

Sample Contract
Contract No. 1213-150
2012 Fleish Flume Rebuild
PWP #WA-2002-389

THIS CONTRACT FOR CONSTRUCTION, made and entered into this 17th day of September, 2012, by and between _____ hereinafter referred to as "Contractor", and Truckee Meadows Water Authority, P.O. Box 30013, Reno Nevada 89520-3013 hereinafter referred to as "Owner".

WITNESSETH:

That for and in consideration of the promises and agreements hereinafter made and exchanged, the Owner and the Contractor agree as follows:

1. **Incorporation of Provisions of NRS.** Contractor acknowledges that TMWA is a Nevada public agency and political subdivision of the State of Nevada, and as such is bound to adhere to certain procedures and obligations set forth in Chapters 338 and 339 of the Nevada Revised Statutes (NRS), notwithstanding the fact that the Project is located in the State of California. While Contractor shall at all times comply with all applicable local and state laws and regulations governing the Project in California, Contractor acknowledges and agrees that the provisions set forth in NRS Chapters 338 and 339 are hereby incorporated by reference as mutually agreeable terms and conditions applicable to the performance of the Work under the Contract.
2. **Scope of Work.** The Contractor will furnish all labor, materials, equipment, tools, transportation, services, appliances, and appurtenances for the construction of the ? in accordance with the Contract Provisions, Plans, and Specifications therefore, adopted by the Owner as prepared by Owner and all work incidental or reasonably inferable which is necessary to produce the results intended by the Contract Documents (the "Work"). The Contractor represents and agrees that it has carefully examined and understands this Agreement and the other Contract Documents, has investigated the nature, locality and site of the Work and the conditions and difficulties under which it is to be performed, and that it enters into this Agreement on the basis of its own examination, investigation and evaluation of all such matters and not in reliance upon any opinions or representations of the Owner, or any of their respective officers, agents, servants, or employees.
3. **Contract Sum.** Owner shall pay the Contractor, as full and complete compensation for Contractor's timely performance of all the Work in accordance with the Contract Documents and to the satisfaction of Owner, the lump sum amount of: _____ **Dollars.** The amount set forth above includes the aggregate amount of all allowances and unit price items to be furnished or installed.
4. **Progress Payments.** The Owner will pay the Contractor progress payments and the final payment in accordance with the provisions set forth in the Specifications computed from the actual quantities of work performed and accepted, and the materials furnished, at the unit and lump sum prices shown in the Proposal, as bid in conformance with the Contract Documents defined hereinafter. Owner will retain from such estimated value of the work done the amounts specified in the General Conditions. 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. Except with respect to any payment withheld pursuant to NRS 338.525, the amount of payments withheld as provided herein shall be retained for a period of 30 days from the date of project Completion and acceptance. 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.
5. **Mechanics Liens and Releases.** Contractor shall pay when due all valid charges for labor and material incurred by Contractor and used in the construction of the Work and shall be responsible for keeping the project free of mechanics liens recorded by or under its subcontractors and suppliers of any tier. If Contractor fails to comply with the foregoing, Owner may settle such claims or procure statutory lien release bonds and contractor shall on demand reimburse Owner for such claims and such bonds plus reasonable attorneys' fees. No progress payment or final

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payment will be made to Contractor until Contractor has furnished mechanics lien releases that comply with Civil Code §3262 or §§8120-8138 signed by all subcontractors, material suppliers, and others that have performed work on or furnished materials to the job. The form of lien releases is attached hereto. Notwithstanding the above, Owner reserves the right to issue payment by joint check directly to Contractor and to any subcontractor or material supplier who claims to remain unpaid for labor or materials provided for the Work.

6. **Time of Completion.** Contractor shall promptly commence and diligently prosecute the Work to be performed under this Agreement and achieve **Substantial Completion by November 26, 2012 and 100 percent completion by December 7, 2012** to the entire satisfaction of the Owner before final payment is made. All times stated in the Contract Documents, including interim milestones and those for the delivery and installation of materials and equipment, are of the essence of this Agreement

7. **Liquidated Damages.** Owner and Contractor recognize Owner will suffer extensive damages if the Work is not completed within the time specified above, the exact amount of which is difficult to ascertain. Accordingly, if Contractor fails to achieve substantial completion of the Work within the time specified above, Owner shall be entitled to retain or recover from Contractor, as liquidated damages for delay (but not as a penalty) the sum of **\$3000 (three thousand dollars)** per day commencing on the expiration of the time specified above and continuing until substantial completion. Owner may deduct liquidated damages from any unpaid amounts then or thereafter due the Contractor under this Agreement.

TMWA will pay the contractor for each day the Work is substantially complete prior to the Substantial Completion the sum of **\$1,500** (one thousand five hundred dollars) available to the Contractor as an Early Completion Incentive for each full calendar day that the work is substantially complete ahead of the Substantial Completion Date. Incentives by partial or pro-rated calendar days will not be considered.

Once the Substantial Completion Date has passed, the Contractor will be allowed two weeks additional time for cleanup, punch list completion, and site restoration. These items must be successfully finished by the Final Completion Date. If these items, and all other remaining contract items are not completed in the specified timeframe TMWA will be entitled to liquidated damages in the amount of **\$500 (five hundred dollars)** per day until all Work is complete.

8. **Prevailing Wage.** Contractor will pay, and will require all subcontractors to pay, unless otherwise exempt there from, all employees on said work a salary or wage at least equal to the prevailing salary or wage established for such work as set forth in the wage determinations and wage standards applicable to this work, as contained in or referenced by the Contract Provisions for this work. Contractor shall forfeit to the Owner, as a penalty, not less than \$20 nor more than \$50 for each calendar day and portion thereof that each workman employed: (a) is paid less than the designated rate for work done under the contract by the Contractor or any subcontractor under him (b) is not reported to the Owner in the time and manner described in NRS 338.070. In the performance of this Contract, not more than eight (8) hours shall constitute a day's work, and the Contractor shall not require more than (8) hours of labor in a day from any person employed by him hereunder. Contractor shall keep accurate records showing the name, occupation and actual per diem wages and benefits paid to each workman employed by him in connection with this project. The records shall be open to inspection by Owner, its officers and agents and at all reasonable hours.

9. **Acceptance and Final Payment.** As soon as practical following the completion of all phases of the Work, the Contractor shall make request by letter to Owner for a final inspection and acceptance of the Work, and if, in Owner's opinion, all provisions of the Contract Documents and Agreement have been satisfied, Owner will cause a Notice of Completion to be completed by the Project Manager. Final payment, constituting the entire unpaid balance of the contract sum, shall be made by Owner to Contractor when the Contract has been fully performed by Contractor except for Contractor's responsibility to satisfy requirements, if any, which necessarily survive final payment; and the Notice of Completion has been completed. Final payment shall be made by Owner not more than 30 calendar days following the Notice of Completion, as specified in the General Conditions. Final payment is further subject to Owner's prior receipt from Contractor of all lien releases, as-built drawings, certifications, prevailing wages,

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maintenance manuals, operating instructions, written guarantees, warranties, and bonds relating to the Work, and assignments of all guarantees and warranties from subcontractors, vendors, suppliers, or manufacturers, all as required by the Contract Documents. Acceptance of final payment by the Contractor shall constitute a full waiver and release by the Contractor of all claims against Owner arising out of or relating to this Agreement.

10. **Insurance.** The Contractor shall purchase and maintain prior to performing any Work on the Project, at its sole expense, from a company or companies authorized to do business in the State of Nevada and State of California, insurance policies containing the types of coverages and minimum limits of liability described in the General Conditions protecting from claims which may arise out of or result from the performance or non-performance of services under this Contract by the Contractor or by anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable, including without limitation subcontractors, independent contractors, and agents. Contractor shall procure and maintain at a minimum the insurance as required in the General Conditions, and shall require all subcontractors to procure and maintain at a minimum the insurance as required in the General Conditions, including but not limited to industrial insurance as required by applicable provisions of California law. Contractor or his subcontractor(s) failure to pay premiums will automatically authorize Owner to, at its option, terminate this Agreement or withhold amounts from funds due the Contractor and make insurance premium payments on behalf of the Contractor and/or his subcontractors.

11. **Performance and Payment Bonds.** The Contractor shall, prior to the execution of the Contract, furnish two bonds on the forms bound herein approved by the Owner, one in the amount of One Hundred Percent (100%) of the Contract price, to guarantee the faithful performance of the work, and one in the amount of One Hundred Percent (100%) of the Contract price to guarantee payment of all claims for labor and materials furnished. This Contractor shall not begin work until such bonds are supplied to and approved by the Owner.

12. **Contract Documents.** Contract Documents include, but are not limited to the Invitation to Bid Book including the: Invitation to Bid, Instructions to Bidders, Bid Bond, Bid Bid Schedule, Contract Award Instructions, Contract Performance Bond, Payment Bond, General Conditions, Permits, Supplementary Conditions, Standard Specifications, Technical Specifications, Plans, details, Addenda, if any, Executed Change Orders, if any, Notice of Award, Notice to Proceed Plans, and any other document that is incorporated into the contract is hereinafter referred to as EXHIBIT "A" and located at the Owner's office for public inspection.

13. **Nondiscrimination.** 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 or age. Such agreements 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. Any violation of such provision by the Contractor shall constitute a material breach of the Contract. Further, Contractor agrees to insert this nondiscrimination provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

14. **Preferences.**

14.1 **Veteran's Preference.** Contractor agrees to give preference to veteran's as described in NRS 338.130. If this provision is not complied with, the Contract shall be void, and any failure or refusal to comply with this provision shall render the Contract void.

14.2 **Bidder Preference.** To the extent Contractor has sought and qualified for a bidding preference and this project has a value of over \$250,000, Contractor acknowledges and agrees that the following requirements will be adhered to, documented and attained for the duration of the Project:

1. At least 50 percent of the workers employed on the Project (including subcontractors) hold a valid driver's license

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or identification card issued by the Nevada Department of Motor Vehicles;

2. All vehicles used primarily for the public work will be (a) registered and (where applicable) partially apportioned to Nevada; or (b) registered in Nevada.
3. At least 50 percent of the design professionals who work on the Project (including sub-contractors) hold a valid driver's license or identification card issued by the Nevada Department of Motor Vehicles;
4. At least 25 percent of the material suppliers used for the Project are located in Nevada; and
5. The Contractor shall maintain and make available for inspection within Nevada all payroll records related to the Project.

Contractor recognizes and accepts that failure to comply with any requirements herein shall be a material breach of the Contract and entitle Owner to liquidated damages in the amount described in NRS Chapter 338. In addition, the Contractor recognizes and accepts that failure to comply with any requirements herein may lose its certification for a preference in bidding for 5 years and/or its ability to bid on any contracts for public works in Nevada for one year pursuant.

15. Warranty. In addition to any other warranties provided by law or in the General conditions, Contractor warrants the Work under this Contract to be free from all defects for a period of one year from the date of final acceptance by Owner. Any defects found during this period shall be repaired by the Contractor at no cost to Owner in accordance with the requirements of the Contract Documents.

16. Indemnification/Hold Harmless. Owner has established specific indemnification and insurance requirements for agreements with Contractors which are fully set forth in the General Conditions, which Contractor has examined, understands and agrees to perform. Indemnification and hold harmless clauses are intended to assure that Contractors accept responsibility to pay for the loss liability and any and all costs and expenses arising out of their activities and Work.

17. Termination. In addition to other provisions of this Agreement, Owner has the right to terminate the Agreement without cause at any time upon giving Contractor seven days notice in writing. In the event the Agreement is terminated by Owner in accordance with this provision, Owner agrees to pay Contractor for all work satisfactorily completed and for materials installed prior to the date of termination.

18. Governing Law. Contractor acknowledges and agrees that, notwithstanding the location of the Project, Owner is a political subdivision of the State of Nevada and therefore to the fullest extent permitted by law this Agreement shall be governed by, interpreted under and construed and enforced in accordance with the laws of the State of Nevada, with venue in the County of Washoe with the sole and exclusive exception of issues arising from the enforcement and release of mechanic's liens, and regulation of Contractor's activities by the California Contractors State License Board, which shall be governed by California law. Each party acknowledges and agrees that the laws of the State of Nevada and the selection of venue were freely chosen.

17. Compliance with Laws. Contractor shall comply, and shall insure each subcontractor and other person who provides labor, equipment, materials, supplies or services for the Project complies, with the requirements of all applicable state and local laws, including without limitation, any applicable licensing requirements and requirements for the payment of sales and use taxes on equipment, materials and supplies provided for the Project, including without limitation, laws of the State of California applicable to Contractor's performance of the Work in the State of California.

18. Confidentiality. Contractor acknowledges and agrees the Drawings and Technical Specifications reveal

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critical infrastructure of facilities used for storing, transporting or transmitting water as contemplated by Nevada's Homeland Security Act, and that the disclosure or release of the Drawings and Technical Specifications to any unauthorized person would create a substantial likelihood of compromising, jeopardizing or otherwise threatening the public health, safety or welfare. Contractor shall not, and shall ensure its Subcontractors, employees and agents shall not, knowingly disclose such documents or information or assist, solicit or conspire with another person to disclose such documents or information Contract Documents without the express prior written consent of Owner.

19. Contractor's License Notice. CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS STATE LICENSE BOARD, WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN 4 YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATIONS. ANY QUESTIONS CONCERNING A CONTACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CA 95826.

20. Attorney Fees. If either party becomes involved in arbitration or litigation arising from this Contract or the performance of it, the court or tribunal in such arbitration or litigation or in a separate suit shall award reasonable costs and expenses of arbitration and litigation, including expert witness fees and attorney fees, to the prevailing party or parties.

Signature page follows this page.

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Owner and Contractor hereby enter into this agreement as of the date and year first written above.

“Owner”	
TRUCKEE MEADOWS WATER AUTHORITY, a joint powers authority	
By: _____	Date: _____
TMWA, General Manager	

STATE OF _____)
) ss
County of _____)

_____ hereby affirms under penalty of perjury that he/she is the Contractor, or authorized agent of the Contractor, for whom the aforesaid described work is to be performed by, and that he/she has read the foregoing Contract and understands and agrees to the terms, conditions, and requirements thereof.

- CONTRACTOR:**
- By:
 - Title:
 - Firm:
 - Address:
 - City/State & Zip:
 - Telephone:
 - Fax:
 - E-mail:
 - Contractor’s License No:

(Signature Of Contractor)

- ATTEST:**
- On this _____ day of _____, in the year 2012, before me, _____
/Notary Public, personally appeared ? personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he (she) executed it.

WITNESS my hand and official seal.

Notary's Signature

L.S.

DATED this ____ day of _____, 2012.

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that I/we ? as Principal, hereinafter called Contractor, and

a corporation duly organized or authorized to do business under the laws of the State of Nevada and State of California, as Surety, hereinafter called the Surety, are held and firmly bound unto Truckee Meadows Water Authority, a joint powers authority created pursuant to NRS Chapter 277, for the Sum of \$ _____ Dollars (state sum in words) to be paid to the Truckee Meadows Water Authority, for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. This bond shall be governed by the laws of the State of Nevada.

WHEREAS, Contractor has by written agreement dated September 17th, 2012 entered into a contract with Truckee Meadows Water Authority for **BID #1213-150** and titled "**2012 Fleish Flume Rebuild**" in accordance with drawings and specifications prepared by Truckee Meadows Water Authority and which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform all of Contractor's obligations under said Contract in accordance with the plans and specifications, and in strict conformity with the terms of said contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect. The Surety hereby waives notice of any alteration or extension of time made by Truckee Meadows Water Authority and its obligation is not affected by any such alteration or extension provided the same is within the scope of the contract. Whenever Contractor shall be, and is declared by Truckee Meadows Water Authority to be in default under the Contract, Truckee Meadows Water Authority having performed Truckee Meadows Water Authority's obligations thereunder, the Surety may promptly remedy the default or shall promptly:

- 1) Complete the Contract in accordance with its terms and conditions; or
- 2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Truckee Meadows Water Authority and the Surety jointly of the lowest responsive, responsible bidder, arrange for a contract between such bidder and Truckee Meadows Water Authority, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price, but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price", as used in this paragraph, shall mean the total amount payable by Truckee Meadows Water Authority to Contractor under the Contract and any amendments thereto, less the amount properly paid by Truckee Meadows Water Authority to Contractor. No right of action shall accrue on this bond to or for the use of any person or corporation other than Truckee Meadows Water Authority or successors of Truckee Meadows Water Authority.

PERFORMANCE BOND

Continued for **BID #1213-150** and titled "**2012 Fleish Flume Rebuild**"

BY:	(signature of Principal)
TITLE:	L.S.
FIRM:	
Address:	
City, State, Zip:	
Phone:	

Printed Principal's Name:

Attest by: (signature of Notary)

Subscribed and Sworn before me this day of , 2012.

Notary public for the State of

CLAIMS UNDER THIS BOND MAY BE ADDRESSED TO:

Nevada Agent Information

Name of Surety	Name of Nevada Licensed Agent
Address	Address
City	City
State/Zip Code	State/Zip Code
Name	Agent's Name
Title	Agent's Title
Telephone	Agent's Telephone

Surety's Acknowledgment:	Nevada Agent's Acknowledgment:
By:	By:

NOTICE:

No substitution or revision to this bond form will be accepted. Sureties must be authorized to do business in and have an agent for service of process in the State of Nevada and State of California. Certified copy of Power of Attorney must be attached.

LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that I/we ? as Principal, hereinafter called Contractor, and

a corporation duly organized or authorized to do business under the laws of the State of Nevada and State of California, as Surety, hereinafter called the Surety, are held and firmly bound unto Truckee Meadows Water Authority, a joint powers authority created pursuant to NRS Chapter 277, for the sum of \$ _____ **Dollars** (state sum in words) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. This bond shall be governed by the laws of the State of Nevada.

WHEREAS, Contractor has by written agreement dated September 17th, 2012 entered into a contract with Truckee Meadows Water Authority for **BID #1213-150** and titled "**2012 Fleish Flume Rebuild**" in accordance with drawings and specifications prepared by Truckee Meadows Water Authority and which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

- 1) A claimant is defined as one having a direct contract with the Contractor or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental of equipment directly applicable to the Contract.
- 2) The above-named Principal and Surety hereby jointly and severally agree with Truckee Meadows Water Authority that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. Truckee Meadows Water Authority shall not be liable for the payment of any costs or expenses of any such suit.
- 3) No suit or action shall be commenced hereunder by any claimant:
 - a) Unless claimant, other than one having a direct contract with the Contractor, shall have given written notice to any two of the following: the Contractor, Truckee Meadows Water Authority, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be personally served or served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal at any place the Principal maintains an office or conducts its business.
 - b) After the expiration of one (1) year following the date on which the last of the labor was performed or material was supplied by the party bringing suit.
 - c) Other than in a court of competent jurisdiction for the county or district in which the construction contract was to be performed.

LABOR AND MATERIAL PAYMENT BOND

Continued for **BID # 1213-150** and titled "**2012 Fleish Flume Rebuild**"

- 4) The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

BY: _____ (signature of Principal)

TITLE: _____ L.S.

FIRM: _____

Address: _____

City, State, Zip: _____

Phone: _____

Printed Principal's Name: _____

Attest by: _____ (signature of Notary)

Subscribed and Sworn before me this _____ day of _____, 2012.

Notary public for the State of _____

CLAIMS UNDER THIS BOND MAY BE ADDRESSED TO:

Nevada Agent Information

Name of Surety	Name of Nevada Licensed Agent
Address	Address
City	City
State/Zip Code	State/Zip Code
Name	Agent's Name
Title	Agent's Title
Telephone	Agent's Telephone

Surety's Acknowledgment:

Nevada Licensed Agent's Acknowledgment:

By: _____

By: _____

NOTICE:

No substitution or revision to this bond form will be accepted. Sureties must be authorized to do business in and have an agent for service of process in the State of Nevada and State of California. Certified copy of Power of Attorney must be attached.