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P.W.

AGREEMENT

THIS AGREEMENT is dated as of the 4th day of Sept. in the year 1992, by and between Douglas County (hereinafter called OWNER) and H.M. BYARS CONSTRUCTION CO. (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK.

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The work for which Bids are to be submitted consists of removal of concrete drainage channel, construction of approximately 1687 feet of reinforced concrete pipe and corrugated metal pipe, drainage facilities including manholes and drop inlets, approximately 515 feet of earth drainage channel, detention basin, 2335 feet of curb removal and replacement, revegetation and bituminous pavement patching.

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Burke Creek/Kahle Ditch Restoration Project

Article 2. ENGINEER.

The Project has been designed by: JWA Consulting Engineers, Inc.
276 Kingsbury Grade, Suite 201
P. O. Box 1819
Zephyr Cove, NV 89448

who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

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BY William J. Deputy
BATESMAN, CLERK

Article 3. CONTRACT TIME.

3.1. The Work will be substantially completed on or before October 8, 1992, and completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions on or before October 15, 1992.

3.2. Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss and if the Work is not completed within the time specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER, and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER one hundred dollars (\$100.00) for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER one hundred dollars (\$100.00) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment. *Refer to Supplementary Condition SC A-5.*

Article 4. CONTRACT PRICE

4.1. OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents in current funds as follows:

Payment will be based on actual quantities for items of work at the Contract Unit Prices shown on the attached CONTRACTOR's Bid for the Unit Price Bid Schedule.

Article 5. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1. Progress Payments. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, on or about the last day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in paragraph 2.9 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

5.1.1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.7 of the General Conditions.

90 % of Work completed. If Work has been 50% completed as determined by ENGINEER, and if the character and progress of the Work have been satisfactory to OWNER and ENGINEER, OWNER on recommendation of ENGINEER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage on account of Work completed in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100% of the Work completed.

5.2. **Final Payment.** Upon Final completion and acceptance of the Work in accordance with paragraph 14.13 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.13.

Article 6. INTEREST.

All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the maximum rate allowed by law at the place of the Project.

Article 7. CONTRACTOR'S REPRESENTATIONS.

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

7.1. CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

7.2. CONTRACTOR has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in paragraph 4.2 of the General Conditions, and accepts the determination set forth in paragraph SC-4.2 of the Supplementary Conditions of the extent of the technical data contained in such reports and drawings upon which CONTRACTOR is entitled to reply.

7.3. CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in paragraph 7.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site

or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.2 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

7.4. CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.6. CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

Article 8. CONTRACT DOCUMENTS.

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 8.1. This Agreement (pages 1 to 6, inclusive).
- 8.2. Exhibits to this Agreement (pages to , inclusive).
- 8.3. Performance and Payment Bonds, identified as Exhibits PB-1 and PB-2 and consisting of 2 pages.
- 8.4. Notice of Award.
- 8.5. General Conditions (pages GC-1 to GC-58, inclusive).
- 8.6. Supplementary Conditions (pages SC-1 to SC-18, and Exhibits A to D, inclusive.)
- 8.7. Specifications bearing the title Construction Specifications and consisting of 31 divisions and 103 pages, as listed in table of contents thereof.
- 8.8. Drawings, consisting of a cover/index sheet, an index sheet and sheets numbered 2 through 10, inclusive with each sheet bearing the following general title:

Burke Creek/Kahle Ditch Restoration Project

- 8.9. Addenda numbers 1 to 1 , inclusive.

8.10. CONTRACTOR's Bid (pages BF-1 to BF-13, inclusive).

8.11. Documentation submitted by CONTRACTOR prior to Notice of Award (pages _____ to _____, inclusive).

8.12. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraphs 3.4 and 3.5 of the General Conditions.

8.13. The documents listed in paragraphs 8.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

8.14. Standard Specifications for Public Works Construction, Washoe County, City of Sparks, City of Reno, Carson City, Douglas County, 1978 edition.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.4 and 3.5 of the General Conditions.

Article 9. MISCELLANEOUS.

9.1. Terms used in this Agreement which are defined in Article I of the General Conditions will have the meanings indicated in the General Conditions.

9.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and 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 the Contract Documents.

9.3. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

Article 10. OTHER PROVISIONS.

10.1 If applicable, in the event that there is any litigation relative to the interpretation or enforcement of this agreement or any of the contract documents, the prevailing party shall be entitled to a reasonable attorney's fee, together with costs of suit.

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IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on their behalf.

This Agreement will be effective on September 3, _____, 1992.

OWNER [Signature] CONTRACTOR H.M. BYARS CONST. CO

Douglas County, P. O. Box 218
Minden, Nevada 89423

Box 10047 RENO 89510

By Michael Fischer

By [Signature]

(CORPORATE SEAL)

(CORPORATE SEAL)

Attest Barbara Reed by WH
by Willene Harrington Deputy
Address for giving notices

Attest Mark F. Bane
Address for giving notices

P. O. Box 218

Box 10047

Minden, Nevada 89423

RENO, NEVADA 89510

(If OWNER is a public body, evidence of authority to sign and resolution or other documents authorizing execution of Agreement.)

Nevada License No. 8791 attach

Agent for service of process:

of authority to sign.)

(If CONTRACTOR is a corporation, attach evidence

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and on record in my office.

DATE: September 8, 1992
B. REED Clerk of the 9th Judicial District Court of the State of Nevada, in and for the County of Douglas.

By Willene Harrington Deputy

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REQUESTED BY
DOUGLAS COUNTY
IN OFFICIAL RECORDS OF
DOUGLAS CO. NEVADA

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