

AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2018, 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 engineering services for the TMWRF Digester #2 and #5 Cover Rehabilitation 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 6 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 materials basis as set forth in Exhibit A per the rate schedule both of 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 \$266,732.00, and shall not be exceeded without authorization of the CLIENT. The City of Reno's share is the sum of \$183,058.17 and the City of Sparks' share is the sum of \$83,673.83. 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.
Community Services Director
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 its 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 of 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, national origin, sex, sexual orientation or age. 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: _____
Geno Martini, Mayor

By: _____
Teresa Gardner, Sparks 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

Truckee Meadows Wastewater Reclamation Facility Digester 2 and Digester 5 Cover Rehabilitation

March 2018

Project Overview

Brown and Caldwell (BC) has prepared the following scope of work for the evaluation, design, and bidding services associated with the Digester 2 cover rehabilitation and the Digester 5 cover exterior coating replacement at the Truckee Meadows Wastewater Reclamation Facility (TMWRF). Digester 2 was constructed as part of the original 1964 treatment plant and has a moveable cover that was converted to a semi-fixed cover. Digester 5 was constructed during the 1985 expansion and has a fixed cover. The existing polyurethane foam (PUF) coating on the exterior of both digester covers will be replaced with a new PUF coating system. It is BC's understanding that previous evaluations have concluded that completely removing covers to rehabilitate the cover skirts is cost-prohibitive; therefore, this scope is based on rehabilitating the covers in place.

Reno (City) will take Digester 2 out of service and clean it prior to the evaluation and will make provision for BC's project team to enter the digester while the cleaning contractor is on site. The interior of the Digester 5 cover was repaired and recoated in 2013 so the evaluation and rehabilitation of Digester 5 will be limited to the exterior.

The project elements include:

- Interior and exterior condition assessment of the Digester 2 cover;
- Exterior condition assessment of the Digester 5 cover;
- Structural assessment of the Digester 2 and 5 covers based on material thickness tests;
- Visual structural assessment of Digester 2 interior and exterior;
- Visual structural assessment of Digester 5 exterior;
- Specifying an interior coating system for Digester 2 cover;
- Specifying an exterior coating system for Digester 2 and Digester 5 covers;
- Designing an exterior seal for Digester 2;
- Preparing design documents for bidding;
- Support services during bidding;
- Preparing conformed documents for construction.

Task 1.0 Project Management and Coordination

Task 1.1 Project Management

BC's Project Manager will be the primary point of contact for the City. The Project Manager is responsible for managing staff resources, budget, subconsultants, and corresponding regularly with the City.

The Project Manager will prepare and submit monthly invoices, progress reports and schedule updates to document all work performed. The budget associated with Task 1.1 assumes a maximum project duration of 7 months.

Task 1.2 Coordination Meetings

BC will prepare agendas, attend, and distribute meeting minutes for project meetings. Meetings will be attended by the BC Project Manager and up to two additional BC staff who will attend by conference call. The minutes of the meetings will be prepared and distributed to attendees by BC. BC anticipates and has budgeted for the following meetings:

- Kick-off Meeting: Schedule and conduct a project kick-off meeting with the City. Meeting agenda items will include the following
 - Introduction of the project team;
 - Establish primary lines of communication;

- Review project purpose and background;
 - Affirm and review the project scope;
 - Review project schedule;
 - Obtain background information; and
 - Identify and discuss issues related to the project.
- Coordination Site Meeting: BC has budgeted one site meeting to coordinate project items with TMWRF and City of Reno staff. It is assumed that this meeting will take a maximum of 2 hours.

Task 2.0 Cover Seal Alternative Evaluation

Per discussions with City and TMWRF staff, they may want to evaluate alternatives to the cover seal that was installed on Digesters 1 and 3. Alternatives for the Digester 2 seal may include, but are not limited to, options for limiting the number of seams on the seal, using a sealant in the annular space between the skirt plate and wall in addition to an exterior seal, and sealant options identified by TMWRF staff. The possible alternatives will be discussed with TMWRF staff on a case-by-case basis, and evaluation efforts can be provided up to the limit of this task budget. It is BC's understanding that the Digester 5 seal will not be evaluated or replaced.

Task 3.0 Condition Assessment

The purpose of the condition assessment is to evaluate the condition of the Digester 2 cover (internal and external), the condition of the Digester 5 cover (external), perform a visual structural assessment of Digester 2 (internal and external), and perform a visual structural assessment of Digester 5 (external). Findings will be documented in a technical memorandum (TM) along with recommended repairs. The work will be performed by BC and BC's subconsultants Blakely Johnson & Ghusn (BJG), V&A Engineering (V&A), and Bay Area Coating Consultants (BACC).

Task 3.1 Safety Plan

This task includes developing a safety plan for entering Digester 2 and coordinating with the City's digester cleaning contractor for entry under their confined space entry permit.

Task 3.2 Structural Assessment

This task includes a structural evaluation of the steel covers and visual assessment of Digester 2 and 5 concrete by BJG. Work includes a site visit for each digester and review of the results of V&A's material condition assessment. The existing coating may cover structural conditions that cannot be observed until the coating is removed by sandblasting; therefore, BC recommends performing additional inspection(s) during construction (not included in this scope). Specific elements of the Structural Assessment include:

- Site visits to both digesters. The digester site visits will be coordinated by BC with V&A who will be performing material evaluation;
- Conduct a visual structural assessment of the Digester 2 interior and exterior. This will assess the general soundness of the concrete and review cracking to determine if it is structurally significant. Recommendations for additional testing will be made as necessary depending on the visual assessment;
- Conduct a visual assessment of exterior of Digester 5. Cracking and surface degradations will be evaluated and a determination made if any additional testing is warranted;
- Review material evaluation results for structural significance, particularly steel thicknesses and connections. This review will depend on the availability of the original cover shop drawings;
- Visually inspect Digester 2's floating cover, guides, and the skirt plate for corrosion and structural soundness;
- Visually review the cover hold-downs for Digester 5 and cover plates that are not covered with insulation; and
- BJG will prepare a report summarizing the structural assessments, provide recommendations for additional testing, and develop a conceptual opinion of probable construction costs for structural repairs.

Task 3.3 Material Assessment

Perform an interior and exterior assessment of the Digester 2 cover and an exterior assessment of the Digester 5 cover. The assessment work will include one person from BC and a two-person V&A crew. A total of two structures will be evaluated during one mobilization over 2 days, assuming that both digesters will be available during the same site visit. It should be noted that the interior coating may cover some defects that will not be visible until the coating is removed during construction. The following assessment methods will be used on the digesters:

- Measure pH of the concrete surfaces at one location on the wall and floor of Digester 2. The pH of concrete can indicate the levels of corrosion attack prevalent;
- Measure the thickness of concrete protecting the reinforcing steel using surface-penetrating radar at up to one easily accessible location on the wall and floor of Digester 2;
- Measure the Digester 2 and Digester 5 cover steel thickness. Exterior metal surfaces of the digester roof will be accessed by removing coupons of the existing foam coating. At a minimum, two sets of ultrasonic test (UT) measurements (outer and inner radius) will be taken at 5-foot intervals around the circumference of the digester roofs. A map showing number and location of tests will be provided;
- Measure pit depth where significant metallic corrosion pitting is observed and a UT measurement is not successful. A depth gauge will be used for pit depth measurements;
- Collect one paint sample from the interior and exterior of Digester 2 cover and the exterior of Digester 5 cover and have them analyzed for arsenic, chromium, cadmium, lead, and zinc at an independent laboratory;
- Perform an X-cut coating adhesion test per American Society for Testing and Materials (ASTM) D3359 on the Digester 2 interior;
- Assess the concrete condition by “sounding” to listen for discontinuities and penetration measurements (using a chipping hammer) to find the depth to sound material;
- Visually assess the coatings on the digester covers by noting defect areas and severity in accordance with the rating system of ASTM D610 and V&A's Metal Condition Rating System;
- Document the inspection with digital photographs. A minimum of 20 photos per Digester will be obtained; and
- V&A will prepare a letter report with the results of field data, field observations and lab chemical analysis, and recommendations for rehabilitation.

Task 3.4 Coating Recommendations

Based on the condition assessment results, BACC and BC will make coating recommendations for coating the interior of the cover and interior skirt plate of Digester 2, and for replacing the exterior polyurethane foam (PUF) coating on the exterior of Digesters 2 and 5.

Task 3.5 Condition Assessment Review Meeting

BC will conduct one review meeting with City and TMWRF staff to discuss the findings from the condition assessment inspections and test results. The BC Project Manager will attend in person and up to three additional BC project personnel will attend via conference call. It is assumed that the meeting will take a maximum of 2 hours and will be scheduled after the draft TM is submitted.

Task 4 Opinion of Probable Construction Costs

An opinion of probable construction costs will be developed and included in the Technical Memorandum. The estimate will be a Class 4 Project Planning Level Estimate in accordance with the Advancement of Cost Engineering International (ACE) with an estimated -30 to +50 percent accuracy range. Construction cost estimates, financial analyses, and feasibility projections are subject to many influences including, but not limited to, price of labor and materials, unknown or latent conditions of existing equipment or structures, and time or quality of performance by third parties. Such influences may not be precisely forecasted and are beyond the control of BC, and actual costs incurred may vary substantially from the estimates prepared by BC. BC does not warrant or guarantee the accuracy of construction estimates. The opinion of probable construction costs will be updated during the design phase to incorporate any new construction items added during design. Structural repair cost estimates will be prepared by BJG.

Task 5 Technical Memorandum

BC will prepare a memorandum summarizing the results of the condition assessment and recommended repairs. The technical memorandum (TM) will include the following:

- Summary of the suitability of the Digester 2 cover for rehabilitation and reuse;
- Recommendations for Digester 2 cover rehabilitation, including interior coating, exterior coating, and structural repairs;
- Recommendations for Digester 5 exterior coating;
- Recommendations for the Digester 2 cover seal;
- Summary of the planning-level opinion of probable construction costs; and

- BJG, V&A, and BACC reports included as attachments.

Five printed copies and one electronic copy of the draft TM will be submitted to the City for review. Draft TM comments from the City will be incorporated into the Final TM and five printed copies and one electronic copy of the Final Design TM will be submitted to the City. The resulting, agreed upon recommendations, will form the basis for the detailed design.

Task 6.0 Design and Bid Document Preparation

BC will prepare plans and specifications suitable for bidding. This will include Digester 2 interior and exterior coating, Digester 2 exterior seal, and Digester 5 exterior coating. This task does not include design for piping modifications or structural repairs. The extent of structural repairs inside Digester 2 will not be known until the interior condition assessment is performed, and probably not until sandblasting is completed during the construction phase. A scope for structural repairs can be developed after interior inspections are performed during the condition assessment and after the interior coating is removed.

Task 6.1 General Design

Customize front-end bid documents based on City's templates.

Task 6.2 Coating Systems

Develop specifications for the Digester 2 interior coating system and Digester 2 and Digester 5 exterior PUF coating system. As a subconsultant to BC, Bay Area Coating Consultants (BACC) will review the interior and exterior coating specifications.

Task 6.3 Digester 2 Cover Seal

Develop plans and specifications for replacing the Digester 2 cover seal based on the recommendations from the TM. The Digester 2 cover can move, but reportedly has not moved in several years due to operational controls to minimize foaming events. A new Digester 2 seal will be designed to accommodate cover movement. TMWRF reports that the Digester 5 seal has no known leaks; therefore, a Digester 5 seal replacement is not included in this scope. The scope of this task is based on the Digester 2 seal being the same as the seals installed on Digester 1 and 3 during the recent Energy Conservation Project. If an alternate seal design is selected, the design can be developed using Contingency Funds as authorized by the City Project Manager.

Task 6.4 60% Design Submittal and Review

A 60% design submittal will be provided to the City for review and comment. Five half-sized paper copies of plans and one electronic copy of plans and specifications will be submitted. The technical specifications will be in Construction Specifications Institute Division 1 to 17 format.

BC will conduct a 60% design-review meeting at TMWRF attended in-person by BC's local Project Manager and others by phone as appropriate.

Task 6.5 90% Design Submittal and Review

A 90% design submittal will incorporate 60% review comments. Five half-sized paper copies of plans and one electronic copy of plans and specifications will be submitted to the City for review and comment. The planning-level cost estimate will be updated to incorporate any changes made from the 60% documents.

BC will conduct a 90% design-review meeting at TMWRF attended in-person by BC's local Project Manager and others by phone as appropriate.

Task 6.6 Bid-Set Document Submittal

A Bid-Set design submittal will incorporate 90% review comments. Five half-sized paper copies of plans and one electronic copy of plans and specifications will be submitted to the City for bidding.

Task 7.0 Bid Assistance

BC will assist the City during the project bidding process with the following items up to the limit of the budget:

- Attend a pre-bid meeting;
- Respond to questions raised by bidders during the bidding period. Decisions on issuing addenda will be conducted with City staff and all addenda will be reviewed and signed by the City;
- Prepare up to two addenda as required during the bid period to respond to bidders' questions; and

- The City will receive bids and conduct the bid opening.

Task 8.0 Conformed Documents

BC will prepare conformed documents for construction that incorporate addendum items into the drawings and specifications. In addition to PDF copies, BC will provide 10 half-sized plan sets, and 10 sets of bound specifications to the Owner to distribute to project personnel.

Task 9.0 Owner Contingency

The Owner contingency is included to account for changes, delays, or additional services required by the City consistent with the general scope of this project. The contingency will only be used upon written or email approval from the City's Project Manager and up to the limit of the budget.

Assumptions and Exclusions

The following items are assumptions and exclusions based on discussions with City and TMWRF staff and BC's understanding of the project:

- The City will provide existing record drawings from all construction projects related to Digester 2 and Digester 5 in PDF format to be used as backgrounds for the design drawings;
- The City's digester cleaning contractor will provide access to Digester 2 for the interior condition assessment, including scaffolding, a ladder, lighting, and temporary fall-protection systems inside the digester;
- BC and subconsultants will enter Digester 2 under the City's or the City contractor's confined-space entry permit. BC's team will provide their own monitoring equipment and harnesses, the City or the City's contractor shall provide lanyards, tie-offs, ventilation, and confined space permit. The City shall provide BC with a copy of the City or contractor's confined space entry plan at least one week prior to entry;
- Assumes scaffold access to Digester 2 interior roof will be provided by the City's contractor that is cleaning the digester;
- Excludes evaluation and design of interior and exterior piping;
- Excludes design of structural repairs;
- Assumes that the exterior PUF coating on both digester lids will be replaced in their entirety;
- Assumes that hazardous material abatement, including but not limited to lead paint, will not be required in the specifications or during construction;
- Excludes evaluation of electrical and controls;
- Excludes analysis of the digester process equipment and performance;
- Assumes that the digester covers will be rehabilitated in place and will not be removed from the digesters;
- Assumes that the existing Digester 5 seal will not be replaced and any seal tests will be performed by TMWRF staff;
- The Digester 2 seal will be an external seal the same as the existing Digester 1 and Digester 3 seals that were installed during the recent Energy Conservation Project;
- The City will provide Bid Document/Specifications templates;
- Design drawings will be generated in AutoCAD 2D on the City's standard title block using BC templates and standards and will utilize 22" x 34" standard drawing sheet size to be reproducible at 1/2 scale on an 11" x 17" sheet; and
- The City will pay directly for all permits and review fees associated with the project.

Construction Period Assistance

This scope excludes construction period assistance. Construction period assistance will be provided as an amendment or as a separate scope at the City's request.

Schedule

The schedule for the condition assessment will be governed by access into Digester 2 while it is down for cleaning. The preliminary schedule is presented below using the access to the interior of Digester 2 as the starting point:

Week 0 – Digester 2 cleaning Contractor finishes preliminary cleaning and assembles scaffolding for inspection

Week 1 – Condition Assessment by BC & subconsultants

Week 5 – BC subconsultants submit reports to BC

Week 10 – BC submits draft TM to City and TMWRF

Week 12 – Preliminary Design Review Meeting

Week 14 – Submit Final TM to City and TMWRF

Week 15 – Start design

Week 22 – Submit 60% Design Documents

Week 23 – 60% Design Review Meeting

Week 26 – Submit 90% Design Documents

Week 27 – 90% Design Review Meeting

Week 30 – Submit Bid Documents

Conformed documents - Two weeks after last issued addendum

Compensation

Compensation shall be on a time-and-materials basis per BC's attached rate table for an amount not to exceed shown in the following table. Although items are estimated by task, BC may transfer funds between tasks as project developments require, except for the Owner Contingency Task.

Task	Task Description	Total Labor Effort	Subconsultant	Expense Cost \$	Owner Contingency	Total Effort \$
1	Project Management & Coordination Meetings	\$13,706		\$1,000		\$14,706
2	Digester Seal Alternative Evaluation (Owner Allowance Item)	\$5,000				\$5,000
3	Condition Assessment	\$19,052	\$78,628	\$2,700		\$100,380
4	Cost Estimate	\$9,800				\$9,800
5	Technical Memorandum	\$23,882		\$400		\$24,282
6	Design Documents	\$52,136	\$1,000	\$1,800		\$54,936
7	Bid Assistance	\$7,124	\$3,000	\$500		\$10,624
8	Conformed Documents	\$5,004		\$2,000		\$7,004
9	Owner Contingency				\$40,000	\$40,000
TOTAL		\$135,704	\$82,628	\$8,400	\$40,000	\$266,732

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	Accountant II Word Processor IV	\$103
F	Engineer II Inspector II Lead Drafter Lead Illustrator	Geologist/Hydrogeologist II Scientist 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	Managing Engineer	Managing Geologist/Hydrogeologist Managing Scientist	Area Bus Ops Mgr IV	\$219
L	Chief Engineer 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