

OWNER-CMAR CONSTRUCTION AGREEMENT

This Owner-CMAR Construction Agreement, between Washoe County, hereinafter referred to as "Owner", and MWH Constructors and KG Walters (MWH & KGW) the Construction Manager at Risk, hereinafter referred to as "CMAR", is entered into as of the following date:

Execution Date: _____

Project identification

Project Name: South Truckee Meadows Water Reclamation Facility 2020 Expansion Project
(GMP#4B) Remaining Plant Expansion

Contract No: WR860114

Labor Commission PWP No.: WA-2022-347

Owner

Washoe County Community Service Department
1001 East Ninth Street
Reno, Nevada 89512

CMAR

MWH & KGW, a Joint Venture
8001 Arista Place, Suite 500
Broomfield, CO 80021

ARTICLE 1 GUARANTEED MAXIMUM PRICE

For furnishing all labor, materials, equipment, tools, and services and for doing everything required by this Agreement and the other Contract Documents, the Owner will pay and the CMAR shall accept a total sum (Guaranteed Maximum Price) not to exceed:

The CMAR's Guaranteed Maximum Price (GMP) for the entire Work associated on the referenced Project:

1) Subcontracted Bid Packages	\$ <u>7,785,246.00</u>
2) Supplier Procurement Packages	\$ <u>7,606,052.00</u>
1) CMAR Self-Perform Services (Including Gen Conditions)	\$ <u>17,795,144.00</u>
2) CMAR's Profit and OH (13% Cost of the Work)	\$ <u>4,314,237.00</u>
3) CMAR's Bonds and Insurance	\$ <u>794,988.00</u>
4) CMAR's Contingency	\$ <u>236,000.00</u>
5) CMAR's Contingency Fee, Bonds, and Insurance	\$ <u>36,332.00</u>
7) Owner's Allowance	\$ <u>4,199,929.00</u>
8) Owner's Contingency	\$ <u>986,627.00</u>
Total Guaranteed Maximum Price	\$ <u>43,754,555.00</u>

<u>Savings Split</u>	<u>Owner</u>	<u>CMAR</u>
Percentage Split of Value Engineering Opportunities Saving	75%	25%
Percentage Split of CMAR's Contingency Savings	75%	25%
Percentage Split of Owner's Contingency	100%	0%
Percentage Split of Owner's Allowance	100%	0%

ARTICLE 2 INCORPORATED DOCUMENTS

The Owner and the CMAR mutually agree that the following documents comprise Contract Documents and are incorporated into and made a part of this Agreement by reference:

- 1) CMAR Work Release Request, dated December 6, 2022
- 2) General Conditions of the Contract of the Construction Contract
- 3) Supplemental General Conditions of the Construction Contract
- 4) 2023 Prevailing Wage Rates - Washoe County
- 5) 2022 Davis Bacon Heavy Rates
- 6) Drawings:
 - a) 100% (Redlined) STMWRF 2020 Expansion Project, Volumes 6 and 7, by Jacobs (September 2022)
- 7) Details:
 - a) 100% (Redlined) STMWRF 2020 Expansion Project, Volumes 8 and 9, by Jacobs (September 2022)
- 8) Specifications:
 - a) 100% (Redlined) STMWRF 2020 Expansion Project, Volumes 1 through 5, by Jacobs (September 2022)
- 9) Change Orders
- 10) Performance and Completion Bonds
- 11) Labor and Material Payment Bonds
- 12) Insurance Specification
- 13) SRF Requirements

ARTICLE 3 CONTRACT TIME

The CMAR shall commence the work on the Project as directed by the Owner in a written Notice to Proceed. After the referenced date of commencement, all work shall be completed and accepted by the Owner within the number of working days stipulated below and as set forth in the Notice to Proceed, after which time, the stipulated liquidated damages provisions shall apply.

Working Days: 714 days

ARTICLE 4 LIQUIDATED DAMAGES

The CMAR agrees that time is of the essence of this Agreement and further agrees to satisfactorily complete the Work in accordance with the Contract Documents and achieve Substantial Completion within the specified contract time plus any adjustments to the Contract Time resulting from approved Change Orders, and failing to do so, agrees to pay, not as a penalty but as liquidated damages, the sum stipulated below for each calendar day in excess of the Contract Time stipulated in this Agreement. Upon Substantial Completion, liquidated damages will not be assessed on the date of Substantial Completion provided the CMAR completes all punch-list work within the time limit stipulated in the Certificate of Substantial Completion. Liquidated damages shall resume if the CMAR does not complete all punch-list work within the time limit stipulated in the Certificate of Substantial Completion. Liquidated Damages shall be Owner's sole and exclusive remedy for all losses based upon, arising from or relating to CMAR's failure to meet Substantial Completion. The total Liquidated Damages that may be assessed against CMAR shall not exceed a total aggregate amount of \$300,000.00.

Liquidated Damages: \$500 per day

ARTICLE 5 AGREEMENT MODIFICATIONS

This Agreement constitutes the entire agreement between the parties and may be modified only by a written Change Order executed by the parties. This agreement is for GMP 4B only and a separate agreement will be entered into for subsequent phases of the project.

ARTICLE 6 AGREEMENT TERMS AND CONDITIONS

The term Work includes all labor, materials, services, shop drawings, equipment, tools, transportation, power, water, permanent and temporary utilities, connections, provisions for safety, and all incidental and other things necessary to produce the finished construction as described by the Contract Documents.

The CMAR agrees to provide all labor materials, equipment, tools and services necessary, and to do everything required by this Agreement and by the Contract Documents, as necessary to complete all Work required for the Project.

ARTICLE 7 CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

The Contract Documents form the agreement between the Owner and the CMAR and are comprised of the documents listed in Article 2 herein. The Contract Documents are complementary and what is required by anyone shall be as binding as if required by all.

In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents are to prevail in the following order:

- a. Written Amendments and Change Orders
- b. This OWNER-CMAR Construction Agreement
- c. Supplemental Conditions, Specification 00 73 01
- d. General Conditions, Specifications 00 72 13
- e. Construction Specifications (Volumes 1 and 5)
- f. Construction Details (Volumes 8 and 9)
- g. Construction Drawings (Volumes 6 and 7)
- h. Final GMP Proposal - CMAR Work Release Request
- i. All other Contract Documents

ARTICLE 8 EXAMINATION OF CONTRACT DOCUMENTS

Execution of this Agreement by the CMAR shall constitute the representation by the CMAR that he has examined the contents of the Contract Documents, including, but not limited to, the General Conditions of the Contract, that he has read and understands the same, and specifically agrees to be bound thereby.

ARTICLE 9 PROGRESS PAYMENT

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

Pursuant to NRS 338.515, Owner shall retain 5 percent (5%) of such estimated value of the Work done as part security for the fulfillment of the Contract until fifty percent (50%) of the Work required by the contract has been performed. When fifty percent (50%) of the Work has been completed to the satisfaction of the Owner, one-half (1/2) of the amount retained by Owner will be paid to Contractor. Thereafter, if in the opinion of the Owner, satisfactory progress is being made, Owner shall retain up to two and a half percent (2.5%) from monthly progress payments as part security for the fulfillment of the Contract until the Work required by the contract has been completed. No partial payment shall be made when, in the judgment of the Owner, the Work is not being diligently prosecuted by the Contractor. The amount of payments withheld as provided herein shall be retained for a period of thirty (30) days from the date of filing of the Notice of Completion.

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

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

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

ARTICLE 10 FINAL PAYMENT

When the Work and all requirements of the Contract Documents are fully and satisfactorily

completed, the Owner will pay to the CMAR a final payment consisting of the remaining unpaid balance of the Contract Sum due the CMAR. The acceptance of the final payment by the CMAR shall constitute a full and final release and waiver of all CMAR claims and rights of claim against the Owner relating or pertaining to the Work.

Acceptance of the final payment by the CMAR shall terminate the Owner-CMAR Construction Agreement after which time the applicable terms and conditions for Warranties and Insurance shall continue to apply. The CMAR indemnification obligation continues after final payment.

ARTICLE 11 PREVAILING WAGE RATES

This project is subject to both NRS Chapter 338 and Federal Davis Bacon requirements. Nevada 2023 prevailing wage rates are published by State of Nevada Office of the Labor Commissioner. Federal Davis-Bacon 2022 wage rates are published by Department of Labor. The highest wage between the Nevada prevailing wage determination and Davis-Bacon prevailing wage determination shall be paid. Contractor shall forfeit, as a penalty to the Owner, not less than \$20 nor more than \$50 for each calendar day or portion thereof that each workman employed:

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

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

Contractor must submit certified payrolls electronically into the County's contracted payroll tracking system "LCP Tracker." This requirement will apply to every lower tier subcontractor and vendor required to provide certified payroll reports by NRS 338.010 to 338.090 inclusive. The County will set up the project in the system, however it's the responsibility of the Prime to add subcontractors. Obtain access to the LCP Tracker system no later than the date employees start work on the project. Ensure subcontractors have access to the LCP Tracker system for the reporting of payrolls no later than the date the subcontractor's employees start work on the project. Associated fees are paid for by the County. Information regarding options for interface software and training is available on LCP Tracker website.

ARTICLE 12 APPRENTICESHIP UTILIZATION ACT

Under NRS 338, this project is a public work that requires use of the apprentices. All contractors must comply with NRS 338.01165 for this project, unless modification, waiver or exemption applies.

ARTICLE 13 PERFORMANCE AND PAYMENT BONDS

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

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

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

ARTICLE 14 STATUTORY REQUIREMENTS

The CMAR agrees to all terms and conditions of the Nevada Revised Statutes (NRS) and the Nevada Administrative Code (NAC), including without limitation, NRS Chapter 338 and NAC 338 as they may apply to this Agreement and to the work performed under this Agreement and agrees to comply with all such applicable portions of the NRS and the NAC.

ARTICLE 15 INFORMATION ACCESS

The books, records, documents, and accounting procedures and practices of the CMAR relevant to this Agreement shall be subject to inspection, examination and audit by the Owner for a period of four years.

ARTICLE 16 ASSIGNMENT RIGHTS

This Contract is not assignable by either party.

ARTICLE 17 TERMINATION

This Agreement may be amended or terminated by mutual written consent of the parties hereto. The Owner, however, specifically reserves the right at any time to terminate this Agreement for convenience seven calendar days after having served the CMAR with a written notice of termination.

Further, Owner reasonably believes that funds can be obtained sufficiently to make all payments during the term of this Agreement. If Owner does not allocate funds to continue the function performed by the CMAR under this Agreement, this Agreement shall be terminated when appropriated funds expire, without penalty, charge or sanction to Owner.

Upon termination, for other than a breach of this Agreement by the CMAR, the Owner shall make payments to the CMAR of all fees due but unpaid for services or work completed to the satisfaction of the Owner as of the time of the notice of termination. The making of such payments by the Owner shall constitute a complete release of all the responsibilities of the Owner under the terms of this Agreement. The CMAR waives any claim for overhead and profit on the services or work remaining at the time of termination.

ARTICLE 18 OWNERSHIP AND USE OF DOCUMENTS

Any drawings, reports, studies, photographs, negatives, or other documents prepared by the CMAR in the performance of his obligations under this Agreement shall be the exclusive property of the Owner and all such materials shall be remitted to the Owner by the CMAR upon completion, termination, or cancellation of this Agreement. The CMAR shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of the CMAR's obligations under this Agreement, without the prior written consent of the Owner.

ARTICLE 19 INDEPENDENT CONTRACTOR

By their signatures, the parties agree the CMAR is an independent contractor, is not a County employee, has the right to perform services for others during the term of this agreement, shall

be responsible for withholding of income taxes, and responsible for providing industrial insurance coverage as required by law and Article 16 of this Agreement.

Consistent with the CMAR's independent contractor status, CMAR shall not be entitled to the benefits of County employment including, but not limited to, participation in group insurance plans which may be available to County employees, participation in or contribution to the Public Employees Retirement System, accumulation of vacation leave or sick leave, or unemployment compensation coverage, or any other County employment benefit.

ARTICLE 20 INDEMNIFICATION/HOLD HARMLESS

Washoe County has established specific indemnification and insurance requirements for agreements with contractors to help ensure that reasonable insurance coverage is maintained. Indemnification and hold harmless clauses are intended to ensure that contractors are aware of and accept the responsibility for losses or liabilities related to their activities. Exhibit A, Pages 1-8, is attached and included by reference. All conditions and requirements identified in this Exhibit shall be completed prior to the commencement of any work under this contract/agreement.

ARTICLE 21 LEGAL ACTIONS

This Agreement shall be construed and interpreted according to the laws of the State of Nevada without resort to conflict of laws principles. Any action brought by either party arising out of or related to this Agreement shall be brought in a court located in Washoe County.

ARTICLE 22 DISPUTE RESOLUTION

In the event of a dispute between the Owner and the CMAR that cannot be resolved satisfactorily between the parties, third party mediation shall be commenced and concluded utilizing a mediator acceptable to the Owner and the CMAR prior to pursuing arbitration. Fees for mediation shall be shared equally between the Owner and the CMAR. In the event of arbitration, the prevailing party shall be entitled to an award of attorney's fees and costs.

ARTICLE 23 INDEMNIFICATION AND LIMITS ON LIABILITY, PUNITIVE DAMAGES

To the fullest extent permitted by law, the CMAR shall defend, indemnify, and hold harmless the Owner, the Design Consultant, and the agents and employees of all of them from and against all claims, damages, losses, and expenses, including, but not limited to attorneys' fees arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) but only to the extent caused by the acts or omissions of the CMAR, a Subcontractor, a supplier, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph.

Owner will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. Contract liability shall not be subject to punitive damages. To the extent applicable actual Agreement damages for any breach shall be limited by NRS 354.626.

ARTICLE 24 FAIR EMPLOYMENT PRACTICES

In connection with the performance of work under this Agreement, the CMAR agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation, gender identity or expression, age. Such agreement shall include, but not be limited to 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. As used in this article, sexual orientation means having or being perceived as having an orientation for heterosexuality, homosexuality, or bisexuality. Sexuality and gender identity or expression means a gender-related identity, appearance, expression, or behavior of a person, regardless of the person's assigned sex at birth.

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

Any violation of such provision by the CMAR shall constitute a material breach of this Agreement.

ARTICLE 25 SEVERABILITY

If any provision of this Agreement is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the parties shall, if possible, agree on a legal, valid, and enforceable substitute provision that is as similar in effect to the deleted provision as possible. The remaining portion of the Agreement not declared illegal, invalid, or unenforceable shall, in any event, remain valid and effective for the term remaining unless the provision found illegal, invalid, or unenforceable goes to the essence of this Agreement.

ARTICLE 26 CROSS CUTTER

Contractor shall comply with all regulations and requirements as noted in the attached Federal Crosscutter documents. Including the following acknowledgment of the A.I.S. requirements:

The Contractor acknowledges to and for the benefit of the County and the Nevada Division of Environmental Protection (the "State") that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund that have statutory requirements commonly known as "American Iron and Steel;" that requires all of the iron and steel products used in the project to be produced in the United States ("American Iron and Steel Requirement") including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by

the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the County for the funding of its project, the County and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

ARTICLE 27 CONSEQUENTIAL DAMAGES

Pursuant to NRS 338.445(2)(d) consequential damages may not be awarded in any action arising from this contract.

WASHOE COUNTY

Chair
Washoe County Commission

ATTEST:

Jan Galassini, Washoe County Clerk

CONSTRUCTION MANAGER AT RISK:

CONSTRUCTION MANAGER AT RISK:

By: *Corey Maxfield*

Date: Dec 14, 2022

Title: Project Manager

By: *Dave Backman*

Dave Backman (Dec 14, 2022 11:40 PST)

Title: Project Director

Date: Dec 14, 2022

STATE OF NEVADA)
) SS:
COUNTY OF WASHOE)

On this 14 day of December, 2022, personally appeared before me, a Notary Public, Corey Maxfield & Dave Backman, who acknowledged to me that he/she executed the foregoing Agreement.

Patricia A. Pauletto











BCC 12-20-22 - GMP 4B OWNER_CMAR AGREEMENT V2 for signature (1)

Final Audit Report

2022-12-14

Created:	2022-12-14
By:	Megan Sizelove (MSizelove@washoecounty.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAABAW8xy4pID773MyqABzZeny1qant4KUygd

"BCC 12-20-22 - GMP 4B OWNER_CMAR AGREEMENT V2 for signature (1)" History

-  Document created by Megan Sizelove (MSizelove@washoecounty.gov)
2022-12-14 - 6:46:55 PM GMT - IP address: 148.186.0.243
-  Document emailed to Corey Maxfield (corey.maxfield@mwhconstructors.com) for signature
2022-12-14 - 6:48:31 PM GMT
-  Email viewed by Corey Maxfield (corey.maxfield@mwhconstructors.com)
2022-12-14 - 6:51:14 PM GMT - IP address: 174.208.162.44
-  Document e-signed by Corey Maxfield (corey.maxfield@mwhconstructors.com)
Signature Date: 2022-12-14 - 7:29:02 PM GMT - Time Source: server- IP address: 24.205.199.186
-  Document emailed to Dave Backman (davebackman@kgwalters.com) for signature
2022-12-14 - 7:29:03 PM GMT
-  Email viewed by Dave Backman (davebackman@kgwalters.com)
2022-12-14 - 7:38:23 PM GMT - IP address: 174.193.48.177
-  Document e-signed by Dave Backman (davebackman@kgwalters.com)
Signature Date: 2022-12-14 - 7:40:54 PM GMT - Time Source: server- IP address: 174.193.48.177
-  Agreement completed.
2022-12-14 - 7:40:54 PM GMT