

Assessor's Parcel Number: N/A

Date: MAY 9, 2019

Recording Requested By:

Name: JEANE COX, COMMUNITY DEVELOPMENT

Address: _____

City/State/Zip: _____

Real Property Transfer Tax: \$ N/A



AGREEMENT #2019.058
(Title of Document)

NO. 2019.058

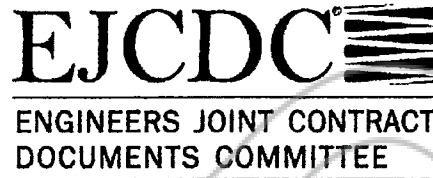
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DATE

DOUGLAS COUNTY CLERK
MINDEN, NV

BY  DEPUTY

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR FOR
CONSTRUCTION CONTRACT (STIPULATED PRICE)**

Prepared by



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1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

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(202) 347-7474
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**AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between Douglas County, a political subdivision of the State of Nevada (“Owner”) and MNW Construction LLC (“Contractor”).

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: Removing accumulated sediment from two existing stormwater retention basins, restoring the basin geometry as shown on the approved plan sets and installing an articulated block basin bottom and all other items of work as stipulated in the approved plans and specifications.

ARTICLE 2 – THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Removing accumulated sediment from two existing stormwater retention basins, restoring the basin geometry as shown on the approved plan sets and installing an articulated block basin bottom

ARTICLE 3 – ENGINEER

3.01 The part of the Project that pertains to the Work has been designed by Jason Tokheim, P.E. – Senior Engineer Lumos and Associates.

3.02 The Owner has retained Erik Nilssen, P.E. – Douglas County Engineer (“Engineer”) 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 the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

A. All time limits for ~~Milestones, if any, Substantial Completion, and completion~~ and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

A. The Work will be completed and ready for final payment in accordance with Paragraph ~~15.06-04~~ of the General Conditions on or before 30 calendar days after the notice of completion.

4.02 *Contract Times: Days*

A. The Work will be completed within Thirty (30) calendar days (for both base bid and if awarded, bid alternate one) after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final

payment in accordance with Paragraph 15.06 of the General Conditions within thirty (30) days after the date when the Contract Times commence to run.

4.03 Notice to Proceed

~~B.A.~~ It is anticipated a Notice to Proceed will be issued no later than June 3, 2019. A preconstruction conference will be scheduled for May 18, 2019.

~~4.03~~ 4.04 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties 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):
1. Completion of Remaining Work: ~~After Substantial Completion, if~~ Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$430 for each day that expires after such time until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:
- A. For all Work, a total sum not to exceed the contract amount awarded by the Douglas County Board of County Commissioners, at the prices stated in the Contractor's Bid.
All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.
 - B. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of unit price work times the actual quantity of that item.
 - C. The bid prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.
 - D. Work shall include the following items:
 1. Base Bid – Donna Way Basin
 2. Bid Alternate No. 1 – Benjamin Way Basin

ARTICLE 6 – PAYMENT PROCEDURES

- 6.01 *Submittal and Processing of Payments*
- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 Progress Payments; Retainage

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment 20 days after the notice of completion as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in 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 elsewhere in the Contract.
- B. Progress payments will be made as follows:
1. Until fifty percent (50%) of the Work required by this Agreement has been performed, progress payments will be paid in an amount equal to ninety-five percent (95%) of each invoice. The remaining five percent (5%) will be withheld as retainage.
 2. After fifty percent (50%) of the Work required by this Agreement has been performed, if requested by the Contractor, the Owner may pay to the Contractor any of the remaining progress payments without withholding additional retainage if, in the Engineer's opinion, satisfactory progress is being made on the Services in accordance with NRS 338.515.
 3. If, after fifty percent (50%) of the Work required by this Agreement has been performed, the Engineer determines that satisfactory progress is being made, the Owner may pay any amount of retainage withheld from progress payments made during the Contractor's completion of the first fifty percent (50%) of Work required by this Agreement on the condition that if a subcontractor performed a portion of the Work, the Engineer determined that such Work was in compliance with this Agreement, the subcontractor submits to the Contractor a release of a mechanics lien for the portion of Work so completed, and a release of any applicable mechanics lien from each of the subcontractor's subcontractors and suppliers, and the amount of retainage the Owner pays is in proportion to the Work which the subcontractor performed. If the Contractor is paid for any retainage for Work completed by its subcontractors, the Contractor must pay to the subcontractor any retainage it held pursuant to NRS 338.555.
 4. If the Engineer determines that satisfactory progress is being made on the Work and does not withhold any amount pursuant to NRS 338.525, the Owner may pay ninety-seven and one-half percent (97.5%) of the amount of each invoice after completion of the first fifty percent (50%) of the Work and will release to the Contractor fifty percent (50%) of the retainage withheld from invoices received for the first fifty percent (50%) of Work completed. If the Engineer determines that satisfactory progress is not being made on the Work and does withhold an amount pursuant to NRS 338.525, the Owner may pay ninety-five percent (95%) of the amount of each invoice after completion of the first fifty percent (50%) of the Services and will continue to withhold the retainage withheld from invoices received for the first fifty percent (50%) of Services completed. The final audit shall be performed after the release of the retainage and may cause an adjustment of payments to the Owner or to the Contractor.
- C. Except as otherwise provided in NRS 338.525, the Owner will pay the Contractor the actual cost of the supplies, materials and equipment, that are identified in Contract; have been delivered and stored at the location; and in the time and manner specified in the Contract

by the Contractor or subcontractor or supplier for use in the Work; and are in short supply or were specially made project.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 7 – INTEREST

- 7.01 All amounts not paid when due shall bear interest, payable at the end of each quarter, at the rate equal to the rate quoted by at least three insured banks, credit unions or savings and loan associations in this State as the highest rate paid on a certificate of deposit whose duration is approximately 90 days on the first day of the quarter. If the amount due to the Contractor at the end of the quarter is less than \$500, Owner may hold the interest in accordance with NRS 338.515.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
- B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- ~~D. If applicable, Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.~~
- E.D. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and, if applicable, the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
- F.E. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.

~~G.F.~~ Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

~~H.G.~~ Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

~~I.H.~~ The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

~~J.I.~~ Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

A. The Contract Documents consist of the following:

1. This Agreement.

2. Performance bond.

3. Payment bond.

~~4. Other bonds.~~

~~a.~~

~~5.4.~~ General Conditions (pages 1 to 83, inclusive).

~~6. Supplementary Conditions (pages to , inclusive).~~ **Incorporated into General Conditions**

~~7. SRF Supplementary Conditions (pages 1 to , inclusive).~~

~~8.5.~~ Specifications as listed in the table of contents of the Project Manual.

~~9.6.~~ Drawings (not attached but incorporated by reference) consisting of 8 sheets with each sheet bearing the following general title: **Douglas County Basin Maintenance and Upgrades.**

~~10.7.~~ Addenda (numbers to , inclusive-No Addendum).

~~11.8.~~ Exhibits to this Agreement (enumerated as follows):

a. Contractor's Bid (dated March 14, 2019).

~~12.9.~~ The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:

a. Notice to Proceed.

b. Work Change Directives.

c. Change Orders.

d. Field Orders.

B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 Terms

- A. Terms used in this Agreement will have the meanings stated in the General Conditions ~~and the Supplementary Conditions.~~

10.02 Assignment of Contract

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is 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.

10.03 Successors and Assigns

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 Severability

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and

4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Legal*

- A. To the extent that the disputes aren't resolved in accordance with Article 17, then any litigation regarding the interpretation or enforcement of this Agreement or any of the Contract Documents must be litigated in the appropriate court with jurisdiction, located in Douglas County, Nevada.

10.07 *Fair Employment Practices*

- A. In connection with the performance of work under this Contract, the Contractor 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, or age, including, without limitation, with regard 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, without limitation, apprenticeship.
- B. The Contractor further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.
- C. Any violation of such provision by the Contractor constitutes a material breach of Contract.
- D. If applicable, The Contractor further agrees to comply with the preferential employment requirements set forth in NRS 338.130. If the provisions of NRS 338.130 are not complied with, said non-compliance will render the Agreement void.

10.08 *Non-Appropriation*

- A. All payments under this contract are contingent upon the availability to the County of the necessary funds. In accordance with NRS 354.626 and any other applicable provision of law, the financial obligations under this contract between the parties shall not exceed those monies appropriated and approved by the County for this contract for the then current fiscal year under the Local Government Budget Act. This contract shall terminate and the County's obligations under it shall be extinguished if the County fails to appropriate monies.
- B. Nothing in this contract shall be construed to provide Contractor with a right of payment over any other entity. Any funds obligated by the County under this contract that are not paid to Contractor shall automatically revert to the County's discretionary control upon the completion, termination, or cancellation of the agreement. The County shall not have any obligation to re-award or to provide, in any manner, the unexpended funds to Contractor. Contractor shall have no claim of any sort to the unexpended funds.

10.09 *Other Provisions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor in the Supplementary Conditions.

~~B. Assignment of Contract~~

- ~~1. The contract between Owner as "buyer" and as "seller" for procurement of goods and special services ("procurement contract") for ██████████ or ██████████ assigned to Contractor by Owner, and Contractor [accepts] [will accept] such assignment. A form documenting the assignment is attached as an exhibit to this Agreement.~~
- ~~2. This assignment will occur on the Effective Date of the Agreement, and will relieve the Owner as "buyer" from all further obligations and liabilities under the procurement contract. Contractor will assume full responsibility for the performance of "seller" as Contractor's Subcontractor or Supplier. Notwithstanding this assignment, all performance guarantees and warranties required by the procurement contract will continue to run for the benefit of the Owner and, in addition, for the benefit of the Contractor. Except as noted in the agreement between "buyer" and "seller," all rights, duties and obligations of Engineer to "buyer" and "seller" under the "procurement contract" will cease.~~
- ~~3.1. Owner will provide Contractor with a copy of the assigned procurement contract after the assignment is completed.~~

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on April 18, 2019 contingent on board approval (which is the Effective Date of the Contract).

OWNER: Douglas County

William B. Penzel

By: William B. Penzel

Title: Chairman Douglas County Board

CONTRACTOR:

Merlin N. Waite

By: Merlin N. Waite

Title: Managing Member

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: Kathy Lewis

Title: Clerk/Treasurer

Attest: _____

Title: _____

Address for giving notices:

Douglas County, NV

PO Box 218

Minden, NV 89423

Address for giving notices:

MNW Construction LLC

561 Mark Way

Carson City, NV 89706

License No.: 0070165
(where applicable)

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

NOTE TO USER: Use in those states or other jurisdictions where applicable or required.

NOTICE OF AWARD

Date of Issuance: April 23, 2019

Owner: Douglas County

Owner's Contract No.: NA

Engineer: Erik Nilssen

Engineer's Project No.: NA

Project: Basin Maintenance and Upgrades

Contract Name:

Bidder: MNW Construction

Bidder's Address: 561 Mark Way, Carson City NV 89706

TO BIDDER:

You are notified that Owner has accepted your Bid dated March 14, 2019 for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

The Project consists of constructing two stormwater retention basins back to their original volumes and providing a hardened basin bottom .

The Contract Price of the awarded Contract is: \$ 152,643

Two (2) unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically.

You must comply with the following conditions precedent within 15 days of the date of this Notice of Award:

1. Deliver to Owner two (2) counterparts of the Agreement, fully executed by Bidder.
2. Deliver with the executed Agreement(s) the Contract security [e.g., performance and payment bonds] and insurance documentation as specified in the Instructions to Bidders; General Conditions, Articles 2 and 6; and Supplemental Conditions, Articles 2 and 6.
3. Other conditions precedent (if any): NA

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: Douglas County

Authorized Signature

By: Erik Nilssen

Title: County Engineer

Copy: Jeane Cox, Administrative Services Manager
Courtney Walker, Stormwater Program Manager

Douglas County

State of Nevada

CERTIFIED COPY

I certify that the document to which this certificate is attached is a full and correct copy of the original record on file in the Clerk-Treasurer's Office on this

23 day of April, 2019

By: [Signature] Deputy