumes that progress meetings will occur on a monthly basis from June 2019 until December 2020. Weekly progress meetings will occur beginning in January 2020 and continue for the remainder of the project until December 2020.

Meetings:

- The Construction Manager will participate in up to 56 progress meetings

Deliverables

- Meeting agenda (PDF)
- Meeting notes (PDF)

Sub-Task 3.4 Field Change Notices, Quotation Requests, and Authorizations of Contingency

The BC Construction Manager will draft and issue FCNs as required to direct a change in work to the Contractor. A maximum of ten FCNs is assumed at 6 hours per FCN. The Construction Manager will issue QRs to obtain quotes for proposed modifications to the work. This task assumes no more than eight (8) QRs at an average of 4 hours per QR. FCNs or QRs resulting in additional compensation to the Contractor from the Force Account will result in receiving an Additional Work Request (AWR) from the Contractor. The AWR will be reviewed for accuracy, and the price for the additional work will be evaluated. After review, the AWR will be sent to the City's Project Representative with a recommendation for payment, further verification of the proposed AWR, or rejection of the AWR. A maximum of nine (9) AWRs is assumed at 6 hours per AWR.

The Construction Manager will draft and issue an Authorization of Contingency (AOC) for each approved AWR from the City's Authorization of Contingency form template. After drafting the AOC, the Construction Manager will obtain signatures on the AOC form from the City of Reno, Contractor, and BC's project representatives. A maximum of seven (7) AOCs with an average of 2 hours per AOC is assumed for this task.

Deliverables:

- FCN issued to Contractor (PDF)
- QR issued to Contractor (PDF)
- AOC (PDF)

Sub-Task 3.5 Payment Application Reviews

The BC Construction Manager will review payment requests based on the acceptability of the work in place and provide a written recommendation letter for payment to the City's Project Manager once the payment application is correct. This task assumes a maximum of 18 payment applications and a maximum of 6 payment applications requiring corrections from the Contractor. Two (2) hours per submitted payment application is assumed for this task.

Deliverables:

- Payment application recommendation letter (PDF)

Sub-Task 3.6 Operation and Maintenance Manual Update

The BC Process Engineer and Startup Engineer, in association with the design team, will assist the TMWRF staff in updating operation and maintenance (O&M) manuals related to the Nitrification Towers and O&M compilation. The revisions prepared by BC will consist of markups of the hard copy files provided by TMWRF. TMWRF will be responsible for incorporating the hard copy markups. Because of the vast range in detail of O&M work products, this task assumes a maximum hour effort. Additional effort can be provided with contingency funds or via a scope amendment as directed by the City's Project Manager.

This task also assumes a maximum effort of 40 hours for the Project Engineer and 4 hours for QC review.,

Sub-Task 3.7 Subconsultant Support and Special Inspections

Task includes special inspection services, soil testing and compaction, concrete rebar placement, and specialty coatings inspections. BC has engaged the following subconsultants for special inspections:

- Blakely Johnson and Ghush – Structural engineering construction-phase support.
- Black Eagle Consulting – Soils, reinforcing, concrete sampling and testing, and asphalt testing.
- Bay Area Coatings Consultants – Coating inspections (maximum of 60 hours of inspection hours with minimum 4-hour blocks).

Deliverables:

- Subconsultant Inspector's Daily Field Reports (PDF)

Task 4.0 Contingency

A project contingency of \$100,000 is included in this task to cover unforeseen activities during construction. BC shall prepare a justification, scope and estimated fee for release of contingency funds. Funds will not be released until authorized by the City.

Assumptions

- A project duration of 18 months.
- Office space is available to the BC Construction Management Team on site without the need for additional construction trailers.
- Work will be performed by a competent Contractor and work will be completed within the original contract duration.
- Contractor shall coordinate all training with vendors.

Fee Estimate

Below is a detailed fee estimate for the services provided in this Scope, including all tasks and deliverables. The table provides the estimated fee by task. It also includes sub-consultant costs, other direct costs, and other associated expenses [MH].

Task	Task Description	Total Labor Effort	Subconsultants	Expense Cost \$	Owner Contingency	Total Effort \$
1	Project Management	\$35,734				\$35,734
2	Engineering Services During Construction	\$142,660		1,500		\$144,160
3	Construction Services	\$422,548	\$46,805	\$2,500		\$471,853
4	Owner Contingency				\$100,000	\$100,000
TOTAL						\$751,746

Cost Assumptions

- Hourly rates are based on labor rates included as Exhibit B.
- Subcontractors include cost plus 5% service charge.
- Travel and reproduction costs are billed at cost, with no markups.
- Budget may be reallocated between tasks as required by BC. This excludes the contingency task which shall be approved by the City before being utilized.

Schedule Assumptions

- Contractor Notice to Proceed provided on June 5, 2019.
- Tower Rehabilitation work will occur from March 2020 through September 2020.

Brown and Caldwell Schedule of Hourly Billing Rates

Level	Engineering	Technical/Scientific	Administrative	Hourly Rate
A			Office/Support Services I	\$53
B	Drafter Trainee	Field Service Technician I	Word Processor I Office/Support Services II	\$66
C	Assistant Drafter	Field Service Technician II	Word Processor II Office/Support Services III	\$75
D	Drafter Engineering Aide Inspection Aide	Field Service Technician III	Accountant I Word Processor III Office/Support Services IV	\$86
E	Engineer I Senior Drafter Senior Illustrator Inspector I	Geologist/Hydrogeologist I Scientist I Senior Field Service Technician	Word Processor IV	\$103
F	Engineer II Inspector II Lead Drafter Lead Illustrator	Geologist/Hydrogeologist II Scientist II	Accountant II Accountant III Area Business Operations Mgr Technical Writer Word Processing Supervisor	\$123
G	Engineer III Inspector III Senior Designer Supervising Drafter Supervising Illustrator	Geologist/Hydrogeologist III Scientist III	Accountant IV Administrative Manager	\$146
H	Senior Engineer Principal Designer Senior Construction Engineer Senior Engineer	Senior Geologist/Hydrogeologist Senior Scientist	Senior Technical Writer	\$165
I	Principal Engineer Principal Construction Engineer Supervising Designer	Principal Geologist/Hydrogeologist Principal Scientist	Corp. Contract Administrator	\$188
J	Supervising Engineer Supervising Constr. Engineer Supervising Engineer	Supervising Scientist Supervising Geologist/ Hydrogeologist	Assistant Controller	\$196
K	Chief Engineer Managing Engineer	Managing Geologist/Hydrogeologist Managing Scientist	Area Bus Ops Mgr IV	\$219
L	Executive Engineer	Chief Scientist Chief Geologist/Hydrogeologist	Corp Marketing Comm. Mgr.	\$237
M	Vice President			\$254
N	Senior Vice President			\$266
O	President/Executive Vice President			\$277
P	Chief Executive Officer			\$304