



**CONSTRUCTION MANAGEMENT-MANHOLE REHAB
CITY OF SPARKS, NEVADA**

THIS CONTRACT made and entered into on this 26th day of May, 2020, by and between the City of Sparks, Nevada, a municipal corporation, existing under and by virtue of the laws of the State of Nevada, hereinafter called "City", and **Brown and Caldwell**, a qualified consultant in the class of work required, hereinafter called "Consultant".

W I T N E S E T H

WHEREAS, the City desires to engage Consultant in the performance of providing Professional Services which are more fully described in Consultant's Proposal dated April 15, 2020, attached hereto and incorporated herein by reference. (Hereinafter referenced to as "Proposal");

WHEREAS, Consultant's legal status is an Independent Contractor and Consultant is in good standing in the State of Nevada;

WHEREAS, Consultant desires to perform the Program under the terms and conditions set forth herein;

NOW, THEREFORE, IT IS AGREED as follows:

1. Scope of Work:

The scope of work for this contract is generally defined as **Construction Management-Manhole Rehab**.

The City's Contract Documents and Consultant's Entire Proposal are on file with the City of Sparks and may be located within "Attachment A." All terms, conditions and requirements contained in these Documents, including any and all addenda issued by the City, are hereby incorporated into this Contract.

The work scope will include, but not be limited to the tasks outlined in Attachment A.

The Consultant shall perform within the time stipulated, the Contract as herein defined and shall provide and furnish any and all of the labor, materials, methods or processes, equipment implements, tools, machinery and equipment, and all utility, transportation and other services required to complete all of the work covered by the Contract in connection with strict accordance with the plans, specifications or proposals, which were approved by said City and are on file with the City, including any and all addenda issued by the City, and with the other contract documents hereinafter enumerated. Consultant will have the right to control or direct the manner and the order in which it provides the services contemplated under this Agreement.

Consultant represents and warrants that Consultant is engaged in an independent calling and has complied and will continue to comply with all local, state and federal laws regarding business permits and licenses that may be required to carry out the independent calling and to perform the services to be performed under this Agreement.

Consultant understands that the services it has been retained to perform may be dangerous or may entail a peculiar unreasonable risk of harm to others unless special precautions are taken and Consultant agrees to exercise reasonable care to take such precautions.



2. Payment for Project Services

As full consideration for the Professional Services to be performed by Consultant, City agrees to pay Consultant as set forth in accordance with the Fee Schedule set forth in the proposal and not to exceed fee of **\$169,950.00** for the project. The City will not hire or directly compensate the Consultant's employees, assistants or subcontractors, if any. It is expressly understood and agreed that all work done by Consultant shall be subject to review as to its result by the City at the City's discretion. Payment of any invoice shall not be taken to mean that the City is satisfied with Consultant's services to the date of payment and shall not forfeit City's right to require the correction of any service deficiencies.

3. Term

This Agreement shall become effective upon contract execution and will continue in effect until

MO/DY/YR, or

The Project is completed (Approximately _____), or unless earlier terminated as provided herein.

4. Time Devoted to Work:

In performing the services contemplated under this Agreement, the services and the hours Consultant is to work on any given day will be on a mutually agreed upon basis, except for attendance at scheduled meetings, and City will rely upon Consultant to put in such number of hours as is reasonably necessary to fulfill the spirit and purpose of this Agreement.

City understands that Consultant is engaged in the same or similar activities for others and that City may not be Consultant's sole client or customer. However, Consultant represents and warrants that it is under no obligation or restriction, nor will it assume any such obligation or restriction, that would in any way interfere or be inconsistent with the services to be performed under this Agreement.

5. No Unfair Employment Practices:

In connection with the performance of work under this Agreement, Consultant agrees not to discriminate against any employee or applicant because of race, creed, color, national origin, sex, sexual orientation, disability or age. Any violation of these provisions by Consultant shall constitute a material breach of this contract.

6. No Illegal Harassment:

Violation of the City's harassment policy, which is incorporated by reference and available from the Human Resources Division, by the Consultant, its officers, employees, agents, consultants, subcontractors and anyone for whom it is legally liable, while performing or failing to perform Consultant's duties under this Contract shall be considered a material breach of this contract.

7. Lawful Performance:

Vendor shall abide by all Federal, State and Local Laws, Ordinances, Regulations, and Statutes as may be related to the performance of duties under this agreement. In addition, all applicable permits and licenses required shall be obtained by the vendor, at vendor's sole expense.

8. Status of Consultant:

It is the intent of the parties that Consultant shall be considered an independent contractor and that Consultant, and anyone else for whom it is legally liable, shall not be considered employees, servants or



agents of the City for any purpose. Furthermore, this Agreement shall not be construed to create a partnership or joint venture between the Consultant and the City.

Neither Consultant nor any of its employees or contractors shall be eligible to participate in City's industrial insurance, unemployment, disability, medical, dental, life or other insurance programs, or any other benefit or program that is sponsored, financed or provided by City for its employees.

Consultant agrees that it shall be Consultant's exclusive responsibility to pay all federal, state, or local payroll, social security, disability, industrial insurance, self-employment insurance, income and other taxes and assessments related to this Agreement. Neither FICA (Social Security), FUTA (Federal Employment), nor local, state or federal income taxes will be withheld from payments to Consultant. Consultant shall at Consultant's expense pay and be fully liable and responsible for, and indemnify and hold harmless City from, any assessments, fines or penalties relating to Consultant's failure to uphold any of these responsibilities.

9. City Ownership of Proprietary Information:

All reports, drawings, plans, specifications, and other documents prepared by Consultant as products of service under this Agreement shall be the exclusive property of the City and all such materials shall be remitted to the City by Consultant in a timely manner upon completion, termination or cancellation of this Agreement. Consultant shall not use, willingly allow or cause to have such materials used for any purpose other than performance of Consultant's obligations under this Agreement without the prior written consent of the City.

10. Public Records:

Consultant understands that City is subject to the provisions of NRS 239.010. As such, the City may have the duty to disclose the Consultant's reports or recommendations.

11. Insurance:

CONSULTANT'S ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW. IT IS HIGHLY RECOMMENDED THAT CONSULTANTS CONFER WITH THEIR RESPECTIVE INSURANCE CARRIERS OR BROKERS TO DETERMINE IN ADVANCE OF PROPOSAL SUBMISSION THE AVAILABILITY OF INSURANCE CERTIFICATES AND ENDORSEMENTS AS PRESCRIBED AND PROVIDED HEREIN.

The City may, unless otherwise required by law, waive or reduce the insurance requirements itemized here, at the discretion of the city's Contracts and Risk Manager.

Should work be required on City premises or within the public right-of-way, upon award of the contract, the bidder shall provide proof of insurance for the types of coverage, limits of insurance and other terms specified herein, prior to initiation of any services under City, Bid, Proposal or Contract. Coverage shall be from a company authorized to transact business in the State of Nevada and the City of Sparks and shall meet the following minimum specifications:

Contractor shall at its own expense carry and maintain at all times the following insurance coverage and limits of insurance no less than the following or the amount customarily carried by Contractor or any of its subcontractors, whichever is greater. Contractor shall also cause each subcontractor employed by



Contractor to purchase and maintain insurance of the type specified herein. All insurers must have AM Best rating not less than A-VII, and be acceptable to the City. Contractor shall furnish copies of certificates of insurance evidencing coverage for itself and for each subcontractor. Failure to maintain the required insurance may result in termination of this contract at City's option. If Contractor fails to maintain the insurance as set forth herein, City shall have the right, but not the obligation, to purchase said insurance at Contractor's expense.

Contractor shall provide proof of insurance for the lines of coverage, limits of insurance and other terms specified below prior to initiation of any services. Coverage shall be from a company authorized to transact business in the State of Nevada and the City of Sparks. Contractor and any of its subcontractors shall carry and maintain coverage and limits no less than the following or the amount customarily carried by Contractor or any of its subcontractors, whichever is greater.

Applicable to this Contract	Insurance Type	Minimum Limit	Insurance Certificate	Additional Insured	Waiver of Subrogation
Yes	General Liability/Umbrella (Excess) Liability	\$2,000,000	✓	✓	✓
Yes	Automobile Liability	\$1,000,000	✓	✓	
Yes	Workers' Compensation	Statutory	✓	N/A	✓
Yes	Employer's Liability	\$1,000,000	✓	N/A	
Yes	Professional Liability	\$1,000,000	✓	N/A	N/A
No	Pollution Legal Liability	\$1,000,000	✓	N/A	N/A

Commercial General Liability

Contractor shall carry and maintain Commercial General Liability (CGL) and, if necessary to meet required limits of insurance, commercial umbrella/excess liability insurance with a total limit of not less than the limits specified herein.

For contracts that are for the construction or improvement of public facilities, the Contractor shall obtain and maintain products and completed operations liability coverage through the statute of repose after completion of the project. Continuing commercial umbrella coverage, if any, shall include liability coverage for damage to the insured's completed work equivalent to that provided under ISO form CG 00 01.

There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage, or damage to the named insured's work unless Subcontractor carries and maintains separate policies providing such coverage and provides Contractor evidence of insurance confirming the coverage.

Minimum Limits of Insurance

\$2,000,000 Each Occurrence Limit for bodily injury and property damage



\$2,000,000 General Aggregate Limit
\$2,000,000 Products and Completed Operations Aggregate Limit
\$10,000 Medical Expense Limit

If Commercial General Liability Insurance or other form with a general aggregate limit is used, it shall be revised to apply separately to this PROJECT or LOCATION.

Coverage Form

Coverage shall be at least as broad as the unmodified Insurance Services Office (ISO) Commercial General Liability (CGL) "Occurrence" form CG 00 01 04/13 or substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

Additional Insured

City, its officers, agents, employees, and volunteers are to be included as insureds using the applicable ISO additional insured endorsement(s) or substitute forms providing equivalent coverage, in respects to damages and defense arising from: activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor; products and completed operations of Contractor; premises owned, occupied, or used by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, or volunteers. Additional insured status for City shall apply until the expiration of time within which a claimant can bring suit per applicable state law.

Primary and Non-Contributory

Contractor's insurance coverage shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to City, its officers, agents, employees, and volunteers. There shall be no endorsement or modification of the CGL to make it excess over other available insurance; alternatively, if the CGL states that it is excess or pro rata, the policy shall be endorsed to be primary with respect to the additional insured. Any insurance or self-insurance maintained by City, its officers, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it in any way.

Waiver of Subrogation

Contractor waives all rights against City and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained pursuant to this agreement. Insurer shall endorse CGL policy as required to waive subrogation against the City with respect to any loss paid under the policy.

Endorsements

Policy forms or endorsements are required confirming coverage for all required additional insureds. The forms or endorsements for CGL shall be at least as broad as the unmodified ISO additional insured endorsement CGO 20 10 07/04 and CG 20 37 07/04 or substitute forms providing additional insured coverage for products and completed operations.

A waiver of subrogation in favor of City shall be endorsed to the policy using an unmodified Waiver of



Transfer of Rights of Recovery of Others to Us ISO CG 24 04 05 09, or a substitute form providing equivalent coverage.

Business Automobile Liability

Minimum Limits of Insurance

\$1,000,000 Combined Single Limit per accident for bodily injury and property damage or the limit customarily carried by Contractor, whichever is greater. No aggregate limit may apply. Coverage may be combined with Excess/Umbrella Liability coverage to meet the required limit.

Coverage Form

Coverage shall be at least as broad as the unmodified Insurance Services Office (ISO) Business Automobile Coverage form CA 00 01 10/13, CA 00 25 10/13, CA 00 20 10/13 or substitute form providing equivalent coverage. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos).

Additional Insured

City, its officers, agents, employees, and volunteers are to be included as insureds with respect to damages and defense arising from the ownership, maintenance or use of automobiles owned, leased, hired, or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, or volunteers. Additional insured status for City shall apply until the expiration of time within which a claimant can bring suit per applicable state law.

Endorsements

A policy endorsement is required listing all required additional insureds. The endorsement for Business Automobile Liability shall be at least as broad as the unmodified ISO CA 20 48 10/13 or a substitute form confirming City's insured status for Liability Coverage under the Who Is An Insured Provision contained in Section II of the coverage form ISO CA 00 01 10/13.

Waiver of Subrogation.

Contractor waives all rights against City, its officers, agents, employees, and volunteers for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained pursuant to this agreement. Contractor's insurer shall endorse policy to waive subrogation against City with respect to any loss paid under the policy.

Workers' Compensation and Employer's Liability

Contractor shall carry and maintain workers' compensation and employer's liability insurance meeting the statutory requirements of the State of Nevada, including but not limited to NRS 616B.627 and NRS 617.210 or provide proof that compliance with the provisions of Nevada Revised Statutes Chapters 616A-D and all other related chapters is not required. It is understood and agreed that there shall be no coverage provided for Contractor or any Subcontractor of the Contractor by the City. Contractor agrees, as a precondition to the performance of any work under this Agreement and as a precondition to any obligation of the City to make any payment under this Agreement to provide City with a certificate issued by an insurer in accordance with NRS 616B.627 and with a certificate of an insurer showing coverage pursuant to NRS 617.210.



It is further understood and agreed by and between City and Contractor that Contractor shall procure, pay for and maintain the above-mentioned coverage at Contractor's sole cost and expense.

Should Contractor be self-funded for workers' compensation and employer's liability insurance, Contractor shall so notify City in writing prior to the signing of this Contract. City reserves the right to approve said retentions, and may request additional documentation, financial or otherwise, for review prior to the signing of this Contract.

Upon completion of the project, Contractor shall, if requested by City, provide a Final Certificate for itself and each Subcontractor showing that Contractor and each Subcontractor had maintained the required Workers Compensation and Employer's Liability by paying all premiums due throughout the entire course of the project.

Nevada law allows the following to reject workers' compensation coverage if they do not use employees or subcontractors in the performance of work under the contract:

- Sole proprietors (NRS 616B.627 and NRS 617.210)
- Unpaid officers of quasi-public, private or nonprofit corporations (NRS 616B.624 and NRS 617.207)
- Unpaid managers of limited liability companies (NRS 616B.624 and NRS 617.207)
- An officer or manager of a corporation or limited liability company who owns the corporation or company (NRS 616B.624 and NRS617.207)

If a contractor has rejected workers' compensation coverage under applicable Nevada law, the contractor must indicate the basis for the rejection of coverage and complete, sign and have notarized an Affidavit of Rejection of Coverage. The Affidavit must be completed, signed and notarized prior to performance of any work.

Minimum Limits of Insurance

Workers' Compensation:	Statutory Limits
Employer's Liability:	\$1,000,000 Bodily Injury by Accident – Each Accident
	\$1,000,000 Bodily Injury by Disease – Each Employee
	\$1,000,000 Bodily Injury by Disease – Policy Limit

Coverage Form

Coverage shall be at least as broad as the unmodified National Council on Compensation Insurance (NCCI) Workers Compensation and Employer's Liability coverage form WC 00 00 07/11 or substitute form providing equivalent coverage.

OTHER INSURANCE COVERAGES (IF APPLICABLE)

Professional Liability Insurance (if Applicable) \$1,000,000 each claim limits of liability or whatever limit is customarily carried by the Contractor, whichever is greater, for design, design-build or any type of professional services. If coverage is required on a claims-made or claims-made and reported basis, any applicable retroactive or pending & prior litigation dates must precede the effective date of this contract. Continuous coverage shall be maintained, or an extended reporting period shall be obtained for a period of at least three (3) years following completion of the project.



ALL COVERAGES

Coverage shall not be suspended, voided, canceled, or non-renewed by either CONTRACTOR or by the insurer, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to CITY except for ten (10) days' notice for nonpayment of premium.

DEDUCTIBLES AND RETENTIONS

Any deductibles or self-insured retentions that exceed \$100,000.00 per occurrence or claim must be declared to and approved by the City's Contracts and Risk Manager and prior to signing this Contract. City is entitled to request and receive additional documentation, financial or otherwise, prior to giving its approval of the deductibles and self-insured retentions. Any changes to the deductibles or self-insured retentions made during the term of this Contract or during the term of any policy must be approved by City's Contracts and Purchasing Manager prior to the change taking effect. Contractor is responsible for any losses within deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS

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

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

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a Best's rating of no less than A-VII and acceptable to the City. City, with the approval of the Risk Manager, may accept coverage with carriers having lower Best's ratings upon review of financial information concerning Contractor and insurance carrier. City reserves the right to require that Contractor's insurer be a licensed and admitted insurer in the State of Nevada, or meet any applicable state and federal laws and regulations for non-admitted insurance placement.

VERIFICATION OF COVERAGE

Contractor shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this contract. 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.

Prior to the start of any Work, Contractor must provide the following documents to City of Sparks, Attention: Purchasing Division, P.O. Box 857, Sparks, NV 89432-0857:

- A. **Certificate of Insurance.** Contractor must provide a Certificate of Insurance form to the City of Sparks to evidence the insurance policies and coverage required of Contractor.
- B. **Additional Insured Endorsements.** An original Additional Insured Endorsement, signed by an authorized insurance company representative, must be submitted to the City of Sparks, by attachment to the Certificate of Insurance, to evidence the endorsement of the City of Sparks as additional insured.



C. Policy Cancellation Endorsement. Except for ten (10) days' notice for non-payment of premium, each insurance policy shall be endorsed to specify that without thirty (30) days prior written notice to the City of Sparks, the policy shall not be suspended, voided, cancelled or non-renewed, and shall provide that notices required by this paragraph shall be sent by certified mailed to the address specified above. A copy of this signed endorsement must be attached to the Certificate of Insurance. If endorsements are not available, Contractor shall be responsible to provide prior written notice to City as soon as practicable upon receipt of any notice of cancellation, non-renewal, reduction in required limits or other material change in the insurance required under this Agreement.

D. Bonds (as Applicable). Bonds as required and/or defined in the original bid documents.

All certificates and endorsements are to be addressed to the City of Sparks, Purchasing Division and be received and approved by City before work commences. The City reserves the right to require complete certified copies of all required insurance policies at any time.

SUBCONTRACTORS

Contractor shall include all Subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to all the requirements stated herein.

MISCELLANEOUS CONDITIONS

1. Contractor shall be responsible for and remedy all damage or loss to any property, including property of City, caused in whole or in part by Contractor, any Subcontractor, or anyone employed, directed, or supervised by Contractor.
2. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payment of damages to persons or property resulting from its operations or the operations of any Subcontractors under it, and such coverage and limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to City in this contract.
3. In addition to any other remedies City may have if Contractor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option:
 - a. Purchase such insurance to cover any risk for which City may be liable through the operations of Contractor under this Agreement and deduct or retain the amount of the premiums for such insurance from any sums due under the Agreement;
 - b. Order Contractor to stop work under this Agreement and/or withhold any payments which become due Contractor here under until Contractor demonstrates compliance with the requirements hereof; or,
 - c. Terminate the Agreement.
4. If Contractor's liability policies do not contain the standard ISO separation of insureds condition, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.



12. Indemnity:

To the fullest extent permitted by law, upon award, Contractor shall hold harmless and indemnify, City, its affiliates, officers, agents, employees, volunteers, successors and assigns (“Indemnified Parties”), and each of them from and against any and all claims, demands, causes of action, damages, costs, expenses, actual attorney’s fees, losses or liabilities, in law or in equity, of every kind and nature whatsoever (“Claims”) to the extent that such Claims are caused by the negligence, errors, omissions, recklessness, or intentional misconduct of Contractor, its employees, agents, representatives, or Subcontractors in any way related to the performance of work under this Agreement by Contractor, or to work performed by others under the direction or supervision of Contractor, including but not limited to:

1. Personal injury, including but not limited to bodily injury, emotional injury, sickness or disease, or death to persons;
2. Damage to property of anyone, including loss of use thereof;
3. Penalties from violation of any law or regulation caused by Contractor’s action or inaction;
4. Failure of Contractor to comply with the Insurance requirements established under this Agreement;
5. Any violation by Contractor of any law or regulation in any way related to the occupational safety and health of employees.

In determining the nature of the claim against City, the incident underlying the claim shall determine the nature of the claim, notwithstanding the form of the allegations against City.

In addition to Contractor’s duty to hold harmless and indemnify the Indemnified Parties above, Contractor shall also defend the Indemnified Parties with respect to any Claims caused by the negligence, errors, omissions, recklessness or intentional misconduct of Contractor, its employees, agents, representatives, or Subcontractors which are not based upon or arising out of the professional services of Contractor. However, Contractor shall not be required to defend the Indemnified Parties with respect to Claims caused by the negligence, errors omissions, recklessness or intentional misconduct of Contractor, its employees, agents, representatives, or Subcontractors which are based upon or arising out of the professional services of Contractor. In such an event, if Contractor is adjudicated to be liable by a trier of fact, the trier of fact shall award reasonable attorney’s fees and costs to be paid by Contractor to the Indemnified Parties, as reimbursement for the attorney’s fees and costs incurred by the Indemnified Parties in defending against such Claims, in an amount which is proportionate to the liability of Contractor.

In cases of professional service agreements, requiring professional liability coverage:

If the insurer by which a Consultant is insured against professional liability does not so defend the City and applicable agents and/or staff, and the Consultant is adjudicated to be liable by a trier of fact, the City shall be entitled to reasonable attorney’s fees and costs to be paid to the City by the Consultant in an amount which is proportionate to the liability of the of the Consultant.

Nothing in this contract shall be interpreted to waive nor does the City, by entering into this contract, waive any of the provisions found in Chapter 41 of the Nevada Revised Statutes.



13. Material Breach of Contract:

In the event Consultant fails to deliver the product and services as contracted for herein, to the satisfaction of the City of Sparks or otherwise fails to perform any provisions of this Contract, the City, after providing five (5) days written notice and consultant's failure to cure such breach, may without waiving any other remedy, make good the deficiencies and deduct the actual cost of providing alternative products and/or services from payment due the Consultant. Non-performance after the first notice of non-performance shall be considered a material breach of contract.

14. Termination:

The City may terminate the Contract for material breach of contract upon ten (10) days written notice and recover all damages, deducting any amount still due the Consultant from damages owed to the City, or seek other remedy including action against all bonds. The Consultant may terminate the Contract for material breach of contract upon thirty (30) days written notice to the City.

Notwithstanding the preceding paragraph, the City may immediately terminate the Agreement, and Consultant waives any and all claim(s) for damages, upon the Consultant's receipt of notice under the following conditions:

- a) If funding is not obtained, continued, or budgeted at levels sufficient to allow for purchase of the services contemplated under this Agreement per Section 23 of this Agreement;
- b) If any federal, state or local law, including but not limited to, statutes, regulations, ordinances and resolutions, is interpreted by a third party judicial, legislative or administrative authority in such a way that the services contemplated under this Agreement are no longer authorized for purchase or appropriate for City financial participation;
- c) If Consultant fails to comply with any local, state or federal law regarding business permits and licenses required to perform the services to be performed under this Agreement or
- d) If it is found that any quid pro quo or gratuities were offered or given by the Consultant to any officer or employee of the City with a view towards securing favorable treatment with respect to awarding, extending, amending or making any determination with respect to the performance of this Agreement.

The indemnity and conflict resolution obligations of this Agreement shall survive the termination of this Agreement and shall be binding upon the parties' and the parties' legal representatives, heirs, successors and assigns.

The City may terminate this agreement for any reason without penalty upon giving thirty (30) days written notice to the Consultant. In the event of termination, the full extent of City liability shall be limited to an equitable adjustment and payment for materials and/or services authorized by and received to the satisfaction of the City prior to termination.

15. Licenses and Permits:

The Consultant shall procure at his own expense all necessary licenses and permits and shall adhere to all



the laws, regulations and ordinances applicable to the performance of this Contract.

All consultants doing business within the City of Sparks are required to obtain and maintain a current business license from the City of Sparks prior to commencement of this contract. Per Sparks Municipal Code Section 5.08.020A: "It is unlawful for any person to transact business in the City without first having obtained a license from the City to do so and without complying with all applicable provisions of this title and paying the fee therefore."

16. Boycott of Israel (NRS 332.065) (This Section IS IS NOT Applicable to this bid):

Pursuant to NRS 332.065 any Contract entered into under NRS Chapter 332 in which the estimated annual dollar amount exceeds \$50,000 will require written certification that the bidder is not, and will not be, engaged in a Boycott of Israel throughout the duration of the Contract. The term "Boycott of Israel" has the meaning ascribed in NRS 332.065(5). Bidder certifies that it is not, and will not be, engaged in a Boycott of Israel throughout the duration of the Contract.

17. Drafting Presumption:

The parties acknowledge that this Agreement has been agreed to by both parties, that both parties have consulted or have had the opportunity to consult with attorneys with respect to the terms, and that no presumption shall be created against the City as the drafter of the Agreement.

18. Governing Law:

The laws of the State of Nevada shall govern this Agreement without regard to conflicts of law principles.

19. Jurisdiction and Venue:

Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement must be brought against either of the parties in the courts of the State of Nevada, County of Washoe. Each of the parties consents to the jurisdiction of the court (and of the appropriate appellate court) in any such action or proceeding and waives any objection to venue laid therein.

20. Claims:

Pursuant to NRS 268.020, which the parties agree to abide by contractually, all demands and accounts against the City must be presented to the Council, in writing, within six (6) months from the time the demands or accounts become due. No demand or account may be audited, considered, allowed or paid by the City unless this requirement is strictly complied with.

21. Assignment:

All of the terms, conditions and provisions of this Contract, and any amendments thereto, shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns. The Consultant shall not assign this Contract without the written consent of the City which will not be unreasonably withheld.

22. Notices:

All notices required to be given in writing by this Contract shall be deemed to be received (i) upon delivery if personally delivered, or (ii) when receipt is signed for if mailed by certified or registered mail, postage prepaid, or by express delivery service or courier, when addressed as follows (or sent to such



other address as a Party may specify in a notice to the others):

CITY OF SPARKS - PURCHASING DIVISION
431 PRATER WAY
PO BOX 857
SPARKS, NV 89432-0857

Roy Johnson
Brown and Caldwell
1325 Airmotive Way, Ste 215
Reno, NV 89502

23. Entire Contract:

This Contract and all associated documents associated by reference constitute the entire agreement of the parties and shall supersede all prior offers, negotiations, agreements and contracts whether written or oral. Any modifications to the terms and conditions of this Contract must be in writing and signed by both parties.

24. Waiver:

No waiver of any term, provision or condition of this Contract, whether by conduct or otherwise, in any one or more instances, shall be deemed to be nor shall it be construed as a further or continuing waiver of any such term, provision or condition of this Contract. No waiver shall be effective unless it is in writing and signed by the party making it.

25. Annual Appropriation of Funds:

Multi-year contracts and leases are subject to annual appropriation of funds by the City Council. The City plans and makes appropriations to the City Budget with respect to a fiscal year that starts July 1st and ends June 30th of each year. Payments made under term contracts and leases are considered items of current expense. Purchase Orders are funded when issued; therefore, they are current expense items and are not subject to any subsequent appropriation of funds. Continuance of a multi-year contract beyond the limits of funds available shall be contingent upon appropriation of the requisite funds in the ensuing fiscal year and the termination of this contract by lack of appropriation shall be without penalty.

26. Severability:

If any part of this Contract is found to be void it will not affect the validity of the remaining terms of this Contract which will remain in full force and effect.

27. Headings:

Paragraph titles or captions contained in this Contract are inserted only as a matter of convenience and for reference only, and in no way define, limit, extend, or describe the scope of this Contract or the intent of any provision hereof.

28. Singular Includes the Plural; Gender; Title Reference:

Whenever the singular number is used in this Contract and when required by the context, the same shall include the plural, and the use of any gender, be it masculine, feminine or neuter, shall include all of the genders, and the word "person" or "entity" shall include corporation, firm, partnership, or any other combination or association.

The use of the title "Bidder", "Vendor", "Contractor" or "Consultant" within this contract or associated bid documents shall be deemed interchangeable and shall refer to the person or entity with whom the City of Sparks is contracting for the service or product referenced within this contract.



29. Execution:

The parties agree to execute such additional documents and to take such additional actions as are reasonably necessary or desirable to carry out the purposes hereof. They also agree, acknowledge and represent that all corporate authorizations have been obtained for the execution of this Contract and for the compliance with each and every term hereof. Each undersigned officer, representative or employee represents that he or she has the authority to execute this Contract on behalf of the party for whom he or she is signing.

IN WITNESS WHEREOF, the City of Sparks has caused this Contract to be executed by its officers thereunto duly authorized and the Consultant has subscribed same, all on the day and year first above written.

(Consultant)

CITY OF SPARKS, NEVADA
A Municipal Corporation

By: _____

By: _____
(Authorized Signature)

(Title)

APPROVED AS TO FORM

ATTEST:

City Attorney

City Clerk (As Required)



Attachment A

Price and scope per written proposal provided by Brown and Caldwell, dated April 15, 2020 (attached).



Exhibit A – Scope of Work

City of Sparks 2020 Manhole Coating CM

April 15, 2020

Project Overview

The City of Sparks (City) has identified 70 manholes that have groundwater infiltration, and it intends to rehabilitate these manholes to stop the infiltration and apply an epoxy coating to help seal out future infiltration. The construction project is anticipated to have a total duration of 24 weeks.

This scope of work is for Brown and Caldwell (BC) to provide construction administration and coating inspection.

Phase 100 Project Management

Task 100.1 Project Management

This task includes managing the overall project including staff resources and monitoring project status, project billings, and internal project coordination.

Task 100.2 BC Field Work Safety Plan

BC will develop a project-specific Field Work Safety Plan for BC employees and subconsultants to follow while completing this work.

Phase 200 Engineering Services During Construction

Task 200.1 Construction Management

BC will provide services for construction administration, Contractor and City coordination, and change order and claims management. BC's construction management effort is based on a construction project duration of 24 weeks.

BC's construction management services includes the following tasks:

- Establishing and maintaining BC's internal document project filing system
- Monitoring and logging requests for information (RFIs) and submittals
- Evaluating and recommending changes to the work
- Documenting and moderating periodic design clarification meetings
- Reviewing monthly Contractor payment applications, including a written recommendation of payment if required by the City

Assumptions:

- 2 hours per week for the Construction Manager for a duration of 24 weeks
- 2 hours per week for Subject Matter Expert technical assistance
- 1 hour per week for internal staff coordination

Task 200.2 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 the City operations and maintenance activities. This scope of work is based on 3 hours of effort per progress meeting for the Construction Manager. The Subject Matter Expert will be available to call into meetings as technical issues or questions warrant.

Assumptions:

- There will be a total of 10 progress meetings. The meetings will be attended in person by the Inspector and Construction Manager. Inspection services will be conducted under Phase 300. The Construction Manager will distribute key discussion items and action items to all attendees.

- This scope of work is based on 3 hours of effort per progress meeting for the Construction Manager, which includes preparation, travel, attendance, and documentation.
- This scope of work is based on the Subject Matter Expert attending five of the progress meetings via conference call.

Task 200.3 Submittal Review

BC will review the coating, construction schedule, grout, and bypass or bypass plug submittals and respond to the Contractor. The budget associated with this task assumes reviewing a maximum of eight total submittals and resubmittals, with an average effort of 2 hours per submittal. This task assumes that all submittals will be received and distributed electronically in PDF format.

Assumptions:

- Maximum of eight submittals total, including resubmittals.

Task 200.4 RFI Responses

This task assumes that BC staff will respond to up to three formal written RFIs, with an average effort of 2 hours per response. BC staff will also respond to up to two informal email RFIs, with an average of 1 hour per response. Additional RFIs can be processed with contingency funds as directed by the City's Project Manager. BC will maintain an RFI Log to track RFI receipt and response dates.

Assumptions:

- Maximum of three formal RFIs and two informal RFIs.

Phase 300 Construction Inspection

Task 300.1 Part-Time Construction Observation

The contract construction duration is 24 weeks. BC's effort is based on 4 weeks of procurement before field work begins and a maximum of 20 weeks of field work. BC will provide part-time inspection during construction.

This task budget assumes an average of 32 hours per week of inspection time to monitor general construction activities, travel to the project site, coordinate with the Contractor, review the coating work at key hold points, prepare field reports for each day the inspector is on site, attend project meetings, and prepare a corrective items list for project closeout.

Task 300.2 NACE Subconsultant Inspection

A National Association of Corrosion Engineers (NACE)-certified Quality Assurance Coating Inspector will provide up to 40 hours of quality assurance inspection. These inspections will occur at designated hold points during the coating application.

Deliverables:

BC will provide the following deliverables:

- Meeting notes in PDF format, within 1 week of each meeting.
- Daily field reports in PDF format at the end of the project, or earlier upon request.
- Submittal and RFI review comments in PDF format.

Exclusions:

- Record drawings.

Phase 400 Contingency

Unanticipated issues may arise during work. The contingency is provided so the City can have BC address out-of-scope items up to the contingency amount without amending the agreement. These funds will not be expended without written or email approval by the City's Project Manager.

Compensation

BC will perform the scope of work described herein on a time-and-materials basis for a not-to-exceed fee of \$169,950. BC will not exceed this fee without prior authorization from the City. A breakdown of the estimated fee is shown in the table below and will be in accordance with the rate table in Exhibit B. Although fees are estimated by phase, BC may transfer funds between phases, except for Contingency, as project developments require.

Phase	Phase Description	Total Labor Effort	Total Expenses	Subconsultant Expense	Total Effort
100	Project Management	\$14,650			\$14,650
200	Engineering Services During Construction	\$40,350	\$200		\$40,550
300	Construction Observation and Coordination	\$93,500	\$1,200	\$5,050	\$99,750
400	Contingency		\$15,000		\$15,000
Total		\$148,500	\$16,400	\$5,050	\$169,950

Brown and Caldwell Schedule of Hourly Billing Rates

Level	Engineering	Technical/Scientific	Administrative	Hourly Rate
A			Office/Support Services I Word Processor I	\$53
B	Drafter Trainee	Field Service Technician I	Office/Support Services II Word Processor II	\$66
C	Assistant Drafter	Field Service Technician 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