

## AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of Reno and the City of Sparks, hereinafter referred to as the “CLIENT”, and Keller Associates, Inc., hereinafter referred to as “ENGINEER”:

### WITNESSETH:

WHEREAS, CLIENT desires to obtain engineering services for the TMWRF Primary Sludge Screening & APD Valve/Piping Improvements, hereinafter referred to as “Project”;

WHEREAS, public convenience and necessity require the services of a consulting engineer to provide the services required;

WHEREAS, the CLIENT has found ENGINEER qualified and experienced in the performance of said services;

WHEREAS, the CLIENT is desirous of engaging the services of ENGINEER to perform said services; and

NOW, THEREFORE, said CLIENT and said ENGINEER, for the considerations hereinafter set forth, mutually agree as follows:

### ARTICLE I - SERVICES

CLIENT agrees to retain and does hereby retain ENGINEER to perform the professional engineering services hereinafter more particularly described, with such services to commence on the date of the execution of this Agreement and to continue until the completion of the work provided for herein.

ENGINEER hereby agrees to perform the professional services as set forth herein and to furnish or procure the use of incidental services, equipment, and facilities necessary for the completion of said engineering services.

ENGINEER has the status of an independent contractor as defined in NRS 333.700 and shall not be entitled to any of the rights, privileges, benefits, and emoluments of either an officer or employee of CLIENT. ENGINEER shall undertake performance of services as independent contractor and shall be wholly responsible for the methods of performance and for their performance.

ENGINEER is subject to NRS 338.010 – 338.090 (prevailing wage) for all covered work.

## ARTICLE II - SCOPE OF SERVICES

The Scope of Services is set forth in Attachment A as attached hereto and incorporated herein by this reference.

## ARTICLE III - COMPENSATION

Payment for the engineering services hereinabove set forth shall be made by the CLIENT to the ENGINEER and shall be considered as full compensation for all personnel, materials, supplies, and equipment used in carrying out the work.

A. Compensation to the ENGINEER shall be on the basis of time and materials as set Attachment A in the not-to-exceed sum of \$483,625.00. The City of Reno's share is the sum of \$331,911.84 and the City of Spark's share is the sum of \$151,713.16. **Any cost not included in Attachment A will not be paid.**

B. Payments shall be made by the CLIENT based on itemized invoices from the ENGINEER which lists costs and expenses. Such payments shall be for the invoice amount.

C. CLIENT will pay ENGINEER within 30 days of receipt by CLIENT of ENGINEER's invoice. If CLIENT disputes only portions of an invoice, CLIENT agrees to pay for undisputed items on that invoice within the time provided herein. Payment by CLIENT of invoices or request for payment shall not constitute acceptance by CLIENT of work performed under the Agreement by the ENGINEER.

D. The not-to-exceed budget for the services authorized by this Agreement in the sum of \$483,625.00 and shall not be exceeded without written authorization of the CLIENT. The budget may be increased by amendment hereto if necessitated by a change in the scope of services which increases the cost of providing the services. ENGINEER is not authorized to provide any additional services beyond the scope of work without having authorized funding pursuant to a written amendment hereto signed by the authorized representative of the governing body.

## ARTICLE IV - SCHEDULE OF WORK

ENGINEER will commence the services as described immediately following the Notice to Proceed provided to the ENGINEER by the CLIENT and will proceed with such services in a diligent manner. ENGINEER will not be responsible for delays caused by factors beyond ENGINEER's control and will not be responsible for delays caused by factors which could not reasonably have been foreseen at the time the Agreement was approved.

## ARTICLE V - ASSIGNMENT OF AGREEMENT

The ENGINEER SHALL not assign this Contract or any portion of the work without prior written approval of the CLIENT which may be withheld for any reason whatsoever.

## ARTICLE VI- OWNER'S RESPONSIBILITY

CLIENT shall provide any information in its possession that is requested by ENGINEER and is necessary to complete the Project. CLIENT shall assist ENGINEER in obtaining access to public and private lands to allow the ENGINEER to perform the work under this Agreement. CLIENT shall examine all studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by the ENGINEER and shall render decisions pertaining thereto within a reasonable time so as not to delay the work of the ENGINEER.

## ARTICLE VII - NONDISCLOSURE OF PROPRIETARY INFORMATION

ENGINEER shall consider all information provided by CLIENT to be proprietary unless such information is available from public sources. ENGINEER shall not publish or disclose proprietary information for any purpose other than the performance of the Services without the prior written authorization of CLIENT or in response to legal process or as required by the regulations of public entities.

## ARTICLE VIII - NOTICE

Any notice, demand, or request required by or made pursuant to this Agreement shall be deemed properly made if personally delivered in writing or deposited in the United States mail, postage prepaid, to the address specified below:

To ENGINEER:  
Larry Rupp, P.E.  
Principal  
Keller Associates, Inc.  
131 SW 5th Ave, Suite A  
Meridian, ID 83642

To CLIENT:  
Trina Magoon, P.E.  
Director of Utility Services  
City of Reno  
1 East First Street  
Reno, NV 89501  
P.O. Box 1900  
Reno, NV 89505

John Martini, P.E.  
Assistant City Manager  
City of Sparks  
431 Prater Way  
Sparks, NV 89431  
PO Box 857  
Sparks, NV 89432

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of ENGINEER and CLIENT.

## ARTICLE IX - UNCONTROLLED FORCES

Neither CLIENT nor ENGINEER shall be considered to be in default of this Agreement, if delays in or failure of performance shall be due to uncontrollable forces the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid and is not reasonably foreseeable at the time of entering into this Agreement. The term “uncontrollable forces” shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the control of the non-performing party. It includes, but is not limited to, fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, inability to procure permits, licenses, or authorizations from any state, local, or federal agency or personal for any of the supplies, material, accesses, or services required to be provided by either CLIENT or ENGINEER under this Agreement, strikes, work slowdowns or other labor disturbances, and judicial restraint. ENGINEER shall be paid for services performed prior to the delay.

Neither party shall, however, be excused from performance if nonperformance is due to uncontrollable forces, which are removable. The provisions of this Article shall not be interpreted or construed to require ENGINEER or CLIENT to prevent, settle, or otherwise avoid a strike, work slowdown, or other labor action. The non-performing party shall upon being prevented or delayed from performance by an uncontrollable force immediately give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligation of this Agreement.

## ARTICLE X- GOVERNING LAW

This Agreement shall be governed by and construed pursuant to the laws of the State of Nevada. In the event suit is commenced hereunder and in accordance with the Dispute Resolution Procedures of Article XXII, the suit shall be brought in the appropriate court in Washoe County, State of Nevada. In the event of an arbitration or mediation pursuant to Article XXII, such arbitration or mediation shall be held in Reno, Nevada.

## ARTICLE XI - SUCCESSORS AND ASSIGNS

CLIENT and ENGINEER each binds itself and their successors, and assigns to the other party to this Agreement and to the successors, and assigns of such other party, in respect to all covenants, agreements and obligations of this Agreement.

## ARTICLE XII - INDEMNIFICATION

To the fullest extent permitted by law, ENGINEER shall defend, indemnify and hold harmless CLIENT and its officers, employees and agents (collectively “Indemnitees”) from any liabilities, damages, losses, claims, actions or proceedings, including, without limitation, reasonable attorneys’ fees, that are caused by the negligence, errors, omissions, recklessness or intentional misconduct of the ENGINEER or employees or agents of the ENGINEER in the performance of this Agreement.

ENGINEER assumes no liability for the negligence or willful misconduct of any indemnitee or other consultants of indemnitee.

ENGINEER'S indemnification obligations for claims involving Professional Liability (claims involving acts, error, or omissions in the rendering of professional services and Economic Loss Only (claims involving economic loss which are not connected with bodily injury or physical damage to property) shall be limited to the proportionate extent of ENGINEER'S negligence or other breach of duty.

If CLIENT's personnel (engineers or other professionals) are involved in defending such legal action, ENGINEER shall also reimburse CLIENT for the time spent by such personnel at the rate charged for such services by private professionals. These provisions shall survive termination of this agreement and shall be binding upon ENGINEER, her legal representatives, heirs, successors and permitted assigns.

If ENGINEER does not so defend the CLIENT and the ENGINEER is adjudicated to be liable, reasonable attorney's fees and costs shall be paid to CLIENT in an amount proportionate to the liability of ENGINEER.

#### ARTICLE XIII - INTELLECTUAL PROPERTY INDEMNITY

To the fullest extent permitted by law, ENGINEER shall defend, protect, hold harmless, and indemnify CLIENT and the CLIENT'S related Parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by CLIENT in writing. If ENGINEER has reason to believe the use of a required design, process or product is an infringement of a patent, ENGINEER shall be responsible for such loss unless such information is promptly given to CITY. This Indemnity Covenant shall survive the termination of this Agreement.

#### ARTICLE XIV – PAYMENT OF TAXES

Any and all Federal, State and local taxes, charges, fees, or contributions required by law to be paid with respect to ENGINEER'S performance of this Agreement (including, without limitation, unemployment insurance, social security, and income taxes).

#### ARTICLE XIV - INSURANCE

##### GENERAL REQUIREMENTS

The CLIENT requires that ENGINEER purchase Industrial Insurance, General Liability, and ENGINEER's Errors and Omissions Liability Insurance as described below against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the ENGINEER, its agents, representatives, employees or

subconsultants. The cost of such insurance shall be borne by ENGINEER unless otherwise agreed.

#### INDUSTRIAL INSURANCE (WORKERS' COMPENSATION & EMPLOYER'S LIABILITY)

It is understood and agreed that there shall be no Industrial Insurance coverage provided for ENGINEER or any Subconsultant by the CLIENT and in view of NRS 616B.627 and 617.210 requiring that ENGINEER complies with the provisions of Chapters 616A to 616D, inclusive and 617 of NRS, ENGINEER shall, before commencing work under the provision of this Agreement, furnish to the CLIENT a certificate of insurance from the Worker' Compensation Insurer certifying that the ENGINEER and each Subconsultant have complied with the provisions of the Nevada Industrial Insurance Act, by providing coverage for each and every employee, subconsultants, and independent contractors. Should the ENGINEER be self-insured for Industrial Insurance, the CONSULTANT shall so notify the CLIENT and approve written approval of such self-insurance prior to the signing of a Contract. The CLIENT reserves the right to accept or reject a self-insured CONSULTANT and to approve the amount(s) of any self-insured retentions. The ENGINEER agrees that the CLIENT is entitled to obtain additional documentation, financial or otherwise, for review prior to entering into a Contract with the ENGINEER.

Upon completion of the project, the contractor shall provide the CLIENT with a Final Certificate for itself and each Subconsultant which is prepared by the State of Nevada Industrial Insurance System. If the ENGINEER or Subconsultants are unlicensed and are a sole proprietor, coverage for the sole proprietor must be purchased and evidence of coverage must appear on the Certificate of Insurance and Final Certificate.

It is further understood and agreed by and between the CLIENT and ENGINEER that ENGINEER shall procure, pay for, and maintain the above mentioned industrial insurance coverage at the ENGINEER's sole cost and expense.

#### MINIMUM SCOPE OF LIABILITY INSURANCE

Coverage shall be at least as broad as: \*

**Commercial General Liability** at least as broad as Insurance Services Office Commercial General Liability Coverage "occurrence" form CG OO O1 04 13 or an equivalent form. The Comprehensive General Liability Coverage shall include, but is not limited to, liability coverage arising from premises, operations, independent contractors, products and completed operations, personal and advertising, injury, blanket contractual liability and broad form property damage.

**Automobile Coverage** at least as broad as Insurance Services Office Business Auto Coverage form CA OO 01 10 13 or an equivalent form covering Automobile Liability Symbol 1 "Any Auto". In lieu of a separate Business Auto Liability Policy, the City may agree to accept Auto Liability covered in the General Liability Policy, if non owned and hired auto liability are included. The ENGINEER shall maintain limits of no less than \$1,000,000 or the amount customarily carried by the contractor,

whichever is greater, combined single limit per accident for bodily injury and property damage. No aggregate limit may apply.

**The Additional Insured Endorsements for General Liability shall be at least as broad as the unmodified ISO CG 20 10 04 13 and ISO CG 20 37 04 13 endorsements, or equivalent. The certificate shall confirm Excess Liability is following form.**

\*Coverages may be excluded only with prior approval of the CLIENTS' Risk Manager.

Professional Errors and Omissions Liability applying to all activities performed under this Agreement in a form acceptable to CLIENT. ENGINEER will maintain professional liability insurance during the term of this Agreement and for a period of six (6) years from the date of substantial completion of the project unless waived by the CLIENT. In the event the ENGINEER goes out of business during the term of this Agreement or the six (6) year period described above, ENGINEER shall purchase Extended Reporting coverage for claims arising out of ENGINEER's negligence acts, errors and omissions committed during the term of the Professional Liability Policy.

#### MINIMUM LIMITS OF INSURANCE

ENGINEER shall maintain limits no less than:

1. General Liability: \$1 million minimum combined single limit per occurrence for bodily injury, personal injury and property damage and \$2 million annual aggregate.
2. ENGINEER's Errors and Omissions Liability: \$2 million per claim and \$4 million as an annual aggregate during the term of this Agreement and for six years after the completion of the project, with each subsequent renewal having a retroactive date which predates the date of this Agreement. The ENGINEER may purchase project insurance or obtain a rider on her normal policy in an amount sufficient to bring ENGINEER's coverage up to minimum requirements, said additional coverage to be obtained at no cost to the CLIENT. Should the CLIENTS' Risk Manager require project insurance, project insurance shall be purchased and premium costs shall be borne by the CLIENT. CLIENT retains option to purchase project insurance through the ENGINEER's insurer or through its own source.

#### DEDUCTIBLES OR SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved by the CLIENT Risk Manager. The CLIENT reserves the right to request additional documentation, financial or otherwise prior to giving its approval of the deductibles or self-insured retention. Any changes to the deductible or self-insured retention made during the term of this Agreement or during the term of any policy, must be approved by the CLIENTS' Risk Manager.

## OTHER INSURANCE PROVISIONS

### General Liability Coverages

The CLIENT, its officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the ENGINEER including the insured's general supervision of the ENGINEER; products and completed operations of the ENGINEER; or premises owned, occupied or used by the ENGINEER. The coverage shall contain no special limitations on the scope of protection afforded to the CLIENT, its officers, officials, employees or volunteers.

The ENGINEER's insurance coverage shall be primary insurance as respects the CLIENT, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the CLIENT, its officers, officials, employees or volunteers shall be excess of the ENGINEER's insurance and shall not contribute with it in any way.

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

The ENGINEER's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Endorsements for General Liability, Auto, and Excess/Umbrella Liability listing all additional insureds are required. The endorsement for Excess/Umbrella Liability can be accomplished by the ENGINEER'S production of a letter from the insurance company stating that Excess/Umbrella Liability will "follow form."

The ENGINEER'S insurance coverage shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after at least thirty (30) days prior written notice for reasons other than non-payment of premium and at least ten (10) days for non-payment of premium mail has been given to the CLIENT.

### ACCEPTABILITY OF INSURERS

Insurance is to be placed with an A.M. Best and Company rating level of A - Class VII or better, or otherwise approved by the CLIENT in its sole discretion. CLIENT reserves the right to require that ENGINEER'S insurer be a licensed and admitted insurer in the State of Nevada, or on the Insurance Commissioner's approved but not admitted lists.

### VERIFICATION OF COVERAGE

ENGINEER shall furnish the CLIENT with certificates of insurance, including but not limited to the Certificate of Compliance in NRS 616B.627 and with original endorsements affecting coverage required by this article. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf and must be



countersigned by a duly appointed and licensed agent in this state. All approved deductibles and self-insured retentions shall be shown on the certificate. The certificates are to be on forms approved by the CLIENT. All certificate and endorsements are to be received and approved by the CLIENT before work commences. The CLIENT reserves the right to require complete, certified copies of all required insurance policies, at any time.

## SUBCONSULTANTS

ENGINEERS shall require all subconsultants to be insured on their own or under its policies and shall furnish separate certificates and endorsement for each subconsultant. Coverages for subconsultants shall be subjected to all of the requirements stated herein.

## Miscellaneous Conditions

If the ENGINEER or any Subconsultant fails to maintain any of the insurance coverages required, the CLIENT may terminate this Agreement for cause.

Nothing herein contained shall be construed as limiting in any way to the extent to which the ENGINEER may be held responsible for payment for damages to persons or property resulting from her operations or the operations of any subconsultant under her.

If ENGINEER's failure to maintain the required insurance coverage results in a breach of this Agreement, CLIENT may purchase the required coverage, and without further notice to ENGINEER, deduct from sums due to ENGINEER any premium cost advanced by CLIENT for such insurance.

## ARTICLE XVI - LITIGATION

This Agreement does not require the ENGINEER to prepare for or appear in litigation on behalf of The CLIENT, or as agent of the CLIENT, other than specified herein, except in consideration of additional reasonable compensation.

## ARTICLE XVII - TERMINATION OF WORK

Either party to this Agreement may terminate the Agreement for cause upon giving the other party thirty (30) days prior written notice. Cause may include, failure to perform through no fault of the party initiating the termination. In addition, CLIENT may terminate the Agreement for any one of the following causes: performance by ENGINEER which CLIENT deems unsatisfactory in CLIENT's sole judgment; and CLIENT's lack of funds to complete the work. Cause for ENGINEER may include, failure of CLIENT to make timely payment to ENGINEER without good cause, following a demand for payment.

In addition, CLIENT may terminate any or all of the work covered by this Agreement by notifying ENGINEER in writing. In the event such termination occurs at the conclusion of services pursuant to an executed task order, then ENGINEER shall be entitled to receive compensation for all work satisfactorily completed and performed through the conclusion of that

task order. No other changes or costs incurred for services or materials other than pursuant to an executed task order shall be reimbursed by CLIENT pursuant to this Agreement. In the event such termination occurs during the performance of services pursuant to an authorized task order, then ENGINEER and CLIENT shall need to determine what, if any additional services should be performed by ENGINEER in order to close out the work in progress and provide any such unfinished materials to CLIENT. ENGINEER and CLIENT shall agree upon the additional amount of work to be performed following the termination notice and the amount payable by CLIENT for such work. In the event that the parties cannot otherwise agree on the amount to be paid pursuant to this provision, then the matter may be referred to the Dispute Resolution Procedure in ARTICLE XXII.

In the event the Agreement is terminated by CLIENT for cause, including performance deemed unsatisfactory by CLIENT, or ENGINEER failure to perform, or other cause created by ENGINEER, CLIENT may withhold and offset against any payments otherwise due and/or seek recovery from ENGINEER for amounts already paid, including without limitation: amounts paid for unsatisfactory work or work not done in accordance with this Agreement; value of CLIENT's time spent in correcting the work or problem; any increase in cost resulting from the problem or work; and any other costs which result from such termination. Subject to the terms herein, ENGINEER will be paid for services performed prior to termination.

ENGINEER expressly agrees that this Agreement shall be terminated immediately if for any reason local, federal and/or State Legislature funding ability to satisfy this Agreement is withdrawn, limited, or impaired.

#### ARTICLE XVIII - PROFESSIONAL SERVICES

ENGINEER shall be responsible for the professional quality and technical accuracy of all services furnished by ENGINEER and their subconsultants under this Agreement. Without limiting the effect of any other provision of this Agreement and in addition to any other provision contained herein, ENGINEER shall, without additional compensation, correct or revise any errors or omissions in their services.

ENGINEER and their subconsultants retained pursuant to this Agreement are considered by CLIENT to be skilled in their profession to a degree necessary to perform the services and duties contained in this Agreement, and CLIENT hereby relies upon those skills and the knowledge of ENGINEER and their subconsultants. ENGINEER and their subconsultants shall perform such professional services and duties as contained in this Agreement in conformance to and consistent with the standards generally recognized as being employed by professionals of their caliber in the State of Nevada and under similar conditions. ENGINEER makes no warranty, either expressed or implied, as to their findings, recommendations, specifications or professional advice other than as provided herein.

Neither CLIENTS' review, approval, or acceptance of nor payment for any of the professional services or work required under this Agreement shall be construed to operate as a waiver of any of CLIENTS' rights under of this Agreement. The rights and remedies of CLIENT provided for under this Agreement are in addition to any other rights and remedies provided by law.

Project information including but not limited to reports, written correspondence, and verbal reports will be prepared for the use of the CLIENT. The observations, findings, conclusions and recommendation made represent the opinions of the ENGINEER. Reports, records, and information prepared by others will be used in the preparation of the report. The ENGINEER has relied on the same to be accurate and does not make any assurances, representations, or warranties pertaining to the records or work of others, except for its subconsultants, nor does the ENGINEER make any certifications or assurances except as explicitly provided in writing. No responsibility is assumed by the ENGINEER for use of reports for purposes of facility design by others.

#### ARTICLE XIX – PROPERTY: COPYRIGHTS

The ENGINEER shall furnish to the CLIENT all field notes, reports, data, and electronic or magnetic media, and original tracings of all drawings and plans, maps, photographs, and other materials (including, if requested by the Director, design computations, design sketches and review drawings) prepared pursuant to this Contract (hereinafter collectively referred to as “Documents”). The originals of such Documents shall be and remain the property of the CLIENT.

All of such Documents shall be deemed to be “works made for hire” prepared for the CLIENT. The ownership of all copyrights and all rights embodied in the copyrights in or to such Documents shall rest in the CLIENT when any such is subject to copyright. The ENGINEER agrees that it, nor any of its employees, shall have any right to copyright any of such Documents. The ENGINEER further agrees that neither it nor any of its employees shall exercise any of the rights embodied in the copyrights in or to such Documents, unless authorized to do so by the Reno City Council. The ENGINEER shall place a conspicuous notation upon each Document which indicates that the copyright thereto is owned by the CLIENT.

Should it be finally determined, by a court or to her tribunal of competent jurisdiction, that any of such Documents is not a “works make for hire,” it is agreed that the provisions of this section shall be termed an assignment, sale, and transfer of the copyright in or to such Documents to the CLIENT for the longest term allowed by law. Notwithstanding the foregoing, the ENGINEER may retain copies of such Documents and such copies shall remain the property of the ENGINEER. The ENGINEER shall have the right to use such copies as it may desire, but the ENGINEER may not sell, license, or otherwise market such Documents.

Documents, including drawings and specification prepared by ENGINEER pursuant to this Contract, are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the services provided for the Project or any other project. Any use of completed Documents for other projects and/or any use of uncompleted Documents without specific written authorization from ENGINEER will be at the CLIENT’s sole risk without liability or legal exposure to ENGINEER.

## ARTICLE XX - RIGHTS OF ENGINEERS AND EMPLOYEES

No personnel employed by ENGINEER shall acquire any rights or status in the CLIENT services and ENGINEER shall be responsible in full for payment of its employees, including insurance, deductions, and all the like.

## ARTICLE XXI - SERVICES BY CLIENT

It is understood and agreed that the CLIENT shall, to the extent reasonable and practicable, assist and cooperate with the ENGINEER in the performance of ENGINEER's services hereunder. Such assistance and cooperation shall include, but not necessarily be limited to, environmental approval, right of access to work sites; providing material available from the CLIENT's files such as maps, As-Built drawings, records, and operation and maintenance information; serving all notices, holding all hearings, and fulfilling legal requirements in connection therewith; and rendering assistance in determining the location of existing facilities and improvements which may be affected by the project.

## ARTICLE XXII - DISPUTE RESOLUTION PROCEDURE

1. If disputes arise under this Agreement, the parties agree to attempt to resolve such disputes through direct negotiations or if such negotiations are not successful, by non-binding mediation conducted in accordance with the rules and procedures to be agreed upon by the parties.
2. Except as otherwise provided herein, each party shall bear its own attorney's fees and court costs regardless of the outcome of any proceeding brought to enforce or interpret this Agreement. In no event shall any prevailing party be entitled to an award of attorney's fees.

## ARTICLE XXIII - NO UNFAIR EMPLOYMENT PRACTICES

1. In connection with the performance of work under this Agreement, Engineer agrees not to discriminate against any employee or applicant for employment because of race, creed, color, religion, national origin, age, sex, sexual orientation, gender identity, gender expression, veteran status, or any other protected class status applicable under federal, state or local law, rule or regulation. Such Agreement shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
2. ENGINEER further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.
3. As used in this Article, sexual orientation means having or being perceived as having an orientation for heterosexuality, homosexuality or bi-sexuality.
4. As used in this Article, race includes traits associated with race, including, without limitation, hair texture and protective hairstyles.

5. Any violation of these provisions by ENGINEER shall constitute a material breach of contract.

#### ARTICLE XXIV - AMERICANS WITH DISABILITIES ACT

1. ENGINEER and its subconsultants shall comply with the terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

#### ARTICLE XXV - GENERAL PROVISIONS

1. Integration. This Agreement, including the attachments and the Recitals, all of which are true and correct and are incorporated by reference as a part of this Agreement, constitutes the complete and integrated Agreement between the parties with respect to the matters recited herein, and supersedes any prior or contemporaneous written or oral agreements or understandings with respect thereto.

2. Severability. The legality of any provision or portion of this Agreement shall not affect the validity of the remainder.

3. Amendment. This Agreement shall not be modified, amended, rescinded, canceled, or waived, in whole or in part, except by written amendment signed by duly authorized representatives of the parties.

4. No Third Party Benefit. This Agreement is a contract between CLIENT and ENGINEER and nothing herein is intended to create any third party benefit.

5. Governing Law and Jurisdiction. This Agreement shall be administered and interpreted under the laws of the State of Nevada. Any action at law, suit in equity or judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the district courts of the State of Nevada, County of Washoe.

#### ARTICLE XXVI - DUE AUTHORIZATION

Each party represents that all required authorizations have been obtained to execute this Agreement and for the compliance with each and every term hereof. Each person signing this Agreement warrants and represents to the other party that he or she has actual authority to execute this Agreement on behalf of the party for whom he or she is signing. An electronic or facsimile signature on this Agreement shall be treated for all purposes as an original signature.

-Signature Page Follows-

Duplicate originals. This Agreement is executed in one duplicate original for each party hereto, and is binding on a party only when all parties have signed and received a duplicate original.

IN WITNESS WHEREOF, CLIENT has caused this Agreement to be executed by the City of Reno and ENGINEER have caused this Agreement to be executed, all as of the day and year first above written.

CITY OF RENO

ATTEST:

By: \_\_\_\_\_  
Hillary L. Schieve, Mayor

By: \_\_\_\_\_  
Mikki Huntsman, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Susan Ball Rothe, Deputy City Attorney

CITY OF SPARKS

ATTEST:

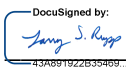
By: \_\_\_\_\_  
Ed Lawson, Mayor

By: \_\_\_\_\_  
Lisa Hunderman, Sparks City Clerk

APPROVED AS TO FORM

By: \_\_\_\_\_  
Wes Duncan, City Attorney

ENGINEER

By:  \_\_\_\_\_  
Larry Rupp, P.E., Principal  
Keller Associates, Inc.

## Attachment A

## City of Reno

# TMWRF Primary Sludge Screening and Acid Phase Digester Valve and Piping Improvements

## SCOPE OF WORK

**PROJECT DESCRIPTION**

**City of Reno** (“Client”) has contracted with **Keller Associates, Inc.** (“Consultant”) to address several deficiencies in their primary sludge and digestion system at the Truckee Meadows Water Reclamation Facility (TMWRF).

The Consultant’s scope of work has been developed based on the following project description. As the project moves forward, some of the information may change or be refined, and additional information will become known, resulting in the possible need to change, refine, or supplement the scope of work.

- The primary sludge screens are aging, and spare parts are not readily available. This has resulted in extended outages and required maintenance staff to fabricate custom parts.
- The Acid Phase Digester piping valves are frozen and cannot be operated. The Client desires to evaluate the piping system within Digester Control Building No.4 and design plans that include valve replacement, piping, and additional Acid Phase Digester bypass piping. The Client desires an evaluation of the impact to the facility process, and design plans/contract documents for construction.
- Design for recommended solutions for each task mentioned above is to be included. This includes contract documents, and bidding services.

Consultant’s services are limited to those services outlined in the following scope of work.

**SCOPE OF WORK****TASK 1: PROJECT MANAGEMENT***Consultant Responsibilities:*

- 1.1. General Project Management. Provide general project administration services including contract administration, project accounting, progress reports, scheduling, and internal project administration.
- 1.2. Kickoff Meeting and Site Visit. Participate in a project kickoff meeting. Prepare agenda and meeting notes. The purpose of this meeting will be to review/establish design criteria, review the overall project schedule including major milestones and meetings, review project constraints and objectives, discuss available data and published materials that will be made available by the Client, and review the process for deliverables including Client review and approval.

*Client Responsibilities:*

- Provide meeting space for project meetings.
- Provide a timely response to Consultant requested information.

*Assumptions:*

- Project management budget assumes a project schedule as shown in the Schedule section.
- Project is being funded by the Client. No other funding sources are anticipated.
- Unless otherwise noted, meetings/workshops may include a combination of in person or virtual attendees. This assumption applies to this task as well as subsequent tasks.

*Deliverables:*

- Monthly invoices and project update summaries.
- Meeting agendas and meeting notes.
- Request for information.

## **TASK 2: Data Collection and Review**

### *Consultant Responsibilities:*

- 2.1 Request for Information. Consultant will provide a request for information (RFI).
- 2.2 Data Review / System Evaluation. Consultant will review the information provided by the Client, and observations made during the site walk. A summary will be included in each relevant Task deliverable below.
- 2.3 Site Visits: Up to 2 visits with at least two people for data collection purposes.

### *Client Responsibilities:*

- Provide record drawings, CAD files, existing reports, and other available documentation as requested by the Consultant.

### *Deliverables:*

- RFI in the form of an email to the Client's project manager.

## **TASK 3: PRIMARY SLUDGE EQUIPMENT EVALUATION**

### *Consultant Responsibilities:*

- 3.1. Workshop: The Consultant will participate in two workshop meetings with Client staff to discuss the findings of the technical memo. It is anticipated that one workshop will take place after providing draft Technical Memorandum. A second workshop is anticipated after submitting the final Technical Memorandum before proceeding to concept design.
- 3.2. Analysis of the Primary Sludge
  - Consultant will perform an analysis of the primary sludge. The lab data is to include solids content only. Results will be used to aid in recommendations for each of the applicable equipment and piping evaluations.
- 3.3. Primary Sludge Screen Evaluation Technical Memorandum. Consultant will perform an evaluation of the existing and alternative Primary Sludge Screening equipment at TMWRF. It is anticipated that this evaluation will be limited to the following components:
  - Screen Type. Consultant will evaluate up to three types of screens.
  - Evaluation Criteria is anticipated to include: flexibility on variability of the sludge, efficiency of removing larger material, footprint, life cycle cost, serviceability (and longevity), odor containment, ease of operation and maintenance, and conflicts with existing constraints.
  - The Consultant will provide a comparison of advantages and disadvantages for each proposed alternative. The comparison will consider life cycle costs, ease of operation, maintenance requirements, treatment goals, and equipment footprint.
  - The Consultant will provide their opinion and recommendation for the best alternative based on the findings of the alternative analysis.

### *Client Responsibilities:*

- Provide a venue for the workshop.
- Provide comments on the draft technical memorandum.
- Provide assistance in sampling primary sludge.



*Deliverables:*

- Draft Primary Sludge Screening Technical Memorandum in PDF format.
- Final Primary Sludge Screening Technical Memorandum in PDF format.
- Summarize Primary Sludge Laboratory test data.

**TASK 4: ACID PHASE DIGESTER PIPING EVALUATION***Consultant Responsibilities:*

- 4.1. Workshop: The Consultant will participate in one workshop meeting with Client staff to discuss the findings of the site walk. It is anticipated that the workshop will take place after the first draft of the Acid Phase Digester Piping Technical Memorandum.
- 4.2. Acid Phase Digester Piping Technical Memorandum. Consultant will perform an evaluation of the Acid Phase Digester piping and valving. Evaluation will be confined to the piping within Digester Building No.4. After the initial site walk, the Consultant will prepare a Technical Memorandum, which discusses the existing piping system, an evaluation of the existing valving, a recommendation for replacement, and a plan for bypass piping. It is anticipated that the Technical Memorandum will be limited to the components below
  - Summary of the findings from the site walk.
  - Review of the existing system with a focus on ability to isolate equipment and processes, redundancy, sequencing with downstream processes, and the ability to bypass the acid phase digesters.
  - Discussion of proposed improvements.
  - Schematic level drawing illustrating the proposed improvements. It is anticipated that the drawings will include:
    - Construction sequencing specification and supporting drawings
    - Process impact evaluation. Consultant will perform a desktop analysis of the following to assess the implications of bypassing the Acid Phase Digester and provide recommendations.
      - Effects on alkalinity
      - Heating and Biogas production
      - Construction timing and correlation with other projects
      - Seasonal concerns
      - Volatile Solids Reduction

*Deliverables:*

- Draft Acid Phase Digester Technical Memorandum in PDF format.
- Final Acid Phase Digester Technical Memorandum in PDF format.

## TASK 5: CONCEPT DESIGN SERVICES

Consultant will perform concept level design services for the recommendations identified in Tasks 3 and 4. In addition to these designs, design services will include plans to demo and replace the primary sludge screens, and Digester Control Building No. 4 demolition plans.

### *Consultant Responsibilities:*

- 5.1. Concept Drawings and Project Constraints. Develop 30% drawings.
- 5.2. Cost Estimate. Provide an AAEC Class 4 opinion of probable cost for the project.
- 5.3. Workshop Meeting. Meet with Client to review concept design, project constraints, and probable cost. Document decisions in meeting minutes.

### *Client Responsibilities:*

- Participate in workshop meeting.

### *Assumptions:*

- Consultant shall be entitled to rely, without liability or the need for independent verification, on the accuracy and completeness of the information provided by Client, Client's consultants and Contractors, information from public records, and information ordinarily or customarily furnished by others, including, but not limited to specialty Contractors, manufacturers, suppliers, and publishers of technical standards. This assumption applies to this task and subsequent tasks.
- Design is anticipated to include process mechanical, structural, electrical, HVAC, and controls. Civil and architectural are not anticipated.
- It is anticipated that all design tasks noted will be submitted in a single package.
- 30 drawing sheets are anticipated.

### *Deliverables:*

- Agenda and minutes from workshop meeting
- Concept drawings (prepared in 22"x34" reviewed in 11"x17") delivered in PDF format.
- Opinion of probable cost.

## TASK 6: FINAL DESIGN SERVICES

### *Consultant Responsibilities:*

- 6.1. Final Design Drawings and Specifications. Once Client has approved the concept plans, Consultant will prepare 60% and 90% design drawings. Consultant will perform design drafting in AutoCAD for the construction plans which may include the Client standard notes, vicinity maps, sheet indexes, north arrows, scale, topography, pipe size, type, fitting, surface repair, crossing requirements, property lines, easements, survey control, and special details necessary for a biddable product. In preparing the final design, Consultant will rely on the accuracy of information provided by others. Drafting will be completed on 22"x34" sheets. Plans will also include standard details and/or references to appropriate design standards.

Specifications will use the City of Reno front-end and electrical contract documents, updates to the Supplemental Conditions, special provisions, references to the applicable design standards, supplemental specifications, and technical specifications.

Upon completion of the 60% and 90% plans, Consultant will submit a review set of plans to the Client and address Client comments.

- 6.2. Design Review Meetings. Participate in 60% and 90% design review meeting with the Client.
- 6.3. 100% Documents. Address Agency and Client comments in plans and specifications and submit 100% documents for Client.

- 6.4. Review Agency Submittal. Submit plans to the Nevada Department of Environmental Protection at the 90% level.
- 6.5. Opinion of Probable Construction Cost. Prepare an updated opinion of probable costs at the 60%, 90%, and 100% design phases. For the 100% cost estimate, utilize the bid schedule developed for the project.

*Client Responsibilities:*

- Provide current version of Client Supplemental Specifications, Client Electrical Specifications, and City of Reno front-end contract documents (if applicable).
- Provide legal and risk reviews of the bid documents.
- Provide comments and input on the design deliverables.
- Client will review and approve all deliverables. If final deliverable fails to comply with the agreed-upon scope of work, Consultant shall revise, correcting any negligent errors or omissions within the deliverables without additional compensation.

*Assumptions:*

- Since Consultant has no control over the cost of labor, materials, equipment, or services furnished by others, or over the contractor's methods of determining prices, or over competitive bidding or market conditions, the Consultant does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by the Consultant.
- Design is anticipated to include process mechanical, structural, electrical, controls, and HVAC.
- Civil, and architectural are not anticipated.
- It is anticipated that all design tasks noted will be submitted in a single package.
- Record CAD files of the Acid Phase Digester and Primary Screening Areas will be available for Consultant use.

*Deliverables:*

- 60% design submittal including (drawings and technical specification table of contents), including one PDF submittal and one 11x17 hard copy.
- 90% design submittal including (drawings and draft technical specifications), including one PDF submittal and one 11x17 hard copy.
- 100% design submittal (drawings and technical specifications), including one PDF submittal and three (3) 11"x17" hard copies.
- NDEP Submittal at 90% (drawings and technical specifications), including two stamped and signed full size (22x34) plan sets.
- Opinion of probable cost at 60%, 90% and 100%.

## **TASK 7: SERVICES DURING BIDDING**

*Consultant Responsibilities:*

- 7.1. Documents. Distribute bidding documents including addenda to Client
- 7.2. Pre-Bid. Attend a pre-bid meeting with Contractors interested in the project. The pre-bid will include a meeting and a site tour to provide a forum for answering Contractor questions.
- 7.3. Addenda. If required, respond to bidder questions that allow Client to provide up to three addenda during the bidding process to clarify, correct, or change the issued documents.
- 7.4. Bid Opening. Attend the bid opening and review Contractor bids with the Client.

*Client Responsibilities:*

- Make arrangements for and pay for the advertisement of the project.
- Chair the pre-bid meeting.
- Chair the bid opening meeting.
- Client will distribute plans, maintaining the plan holders list, distributing addenda, conducting the bid opening, and reviewing the bids
- Provide legal services if required.
- Award the bid.

*Assumptions:*

- One bid package and one bidding process is assumed. If rebidding or addressing bid protests is required, these services will be provided as an additional service.
- Includes responding to up to 30 bidder questions.

*Deliverables:*

- Three paper copies and one electronic copy in PDF format of the bidding documents and 11"x17" plans will be delivered to the Client.

**TASK 8: CLIENT DIRECTED SERVICES**

From time to time the Client may have additional tasks related to the project or additional tasks may be encountered that are not identified in this scope of work. For these instances, a time and material budget is established in order for Consultant to complete the additional services. A Client Directed Services budget is incorporated into this agreement to allow Client Staff (Client Project Manager) to authorize Additional Services if needed. The scope, schedule and budget for such items will be agreed upon in writing through a task order prior to incorporation into the work.

**ADDITIONAL SERVICES** (not included in scope of work)

- Special use permits, environmental services, or additional permitting beyond those described in the scope of work
- Public outreach or stakeholder outreach support
- Field investigations, including subsurface investigations, to check available record drawings
- Funding administration support
- Potholing
- Geotechnical field investigation
- Construction Phase services

**SCHEDULE**

Consultant anticipates the following project schedule. The number of days associated with each of the tasks are approximate and assume timely Client reviews and delivery of requested information. Actual schedule may vary:

<b>Task</b>	<b>Schedule</b>	<b>Comments</b>
Task 1 – Project Management	460 days	
Task 2 – Data Collection and Review	30 days	
Task 3 – Primary Sludge Piping and Equipment Evaluation	100 days	Assumes data from task 2 is received within the 30 days. Concurrent Tasks 3, and 4
Task 4 – Acid Phase Digester Piping Evaluation	100 days	Concurrent Tasks 3 and 4
Task 5 – Concept Design Services	90 days	
Task 6 – Final Design Services	150 days	
Task 7 – Services During Bidding	90 days	

**COMPENSATION**

As compensation for services to be performed by Consultant, the Client will pay Consultant as described in the following table. While individual task budgets may be exceeded The total authorized budget amount shall not be exceeded without written authorization from the Client. For time and materials tasks, compensation will be according to the Consultant's standard billing rates updated semi-annually in January and July.

It is understood that mileage, lodging, and food will be reimbursed at GSA rates.

<b>Task</b>	<b>Type</b>	<b>Manhours</b>	<b>Amount</b>
Task 1 – Project Management	T&M	116	\$ 21,215
Task 2 – Data Collection and Review	T&M	102	\$ 21,150
Task 3 – Primary Sludge Piping and Equipment Evaluation	T&M	548	\$ 46,750
Task 4 – Acid Phase Digester Piping Evaluation	T&M	282	\$ 42,750
Task 5 – Concept Design Services	T&M	1,066	\$ 39,490
Task 6 – Final Design Services	T&M	6,952	\$ 231,685
Task 7 – Services During Bidding	T&M	216	\$ 20,585
Task 8 – Client Directed Services	T&M		\$ 60,000
<b>TOTAL COST</b>			<b>\$ 483,625</b>

T&M = Time and Materials