



# CITY OF ELKO

## MUNICIPAL SWIMMING POOL REPAIR PROJECT - 2019

**JANUARY 22, 2019**

Prepared for:

**City of Elko  
1751 College Avenue  
Elko, NV 89801**

CONSISTS OF:

BIDDING REQUIREMENTS  
PROPOSAL FORMS  
CONDITIONS OF THE CONTRACT  
TECHNICAL SPECIFICATIONS

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Bid Set No. \_\_\_\_\_



## Table of Contents

<b>1.0</b>	<b>INVITATION TO BID .....</b>	<b>2</b>
<b>2.0</b>	<b>INSTRUCTIONS TO BIDDERS .....</b>	<b>4</b>
<b>3.0</b>	<b>PUBLIC WORKS CONTRACT .....</b>	<b>14</b>
	ARTICLE ONE - DESCRIPTION OF WORK .....	14
	ARTICLE TWO .....	16
	ARTICLE THREE - STARTING AND COMPLETION DATES .....	16
	ARTICLE FOUR - CONTRACT DOCUMENTS .....	16
	ARTICLE FIVE - DUTIES AND AUTHORITY OF THE OWNER .....	17
	ARTICLE SIX - RESPONSIBILITIES OF CONTRACTOR .....	19
	ARTICLE SEVEN - INSURANCE .....	22
	ARTICLE EIGHT - CORRECTING WORK .....	23
	ARTICLE NINE - CONTRACTOR'S WARRANTY .....	23
	ARTICLE TEN - MANUFACTURER'S WARRANTIES .....	23
	ARTICLE ELEVEN - CHANGES IN THE WORK .....	24
	ARTICLE TWELVE - CHANGE OF CONTRACT PRICE .....	25
	ARTICLE THIRTEEN - CHANGE OF THE CONTRACT TIME .....	26
	ARTICLE FOURTEEN - NOTICES .....	26
	ARTICLE FIFTEEN - EARLY TERMINATION FOR FAILURE TO REMEDY DEFAULT .....	27
	ARTICLE SIXTEEN - LIQUIDATED DAMAGES .....	28
	ARTICLE SEVENTEEN - ADDITIONAL PROVISIONS .....	29
<b>4.0</b>	<b>EXHIBITS .....</b>	<b>33</b>
	EXHIBIT 1 - BID FORM .....	33
	EXHIBIT 2 - BID PROPOSAL GUARANTEE .....	38
	<i>EXHIBIT 3 - EXPERIENCE QUALIFICATIONS</i> .....	40
	EXHIBIT 5 - AFFIDAVIT OF NON-COLLUSION .....	44
	EXHIBIT 6 - CERTIFICATION OF BIDDER REGARDING PENALTIES FOR NON-COMPLIANCE WITH NEVADA PREVAILING WAGE REQUIREMENTS .....	45
	EXHIBIT 7 - FRINGE BENEFIT PLAN, FUND OR PROGRAM DISBURSEMENT INFORMATION .....	46
	EXHIBIT 8 - DRAWINGS .....	48
	EXHIBIT 9 - PERFORMANCE BOND .....	49
	EXHIBIT 10 - PAYMENT BOND .....	52
	EXHIBIT 11 - NOTICE OF AWARD .....	56
	EXHIBIT 12 - NOTICE TO PROCEED .....	59
	EXHIBIT 13- STANDARD SPECIFICATIONS AND DETAILS FOR PUBLIC WORKS CONSTRUCTION (ORANGE BOOK), 2016 REVISED EDITION .....	60
	EXHIBIT 14 - GENERAL PROVISIONS .....	61
	EXHIBIT 15 - SPECIAL OR SUPPLEMENTAL PROVISIONS .....	62
	EXHIBIT 16 - TECHNICAL SPECIFICATIONS .....	63
	EXHIBIT 17 - PREVAILING WAGE RATES – ELKO COUNTY OR DAVIS-BACON (ATTACHED) .....	64
	EXHIBIT 18 – PREFERTNTIAL BIDDER STATUS AFFIDAVIT .....	65



## 1.0 INVITATION TO BID

Sealed bid proposals will be accepted until **3:00 P.M., Local Time, Tuesday, February 19, 2019**, at the office of the Elko City Clerk; 1751 College Avenue; Elko, Nevada 89801, for the following:

### **MUNICIPAL SWIMMING POOL REPAIR PROJECT - 2019**

Bid proposals received by the City Clerk after the above-stated time will not be accepted. **Bidders mailing their bids assume the risk of late delivery.**

Bidding documents, plans, specifications and contract documents can be obtained free of charge electronically from the City of Elko's website at the following web address: [http://www.elkocitynv.gov/government/bidding\\_opportunities/index.php](http://www.elkocitynv.gov/government/bidding_opportunities/index.php). All bidders shall be registered with the Elko City Clerk's Office on the official plan holder's list for this project prior to submitting bids for this project. All bidders shall attend the mandatory Pre-Bid Conference for the Project at the time and location stated below to be eligible to submit a construction bid.

Bid proposals must be submitted on the prescribed forms and accompanied by security in the amount, form and subject to the conditions listed in the Instructions to Bidders. Bid proposals will be opened at City Hall immediately after the above deadline, with the bid amounts submitted being read aloud by City Staff to the interested parties present, if any. All interested parties are invited to be in attendance at the bid opening. Contractors will be required to have a current Elko City business license prior to time of contract execution; moreover, a current Nevada State contractor's license of the proper classification to perform the project work is required at the time of the Project bid opening.

All bids must be submitted in a sealed envelope that is legibly marked "**MUNICIPAL SWIMMING POOL REPAIR PROJECT - 2019**". City staff shall thoroughly review all bid proposals for conformance with the contract documents prior to making a written recommendation for award to the Elko City Council.

The award will be made to the lowest responsive and responsible bidder to the extent and in the manner required by law, unless all bids are rejected. The lowest responsive and responsible bidder shall be determined on the basis of price, conformance to plans and/or specifications, the bidder's qualifications, conformance to applicable sections of NRS Chapter 338, and the best interest of the public.

**The mandatory Pre-Bid Conference will be held at Elko City Hall (1751 College Avenue, Elko, Nevada), on Tuesday, February 5, 2019 at 1:30 P.M., Local Time.**

The City Council may formally award the contract to the successful bidder at its regularly scheduled meeting at City Hall on **Tuesday, February 26, 2019**, after **4:00 P.M., Local Time.** The City Council may, in its sole discretion, reject all bids.



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**LABOR COMMISSIONER:** The Nevada Labor Commissioner's identifying project number is **PWP-EL-2019-120** for this project. NRS 338.013 requires the Labor Commissioner's identifying number to be included in all Bids. This project is estimated to be above \$250,000.00 in cost.

The City of Elko reserves the right to accept or reject any and/or all items specified in the bid proposal and further reserves the right to waive any minor technicalities in the bidding documents.

Dated this 29th day of January 2019.

City of Elko  
Elko City Council

BY: Bob Thibault  
Civil Engineer

Publish: Elko Daily Free Press –



## 2.0 INSTRUCTIONS TO BIDDERS

Bids are requested for a general construction contract, or work described in general, as follows:

- 1) The City of Elko (City) will receive sealed bids from Bidders until **3:00 P.M; Local Time, on Tuesday, February 19, 2019**. Bids received after this time will not be opened or accepted and will be returned unopened.
- 2) **The site visit and mandatory Pre-Bid Conference will be held at the Elko City Hall (1751 College Avenue, Elko, Nevada), on Tuesday, February 5, 2019, at 1:30 P.M. Local Time.** The City or an authorized representative will transmit to all prospective Bidders of record such Addenda as the City or its authorized representative in his discretion considers necessary in response to questions arising at the Pre-bid Conference. Oral statements by City representatives may not be relied upon and will not be binding upon the City. Minutes of the Pre-bid Conference issued by the City or authorized representative, if any, and Addenda issued as a result of the Pre-bid Conference, if any, shall constitute the sole and exclusive record and statement of the results of the Pre-bid Conference.
- 3) The apparent Low Bid will be based solely on the total amount of all bid items and any additive or deductive alternates selected for award by the City. All Bidders are required to submit Bids on all bid items, including all additive and deductive alternates. Additive and deductive alternates will be awarded at sole discretion of the City. If Alternate Bids are requested on this Project, the following applies: The priority of Alternate Bids will be announced by the City prior to the opening of bids. The City reserves the right to reject all Base Bids and all Alternate Bids. If the City elects not to reject all Bids, it will, prior to the award, first determine which one or more Alternates to accept; then the City will evaluate the lowest responsive and responsible Bidder based upon the Base Bid combined with any Alternates selected. If any Alternates are selected, the fact that a Bidder may have a lower individual Base or Alternate Bid than the individual Bids of the apparent lowest responsive and responsible Bidder is irrelevant, since the successful Bidder will be chosen on the basis of the sum of the Base Bid and the Alternates selected, together with the other relevant factors pursuant to NRS Chapter 338.
- 4) Bidders must submit bids on the Bid Form supplied by the City, fully completed with all blanks filled in, and signed by an authorized representative of the Bidder. Bids not submitted on the required form, and/or not fully completed and/or not signed by an authorized representative of the Bidder, shall be deemed nonresponsive and shall not be considered, subject to the right of the City to waive minor technical defects that do not give the Bidder an advantage over other Bidders, at its sole discretion.
- 5) The Nevada Labor Commissioner's identifying number for this project is **PWP-EL-2019-120**. NRS 338.013 requires that the project identifying number must be included in all Bids.



- 6) All Bidders must submit a Bid Bond in the form of a cashier's check, a certified check, or a corporate surety bond of not less than ten percent (10.0 %) of the amount of the bid, including additive and/or deductive alternates, payable to "The City of Elko," with their Bids. The Bid Bond will be forfeited to the City should the bidder to whom the contract is awarded fail to enter into the Contract in accordance with its Bid and the Contract Documents, and/or fail to furnish any other required bonds or certificates of insurance. The Bid Bond is a penalty, as opposed to liquidated damages, and the Bidder will be liable for all damages in excess of the Bid Bond. The Bid Bond will be returned upon signing of the Contract. The Bidder must use the form of Bid Bond required by the City. A Bid submitted without a Bid Bond that complies with all applicable City requirements will be deemed nonresponsive and not considered.
- 7) NRS 338.141 provides:
- 1) Except as otherwise provided in subsection (2) next below, each bid submitted must include:
    - (a) If the City provides a list of the labor or portions of the public work which are estimated by the City to exceed 3 percent of the estimated cost of the public work, the name of each first tier subcontractor who will provide such labor or portion of the work on the public work which is estimated to exceed 3 percent of the estimated cost of the public work; or
    - (b) If the City does not provide a list of the labor or portions of the public work which are estimated by the City to exceed 3 percent of the estimated cost of the public work, the name of each first tier subcontractor who will provide labor or a portion of the work on the public work to the prime contractor for which the first tier subcontractor will be paid an amount exceeding 5 percent of the prime contractor's total bid. If the bid is submitted pursuant to this paragraph, within 2 hours after the completion of the opening of the bids, the contractors who submitted the three lowest bids must submit a list containing the name of each first tier subcontractor who will provide labor or a portion of the work on the public work to the prime contractor for which the first tier subcontractor will be paid an amount exceeding 1 percent of the prime contractor's total bid or \$50,000, whichever is greater, and the number of the license issued to the first tier subcontractor pursuant to chapter 624 of NRS.

Forms for the Subcontractors List are provided for Bidder's use, to include a 5% List and a 1% List.



- (2) The lists required by subsection 1 must include a description of the labor or portion of the work which each first tier subcontractor named in the list will provide to the prime contractor.
- (3) A prime contractor shall include its name on a list required by paragraph (a) of subsection 1 if it will perform any of the work required to be listed pursuant to paragraph (a) of subsection 1.
- (4) Except as otherwise provided in this subsection, if a contractor:
  - (a) Fails to submit a required Subcontractors List within the required time; or
  - (b) Submits a Subcontractors List that includes the name of a subcontractor who, at the time of the submission of the list, is on disqualified status with the State Public Works Board pursuant to NRS 338.1376, the contractor's bid shall be deemed not responsive. A contractor's bid shall not be deemed not responsive on the grounds that the contractor submitted a list that includes the name of a subcontractor who, at the time of the submission of the list, is on disqualified status with the State Public Works Board pursuant to NRS 338.1376 if the contractor, before the award of the contract, provides an acceptable replacement subcontractor in the manner set forth in subsection 1 of NRS 338.13895.
- (5) A contractor whose bid is accepted shall not substitute a subcontractor for any subcontractor who is named in the bid, unless:
  - (a) The City or its authorized representative objects to the subcontractor, requests in writing a change in the subcontractor and pays any increase in costs resulting from the change.
  - (b) The substitution is approved by the City or its authorized representative. The substitution must be approved if the City or its authorized representative determines that:
    - (1) The named subcontractor, after having a reasonable opportunity, fails or refuses to execute a written contract with the contractor which was offered to the named subcontractor with the same general terms that all other subcontractors on the project were offered;
    - (2) The named subcontractor files for bankruptcy or becomes insolvent;





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- (3) The named subcontractor fails or refuses to perform his subcontract within a reasonable time or is unable to furnish a performance bond and payment bond pursuant to NRS 339.025; or
- (4) The named subcontractor is not properly licensed to provide that labor or portion of the work.
- (c) The City or its authorized representative, in awarding the contract pursuant to NRS 338.1375 to 338.139, inclusive:
  - (1) Applies such criteria set forth in NRS 338.1377 as are appropriate for subcontractors and determines that the subcontractor does not meet that criteria; and
  - (2) Requests in writing a substitution of the subcontractor.
- (6) If a contractor indicates pursuant to subsection 1 that it will perform a portion of work on the public work and thereafter requests to substitute a subcontractor to perform such work, the contractor shall provide to the City a written explanation in the form required by the City which contains the reasons that:
  - (a) A subcontractor was not originally contemplated to be used on that portion of the public work; and
  - (b) The substitution is in the best interest of the City.
- (7) As used in this section, "general terms" means the terms and conditions of a contract that set the basic requirements for a public work and apply without regard to the particular trade or specialty of a subcontractor, but does not include any provision that controls or relates to the specific portion of the public work that will be completed by a subcontractor, including, without limitation, the materials to be used by the subcontractor or other details of the work to be performed by the subcontractor.
- 8) All Bids must include a printout from the Nevada State Contractor's Board internet website (<http://www.nscb.nv.gov>), dated no more than 90 calendar days prior to the date for receipt of Bids, showing that the Bidder has a Nevada Contractor's license in good standing, and that the license is of the type and the monetary limit is sufficiently high to permit the Bidder to perform the work as a general contractor.**
- 9) A Bid by a corporation, limited liability company, or limited partnership, must include either: (A) for a foreign entity, a Certificate issued by the Nevada**





**Secretary of State within 90 calendar days prior to the date for receipt of Bids, certifying that the Bidder is qualified to do business in the State of Nevada (i.e., a Good Standing Certificate); or (B) for both foreign and domestic entities, a printout from a Business Entity Search on the Nevada Secretary of State Website within 30 calendar days prior to the date for receipt of Bids showing that the Bidder is an active entity registered in that office, together with any other information about the entity contained on the web page.**

- 10) Bidders must supply all information required by the Bid documents, and specifications. Bids must be full and complete. The City Council reserves the right in its sole discretion to reject any Bid as nonresponsive as a result of any error or omission in the Bid.
- 11) Bids must be clearly written without erasure or deletions. The City Council reserves the right to reject any Bid containing erasures or deletions.
- 12) Bidders may not modify the Bid Form or qualify their Bids.
- 13) Submission of a Bid signifies careful examination of the Contract Documents and complete understanding of the nature, extent and location of Work to be performed. The Bidder must complete the tasks listed in subsections "a" through "e" below, as a condition to bidding, and submission of a Bid shall constitute the Bidder's express representation to the City that the Bidder has fully completed the following:
  - a) The Bidder has visited and investigated the site where the Work will be performed prior to bidding and is satisfied with all conditions affecting the Work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electrical power, roads and uncertainties of weather, or similar physical conditions at the Project site, and the character of equipment and facilities needed prior to and during prosecution of the Work. The Bidder is satisfied as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from inspection of the Project site, including all exploratory work done by the City, as well as from information presented by the Contract Documents, or any other information made available to the Bidder prior to receipt of bids. Any failure by the Bidder to become acquainted with the available information shall not relieve the Bidder from the responsibility for estimating properly the difficulty or cost of successfully performing the Work.
  - b) The Bidder shall be entitled to rely upon all information furnished to the Bidder in writing by the City with respect to the Project site and to make all inferences from it that would reasonably be made by a contractor having knowledge and experience with similar work; however, the Bidder shall not be entitled to infer from City-supplied information any fact or condition which



would not be inferred by a bidder having knowledge and experience with similar work and, if the City-supplied information is inadequate or insufficient in any respect, the Bidder shall be required to obtain independently such other information as a knowledgeable and experienced contractor would prudently obtain in order to evaluate any such condition.

- c) The Bidder specifically acknowledges familiarity with all Federal, State, and local laws, ordinances, rules, and regulations which may in any manner affect those engaged or employed in the Work, or the materials or equipment in or about the Work, or in any way affect the conduct of the Work.
  - d) Bidder has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents; and
  - e) Bidder has given City or authorized representative prompt written notice of all conflicts, errors, ambiguities or discrepancies that it has discovered in or among the Contract Documents; provided, the City reserves the sole and exclusive right, in its discretion, to revise the Contract Documents to the extent permitted by law.
- 14) Bidders may examine any available "as-built" drawings of previous work by giving City or authorized representative upon reasonable request, so long as the disclosure of the as-built drawings does not violate the intellectual property rights of a third party. The City will not be responsible for accuracy of "as-built" drawings.
- 15) All questions about the meaning or intent of the Contract Documents are to be directed to the City or its authorized representative. Interpretations or clarifications considered necessary by the City or its authorized representative in response to such questions will be issued by Addendum mailed or delivered to all persons who were previously supplied the Bidding Documents. Questions received less than seven (7) business days prior to the date for opening Bids may not be answered. Only questions answered by a formal written Addendum will be binding upon the City. Questions answered in a written format other than an Addendum, or verbal or other unwritten interpretations or clarifications will not be binding upon the City.
- 16) Addenda may also be issued to modify the Bidding Documents at the discretion of the City.
- 17) Addenda must be acknowledged by the Bidder in the Bid Form by number. Addenda are Contract Documents. A complete list of Addenda may be obtained from the City or its authorized representative.
- 18) For contracts of \$250,000.00 or more, subject to certain limited exceptions, NRS



338.020 requires the contractor and all subcontractors to pay at least the prevailing wage set by the Nevada Labor Commissioner in effect at the time of contract award, even if the prevailing wage rates are changed between the time of preparation of the specifications and the time of contract award. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by the Nevada Labor Commissioner and in effect at the time of the printing of the specifications, are included in the specifications. All Bidders are responsible for confirming whether any applicable prevailing wage rates are changed between the time of preparation of the specifications and the time of contract award. Current "Prevailing Wage Rates for Elko County" are included in the attachment at the end of the Contract Technical Specifications for the Project.

- 19) Pursuant to NRS 338.140(1)(b), the City is prohibited from drafting or causing to be drafted specifications for bids, except in those instances where the product is designated to match others in use on a particular public improvement either completed or in the course of completion, calling for a designated material, product, thing or service by specific brand or trade name unless the specification lists at least two brands or trade names of comparable quality or utility and is followed by the words "or equal" so that bidders may furnish any equal material, product, thing or service. In the event equals are identified in the specifications, bids must be based on products and systems specified, or listed by name, in the Contract Documents or listed by name in Addenda. In the event the term "or equal" is used in the specifications, the following procedure must be followed for the approval of an equal:
- a) Any Bidder may request the City or its authorized representative to approve an equal prior to Bid opening, and each Bidder is encouraged to do so as soon as possible if its Bid will include an equal. However, no Bidder is required to make such a request.
  - b) If an equal item is approved prior to Bid opening, it must be listed on an Addenda to all prospective Bidders.
  - c) Requests for approval of an equal must contain sufficient information to permit the City or its representative to assess its suitability and impact on the Project. Insufficient information regarding the suitability of the equal shall be grounds for disapproval.
  - d) Nevada law permits the Contractor to submit data substantiating a request for approval of an equal up to seven (7) business days after the award.
  - e) If the request for approval of an "equal" is not given, the Bidder's Bid must be deemed nonresponsive (and the award rescinded if it has been made).



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- f) Substitutions may be requested after the Contract has been signed, but only in accordance with requirements specified in the General Conditions and Specifications, and Nevada law.
- 20) Bids will be received at the City Clerk's Office at **1751 College Avenue, Elko, Nevada**. Bids will be opened in a conference room at the City offices.
- a. Envelopes or boxes containing Bids must be sealed, and marked with name and address of the Bidder, and addressed to:
- City of Elko  
1751 College Avenue  
Elko, Nevada 89801**
- b. Mark envelopes or boxes:  
**BID FOR: MUNICIPAL SWIMMING POOL REPAIR PROJECT - 2019**  
**PROJECT FOR: City of Elko, Elko, Nevada**
- 21) By 3:00 p.m. of the **twentieth** business day following acceptance of Bids by the City Council, the bidder must deliver to the City proof that Bidder has taken out for the entire period covered by the proposed contract all insurance policies that would be required to perform the Contract. Proof of insurance may, without limitation, include a declaration page(s) and any other documents reasonably necessary to prove that all required insurance coverages are in effect at the time bids are submitted.,

Failure to properly and timely submit proof of insurance entitles the City Council to **reject the bid as non-responsive**, not issue a Notice to Proceed, and award the Contract to another Bidder.

- a. Any bid protest must be submitted in writing to **City legal counsel, David M. Stanton of Goicoechea, Di Grazia, Coyle & Stanton, Ltd., 530 Idaho Street, Elko, Nevada 89801** within five (5) business days after the date the recommendation to award a contract is issued by the City Council or its authorized representative. The notice of protest must include a written statement setting forth with specificity the reasons the person filing the notice believes the applicable provisions of law were violated. The protest must refer to the specific portions of all documents which form the basis for the protest. The protest must include the name, address and telephone number of the person representing the protesting party. The party filing the protest must concurrently transmit a copy of the initial protest document and any attached documentation to all other Bidders with a direct financial interest which may be adversely affected by the outcome of the protest



and/or who appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest.

- b. The City, to include its legal counsel, may investigate the protest.
  - c. A person filing a notice of protest may be required by the City at the time the notice of protest is filed, to post a bond with a good and solvent surety authorized to do business in the State of Nevada or submit other security, in a form approved by the City, to the City who shall hold the bond or other security until a determination is made on the protest. A bond posted or other security submitted with a notice of protest must be in an amount equal to the lesser of: (a) Twenty-five percent of the total value of the bid submitted by the person filing the notice of protest; or (b) Two hundred fifty thousand dollars.
  - d. A notice of protest filed in accordance with the provisions of this section operates as a stay of action in relation to the awarding of any contract until a determination is made by the City on the protest.
  - e. A person who makes an unsuccessful bid may not seek any type of judicial intervention until the City has made a determination on the protest and awarded the contract.
  - f. Neither the City, nor any authorized representative of the City, is liable for any costs, expenses, attorney's fees, loss of income or other damages sustained by a person who makes a bid, whether or not the person files a notice of protest pursuant to this section.
  - g. If the protest is upheld, the bond posted or other security submitted with the notice of protest must be returned to the person who posted the bond or submitted the security. If the protest is rejected, a claim may be made against the bond or other security by the City in an amount equal to the expenses incurred by the City because of the unsuccessful protest. Any money remaining after the claim has been satisfied must be returned to the person who posted the bond or submitted the security.
  - h. Bidders are advised to consult Nevada Revised Statutes 338.142 for requirements applicable to protests of awards of public works contracts.
- 22) Prior to award, the City Council reserves the right to reject any or all bids to the extent permitted by law including, without limitation, the right to reject any or all responsive bids or bids submitted by bidders determined to be not responsible.



Bidders are advised that any bid may be rejected if the public interest would be served by such a rejection.

- 23) The City Council also reserves the right to waive technical defects to the extent such defects are minor and the waiver does not provide any bidder with a competitive advantage over any other bidder.
- 24) Unbalanced bids and conditional bids are nonresponsive. For purposes of this paragraph, an "unbalanced bid" is one having nominal prices for some work items and enhanced prices for other work items. A "conditional bid" is one in which one or more specified prices may change after a bid is submitted.
- 25) Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between written words and figures, or words and numerals, will be resolved in favor of the words.
- 26) In evaluating bids to determine the best bid (where required), the City Council will consider the qualifications of bidders; whether the bids are responsive (to include whether the bids comply with the prescribed requirements, and such alternates, unit prices and other data, as are requested in the Bid Form or prior to the Notice of Award); whether the bidder is responsible; whether the quality of the services, materials, equipment or labor offered conforms to the approved plans or specifications; and whether the public interest would be served by such a rejection. The City may conduct such investigations as the City Council deems necessary to assist in this evaluation.
- 27) As a requisite to bidding on the work, bidders and their subcontractors must be properly licensed at the time of bid opening to perform all work bid under Chapter 624 of the Nevada Revised Statutes and Chapter 624 of the Nevada Administrative Code.
- 28) Unless all bids are rejected and except as otherwise provided under Nevada law, the contract will be awarded to the lowest responsive, responsible bidder.
- 29) For public works contracts of \$250,000.00 or more, NRS 338.147 requires the City to award the contract to the contractor who submits the best bid. Bidders are directed to NRS 338.147 for the criteria used to determine the best bid, which includes criteria for determining the lowest bid.
- 30) Bids may not be withdrawn (1) within sixty (60) calendar days following the date of bid opening or (2) after the contract has been awarded.

END OF DOCUMENT





### 3.0 PUBLIC WORKS CONTRACT

#### (NEVADA REVISED STATUTES CHAPTER 338)

This Contract is made and entered into on this \_\_\_ day of \_\_\_\_\_, 20\_\_ (hereinafter the "Effective Date") between the City of Elko, Nevada, a municipal corporation and political subdivision of the State of Nevada (hereinafter the "Owner") and:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

which party is a

\_\_\_\_\_  
(name and describe individual and/or type of business entity, including state of formation or incorporation, where applicable) hereinafter "Contractor."

#### RECITALS

WHEREAS, Owner intends to award a contract for the performance of a public works project known as the **MUNICIPAL SWIMMING POOL REPAIR PROJECT - 2019** (hereinafter the "Project");

WHEREAS, the Project is generally described as follows: Demolition and repair of the indoor swimming pool northern wall/roof area.

WHEREAS, Contractor was selected to perform the Project in accordance with Chapter 338 of the Nevada Revised Statutes and to complete the work in accordance with the Contract Documents (defined below) (hereinafter the "Work");

NOW, THEREFORE, for and in consideration of the above recitals and for good and valuable consideration as further described herein, the parties agree as follows:

#### **ARTICLE ONE - DESCRIPTION OF WORK**

Contractor shall perform all Work needed to complete the Project in accordance with this Contract and the documents attached hereto and incorporated herein as

**Exhibits 1 through 17**, as follows:

**Exhibit 1** Bid Form





- Exhibit 2** Bid Proposal Guarantee (including Bid Bond, if applicable)
- Exhibit 3** Bidder Experience Qualifications
- Exhibit 4** Designation of Subcontractors with 1% & 5% Subcontractor Lists
- Exhibit 5** Affidavit of Non-Collusion
- Exhibit 6** Certification of Bidder Regarding Penalties for Non-Compliance with Nevada Prevailing Wage Requirements
- Exhibit 7** Fringe Benefit Plan, Fund or Program Disbursement Information
- Exhibit 8** Drawings (including plans, maps, plats and blueprints)
- Exhibit 9** Performance Bond
- Exhibit 10** Payment Bond
- Exhibit 11** Notice of Award
- Exhibit 12** Notice to Proceed
- Exhibit 13** Standard Specifications and Details for Public Works Construction (Orange Book) *2016 Revised Edition* (see the following URL: <http://www.rtcwashoe.com/engineering-construction-99-156.html>) (hard copy not attached to Contract)
- Exhibit 14** General Provisions (depending upon applicable requirements)
- Exhibit 15** Special or Supplemental Provisions
- Exhibit 16** Technical Specifications
- Exhibit 17** Prevailing Wage Rates - Elko County or Davis-Bacon Wage Rates
- Exhibit 18** Preferential Bidders Status Affidavit

This Contract and **Exhibits 1 through 18** are herein referred to collectively as the "Contract Documents." The Work shall include all items identified as Additive Alternates in the Notice of Award. Unless otherwise indicated in the Contract Documents, the Work shall not include design work, which Owner shall procure through a separate contract or contracts with design professionals, nor shall the Work include work performed by Owner or items identified as Deductive Alternates in the Notice of Award.

In the event of an inconsistency between the terms of this Contract and any of the Contract Documents attached hereto as **Exhibits 1 through 18**, the terms of this Contract shall prevail.



**ARTICLE TWO**  
**CONTRACT PRICE**

Owner agrees to pay Contractor for the Work the total price of:

\$ \_\_\_\_\_

(hereinafter the "Contract Price"), which includes all labor, materials, and (where applicable) architectural and engineering plans necessary for the erection and completion of the Work as described in the Plans and Specifications and in accordance with the Contract Documents. Payment of the Contract Price is subject to approved additions or approved deductions in accordance with the provisions of this Contract.

**ARTICLE THREE - STARTING AND COMPLETION DATES**

Construction under this Contract shall begin no later than the date indicated on the "Notice to Proceed" to be issued by Owner after execution of this Contract. Subject to written extensions of time or delays authorized by Owner or stoppage of Work as permitted in this Contract, the Work shall be substantially completed no later than **Seventy-five (75) calendar days** after the Commencement Date indicated on the Notice to Proceed document which will be issued by the Owner on or after the Effective Date (hereinafter the "Contract Time"). In the event the Work has not been completed in accordance with the terms of this Contract, including written extensions of time and stoppages of Work as permitted by this Contract, or in the event the Contractor abandons the Work, the Owner may contract with a third party for completion of the Work, in which event the Contractor shall pay to Owner the additional cost for the portion of the Work completed by the third party. The foregoing is in addition to any other remedies provided under this Contract.

**ARTICLE FOUR - CONTRACT DOCUMENTS**

The Contract Documents on which the Contract between Owner and Contractor is based and which contain the Plans and Specifications in accordance with which the Work is to be done are as follows:



- A. This Contract, with any supplementary contracts and conditions attached hereto which are signed by both parties;
- B. **Exhibits 1 through 18**, which have been incorporated by reference herein; and
- C. Written Work Change Orders properly issued.

The Contract Documents together form the contract for the Work herein described. The parties intend that the Contract Documents include provisions for all labor, materials, equipment, supplies, and other items necessary for the execution and completion of the Work, and all items and conditions of payment. The documents also include all work and procedures not expressly indicated therein necessary for proper execution of this Project.

#### **ARTICLE FIVE - DUTIES AND AUTHORITY OF THE OWNER**

The duties and authority of the Owner are as follows:

- A. General Administration of Contract. General administration of the contract to ensure compliance with design plans.
- B. Access to Work Site for Inspections. Owner, or Owner's agents, shall be given free access to the Work at all time during its preparation and progress.
- C. Payment and Acceptance of Work.

(1) Application for Progress Payment. As a prerequisite to Contractor's entitlement to a progress payment, Contractor shall first submit to Owner for review an Application for Progress Payment filled out and signed by Contractor covering the Work completed to that date, and accompanied by such supporting documentation as is required by the Contract documents. If payment is requested on the basis of materials and equipment not yet incorporated into the Work, but delivered and suitably stored at the site or at another location designated by Contractor, the Application for Progress



Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all liens (to include lien waivers, if appropriate), charges, security interests and encumbrances, and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interests therein, all of which will be satisfactory to Owner.

(2) Progress Payments. Except as otherwise provided herein, Owner shall pay to Contractor the amount indicated on each Application for Progress Payment within thirty (30) calendar days of the date it is submitted to the Owner. All Progress Payments are subject to the requirements of NRS 338.515 (Time for making payments; amounts paid; amounts withheld as retainage; rate of interest paid on amounts withheld; powers of Labor Commissioner when worker is owed wages), as amended.

(3) Payment Upon Final Completion. Payment of any outstanding balance shall be paid in accordance with NRS 338.520 upon occupancy, use or recording of notice of completion, less amounts previously paid for the Work or amounts which Owner is required to withhold by order of the Nevada Labor Commissioner pursuant to NRS 338.515. In the event any liens are filed on the Project, those sums shall be withheld from the final retention payment, until such liens are resolved and removed. Upon final acceptance of the completed Work, Owner may publish a Notice of Completion. Contractor acknowledges and agrees that "substantial completion" is not equivalent to final completion.

D. Work Performed by Owner. This Contract specifically allows Work to be performed by Owner. Contractor assumes no responsibility for work performed by Owner and Owner shall release and hold harmless Contractor for any deficiencies in such work, and shall indemnify and defend Contractor from and against any and all claims arising from or in any manner related to Work performed by Owner. Owner shall, upon Contractor's request, identify in writing all work performed by Owner which is included within the scope of the Work and the Contract Price shall thereafter be reduced by the amount Contractor would have otherwise charged for the work pursuant to the Contract.



## **ARTICLE SIX - RESPONSIBILITIES OF CONTRACTOR**

Contractor's duties and rights in connection with the project herein are as follows:

A. Responsibility for and Supervision of Construction. Contractor shall be solely responsible for all construction under this Contract, including the techniques, sequences, procedures, and means, and for coordination of all Work. Contractor shall supervise and direct the Work to the best of its ability, and give the Work all attention necessary for such proper supervision and direction.

B. Furnishing of Labor, Materials. Contractor shall provide and pay, if necessary, for all labor, materials, and equipment, including tools, construction equipment, and machinery, utilities, transportation, and all other facilities and services necessary for the proper completion of Work on the project in accordance with the Contract Documents.

C. Compliance with Construction Laws and Regulations. The Contractor and any subcontractor or other person who provides labor, equipment, materials, supplies or services for the Work shall comply with the requirements of all applicable state and local laws, including, without limitation, any applicable licensing and registration requirements and requirements for the payment of sales and use taxes on equipment, materials and supplies provided for the Work. If any of the Contract Documents are at variance therewith, Contractor shall notify Owner promptly on discovery of such variance.

D. Responsibility for Negligence of Employees and Subcontractors. Contractor assumes full responsibility for acts, negligence, or omissions of all its employees on this project, for those of its subcontractors and their employees, and for those of all other persons doing Work under a contract with Contractor.

E. Materials Warranty. In addition to any other warranties set forth herein, Contractor represents and warrants to Owner that the materials used in the Work, and made a part of the structure on the Property or placed permanently in connection therewith, will be new unless otherwise specified in the Contract Documents, of good quality, free of defects, and in conformity with the Contract Documents. It is understood between the parties hereto that materials not so in conformity are defective.



F. Clean-up. Contractor agrees to remove all such waste material and rubbish on termination of the project, together with all its tools, equipment, machinery and surplus materials. Contractor agrees, on terminating its Work at the site, to conduct general clean-up operations.

G. Indemnity and Hold Harmless Contract. Contractor agrees to indemnify and hold harmless Owner, and its agents, and employees, from and against all claims, damages, losses, and expenses, including reasonable attorneys' fees in case it shall be necessary to file an action, arising out of performance of the Work herein, which is (1) for bodily injury, illness, or death, or for property damages including loss of use, and (2) caused in whole or in part by Contractor's intentional or negligent act or omission. Owner agrees to indemnify and hold harmless Contractor, and its agents, and employees, from and against all claims, damages, losses, and expenses, including reasonable attorneys' fees in case it shall be necessary to file an action, arising out of performance of the work herein (to include work performed by Owner), which is (1) for bodily injury, illness, or death, or for property damages including loss of use, and (2) caused in whole or in part by Owner's intentional or negligent act or omission.

H. Safety Precautions and Programs. Contractor has the duty of providing for and overseeing all safety orders, precautions, and programs necessary for the reasonable safety of the Work. In this connection, Contractor shall take reasonable precautions for the safety of all Work employees and other persons whom the Work might affect, all labor and materials incorporated in the project, and all property and improvements on the construction site and adjacent thereto, complying with all applicable laws, ordinances, rules, regulations and orders.

I. Subcontractors. Contractor acknowledges that it has provided Owner with a list or lists of all subcontractors which Contractor shall use for the Work to be performed herein in compliance with NRS 338.141(1)(b).

J. Payment of Materialmen. Contractor shall promptly pay all materialmen, subcontractors and other persons furnishing labor, material, goods or services to the Work, and shall indemnify and hold Owner harmless from any liens filed by such persons or entities including reasonable attorney fees and court costs incurred in connection



herewith.

K. Sales Taxes. Contractor shall be responsible for the payment of all sales, use, gross receipts or other taxes related to Contractor’s Work under this Contract.

L. Worker’s Compensation. Contractor shall, at its sole cost and expense, be responsible for providing or assuring that worker’s compensation coverage is provided to or by, all persons or entities providing labor in connection with the Work as required under the laws of the State of Nevada.

M. Employee Benefits. Contractor shall be responsible at its sole cost and expense for payment of any or all employee benefits taxes, including but not limited to unemployment, social security, retirement, health, welfare or any other fringe benefit in connection with any Work performed by Contractor.

N. Fees, licenses and Permits. Except as otherwise provided in this Subsection N, Contractor shall be responsible for fees (to include inspection fees), licenses and permits required by a governmental entity, to include, without limitation, the City of Elko. Notwithstanding the foregoing, Owner shall pay for or waive the following fees and/or permits to the extent required for the performance of the Work:

1. Building Permit Fee \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

O. No Assignment of Payments. Contractor shall not assign the right to receive any payments due under this Contract except with the prior written consent of the Owner.

P. Capacity of Contractor. Contractor has the financial capacity to pay all debts incurred in the performance of the Work, and possesses or shall prior to performance acquire all knowledge, equipment, materials, supplies and other means necessary to finally complete the Work within the Contract Time, to include the retention of appropriate subcontractors.





Q. Financial Capacity of Subcontractors. Contractor will ensure that all subcontractors it retains will have the financial capacity to pay all debts incurred in the performance of the portion of the Work for which they are subcontracted, and will possess or shall prior to performance acquire all knowledge, equipment, materials, supplies and other means necessary to finally complete the portion of the Work for which they are subcontracted within the Contract Time.

R. Licensing. Contractor is authorized to do business in the State of Nevada, is licensed for the type of work to be performed herein and holds Nevada Contractor's License Number(s):

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S. Site Inspection and Research. Contractor has visited the Property and has performed sufficient research necessary to familiarize itself with the Property and any special or local conditions, to include climate, topography and geographic location that have the potential to materially impact its ability to perform the Work within the Contract Time. Contractor has also reviewed all reasonably available reports (including geotechnical reports), test results, drilling logs and studies pertaining to subsurface conditions at the Property. Based upon the foregoing, Contractor has determined that it can perform the Work within the Contract Time.

**ARTICLE SEVEN - INSURANCE**

A. Contractor's Liability Insurance. Contractor agrees to keep in force at his own expense during the entire period of construction of the project such liability insurance as will protect it from claims, under worker's compensation and other employee benefit laws, for bodily injury and death, and for property damage, that may arise out of work under this Contract, whether directly or indirectly by Contractor, or directly or indirectly by a subcontractor. The minimum liability limit for bodily injury on such insurance shall not



be less than Two Million Dollars (\$2,000,000.00). Such insurance shall include contractual liability insurance applicable to Contractor's obligations under this contract. Unless previously provided, proof of such insurance shall be filed by Contractor with Owner within five (5) calendar days after execution of this contract.

B. Owner's Liability Insurance. Owner shall maintain premises liability in the amount of Two Million Dollars (\$2,000,000.00).

C. Property Damage Insurance. Contractor shall be solely responsible for any losses to his own equipment through fire, vandalism or other perils.

D. Fire and Perils Waiver. Owner and Contractor waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance provided herein.

#### **ARTICLE EIGHT - CORRECTING WORK**

When it appears to Contractor during the course of construction that any Work does not conform to the provision of the Contract Documents, Contractor shall make necessary corrections so that such Work will so conform, and in addition will correct any defects caused by faulty materials, equipment, or workmanship in Work supervised by Contractor or by a subcontractor.

#### **ARTICLE NINE - CONTRACTOR'S WARRANTY**

Contractor further represents and warrants that the Work will be performed in a good and workmanlike manner, in conformance with the Contract Documents and free from any and all defects. For a period of one (1) year after final acceptance by the Owner or within such longer period as may be prescribed by law, Contractor shall, at its own expense, promptly repair, replace, rebuild or restore any portion of the Work that is determined by the Owner to be defective or not in conformance with the Contract Documents.

#### **ARTICLE TEN - MANUFACTURER'S WARRANTIES**

To the extent available to Contractor, Contractor shall deliver to Owner guarantees



or warranties provided by the manufacturers of specific products utilized in the performance of the Work and installed or constructed on the Property.

### **ARTICLE ELEVEN - CHANGES IN THE WORK**

A. Owner's Change Orders. Without invalidating the Contract, Owner may at any time, from time-to-time, order additions, deletions, or revisions in the Work that do not result in a material change to the scope of Work. These will only be authorized by written Change Orders. Change Orders are to be negotiated solely with Contractor or its authorized representative and not with subcontractors or materialmen. Upon receipt of a written Change Order, Contractor will proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, an equitable adjustment will be made as provided in ARTICLE TWELVE or ARTICLE THIRTEEN.

B. Owner's Field Orders. Owner may authorize minor changes or alterations in the Work not involving extra cost and not inconsistent with the overall intent of the Contract Documents. These may be accomplished by a written Field Order. If Contractor believes that any minor changes or alterations by Owner entitle it to an increase in the Contract Price, Contractor may suspend Work until the Owner and Contractor agree upon the increased price.

C. Unauthorized Additional Work. Additional Work performed by Contractor without authorization of a Change Order will not entitle Contractor to an increase in the Contract Price or an extension of the Contract Time.

D. Execution of Change Orders. Owner will, upon approval, execute appropriate Change Orders prepared by Contractor covering changes in the Work to be performed and any other claim of Contractor for a change in the Contract Time or the Contract Price that is reasonable.

E. Writing Required. All Change Orders of whatever type or nature must be in writing and signed by an authorized representative of the Owner. Accordingly, wherever



the context of this Contract indicates that Owner approval is required, such approval must be as described in this ARTICLE ELEVEN, E, herein.

F. Suspension of Work. Notwithstanding any other provision herein, Contractor may not suspend Work based on a written Change Order affecting price or adding time unless the change requested materially affects Contractor's ability to perform the remainder of the Work within the price or time frames of the original Contract.

G. No Material Changes to Scope. In no event shall a Change Order cause a material change to the scope of the Work.

## **ARTICLE TWELVE - CHANGE OF CONTRACT PRICE**

A. Total Compensation. The Contract Price constitutes the total compensation payable to Contractor for performing the Work. All duties, responsibilities, and obligations assigned to or undertaken by Contractor shall be at its expense without change in the Contract Price.

B. Necessity of Change Order. The Contract Price may only be changed by a Change Order approved by the Owner and the Contractor. Any claim for an increase in the Contract Price shall be in writing and delivered to Owner. All claims for adjustments in the Contract Price resulting from any such claim shall be incorporated in a written Change Order. Subject to the limitations in ARTICLE ELEVEN, F, the Contractor may suspend Work until the Owner and Contractor agree upon the Change Order changing the Contract Price.

C. Determination of Value of Change Order Work. The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined by multiplying the applicable quantity by the unit price indicated in the bid form, except as otherwise agreed between Owner and Contractor in a written Change Order. In such case, Contractor will submit an itemized cost breakdown together with supporting data.

D. Amount of Credit to Owner. The amount of credit to be allowed by



Contractor to Owner for any such change that results in a net decrease in costs, will be determined by multiplying the applicable quantity by the unit price indicated in the bid form, except as otherwise agreed between Owner and Contractor in a written Change Order. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase, if any.

### **ARTICLE THIRTEEN - CHANGE OF THE CONTRACT TIME**

A. Necessity of Change Order. The Contract Time may only be changed by a Change Order. Any claim for an extension in the Contract Time shall be in writing delivered to Owner by Contractor within five (5) calendar days of the occurrence of the event giving rise to the claim. All claims for adjustment in the Contract Time shall be agreed upon in writing by the Owner and Contractor. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order. Subject to the limitations of ARTICLE ELEVEN, F, the Contractor may suspend Work until the Owner and Contractor agree upon the change in Contract Time.

B. Delays Beyond Contractor's Control. The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of Contractor if Contractor makes a claim for such extension(s) as provided in Section A of this ARTICLE THIRTEEN. Such delays shall include, but not be restricted to, acts or neglect by any separate contractor employed by Owner, fires, flood, labor disputes, epidemics, abnormal weather conditions, unanticipated site conditions or Acts of God, suspension of Work by Contractor resulting from Owner and Contractor failing to agree on Change Orders and work stoppage as set forth in Section C, below. Notwithstanding all provisions herein to the contrary, delays beyond sixty (60) calendar days, for any reason, permit the Owner to terminate this Contract on ten (10) calendar days' prior written notice. In such instance, Owner shall be liable to Contractor for all Work performed to the date of termination.

### **ARTICLE FOURTEEN - NOTICES**

Any and all notices, demands, requests, and other communications required or permitted to be served on or given to either party by the other shall be delivered personally or by United States Mail, first class postage prepaid, certified or registered



mail, return receipt requested, by facsimile or by e-mail, read receipt, as follows:

Contractor:            Name: \_\_\_\_\_  
                                  Attention: \_\_\_\_\_  
                                  Address: \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  Facsimile: \_\_\_\_\_  
                                  E-Mail: \_\_\_\_\_

Owner:                Name: **City of Elko**  
                                  Attention: **Kelly Wooldridge City Clerk**  
                                  Address: **1751 College Avenue,**  
                                  **Elko, Nevada 89801**  
                                  Facsimile: **775-777-7129**  
                                  E-Mail: **cityclerk@elkocitynv.gov**

Such addresses may be changed by the party entitled to receive notice any time upon this notice to the other party of designation of a new address. If delivered personally, such notice shall be effective upon delivery. If mailed, such notice shall be effective upon the date of receipt indicated on the return receipt.

**ARTICLE FIFTEEN - EARLY TERMINATION FOR FAILURE TO REMEDY DEFAULT**

A. Failure to Remedy Default; Early Termination. If Contractor defaults in performance of any material provision herein and Contractor fails to commence reasonable efforts to remedy such default after thirty (30) calendar days' written notice from the Owner specifying the default, Owner may then terminate this Contract before the completion date hereof without prejudice to any other remedy Owner may have.

B. Cost to Complete Project to be Reimbursed. If Owner terminates the Contract due to a breach in the terms of the Contract by Contractor, and is thereby required to retain a different contractor to complete the Project, any related increase in the total cost of the Project will be at Owner's sole discretion, will be withheld from any retention held by Owner, will be obtained from the proceeds of any applicable bond(s)



posted by the Contractor and/or will be reimbursed by the Contractor to the Owner immediately upon demand.

### **ARTICLE SIXTEEN - LIQUIDATED DAMAGES**

A. Liquidated Damages for Failure to Timely Achieve Substantial Completion. It is acknowledged that the Contractor's failure to achieve substantial completion of the Work within the Contract Time provided by the Contract Documents will cause the Owner to incur substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain with certainty as a basis for recovery by the Owner of actual damages, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages for such delay, the Contractor agrees that liquidated damages may be assessed and recovered by the Owner as against Contractor and its Surety, in the event of delayed completion and without the Owner being required to present any evidence of the amount or character of actual damages sustained by reason thereof; therefore Contractor shall be liable to the Owner for payment of liquidated damages in the amount of **One Thousand Dollars (\$1,000.00)** for each calendar day that Substantial Completion is delayed beyond the Contract Time as adjusted for time extensions provided by the Contract Documents.

B. Interest. Interest shall accrue on all unpaid liquidated damages at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions on January 1 or July 1, as the case may be, immediately preceding the date of the liquidated damages accrue, plus 2 percent. The rate shall be adjusted accordingly on each January 1 and July 1 thereafter until the liquidated damages are paid in full.

C. Owner's Right of Offset. In the event there are sums due to Contractor from Owner subsequent to the date upon which liquidated damages begin to accrue, Owner may thereafter offset and deduct from such sums the amount of any liquidated damages then accrued and Contractor shall not thereafter be entitled to recover the difference from Owner.

D. Remedy not Exclusive. Liquidated damages are intended to represent estimated actual damages and are not intended as a penalty. Contractor shall pay





liquidated damages to Owner without limiting Owner's right to terminate this Contract for default as provided elsewhere herein. Liquidated damages only represent damages for administrative costs, overhead and loss of public use caused by Contractor's delay. The imposition or recovery of liquidated damages by Owner shall in no manner affect Owner's ability to recover any other damages caused by Contractor's default to include, without limitation, the cost of completion.

## **ARTICLE SEVENTEEN - ADDITIONAL PROVISIONS**

A. Integration. This Contract and the exhibits hereto constitute the entire contract between the parties with respect to the Work and supersede all prior agreements, offers and negotiations (to include, without limitation, the Invitation to Bid and Instructions to Bidders, unless otherwise specifically stated herein) and may not be amended except by a contract in writing signed by the parties.

B. Binding on Assigns and Successors. This Contract shall inure to the benefit of and be binding upon the parties hereto and their respective heirs and assigns and successors.

C. Choice of Law; Jurisdiction and Venue. This Contract and the provisions hereof shall be construed, given effect and governed by the laws of the State of Nevada, and in the event of a breach of this contract by any of the parties, the other party shall have all remedies at law or equity provided by the laws of the State of Nevada. Irrespective of any statutory provision to the contrary, jurisdiction and venue for any action shall be in the Fourth Judicial District Court of the State of Nevada, in and for the County of Elko. The parties understand that statutory provisions may permit venue in locations other than the County of Elko; however, the parties hereby voluntarily waive any such statutory provisions.

D. Captions and Headings. The captions and headings of the sections hereof are for convenience only and shall not control or affect the meaning or construction of any of the terms or provisions of the Contract.

E. Attorney Fees and Costs to Prevailing Party. Should either party be required



to seek legal action to enforce or interpret the terms and conditions of this contract, the prevailing party shall be entitled to reasonable attorney fees and costs.

F. Ambiguities. Each party has reviewed this Contract with counsel; accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Contract.

G. Unenforceability of Provisions. In the event that one or more of the provisions, or portions thereof, of the Contract is determined to be illegal and unenforceable, the remainder of the Contract shall not be affected thereby and each remaining provision or portion thereof shall continue to be valid and effective and shall be enforceable to the fullest extent permitted by law.

H. Further Documents. Contractor and Owner agree to execute all documents necessary to complete the Contract described herein.

I. Waiver. Any waiver of one or more defaults or breach of any term of this Contract shall not be construed to constitute a waiver of future defaults or breaches of the terms of this Contract.

J. Signatures. The parties agree that this Contract may be executed by electronic or facsimile signatures, which shall have the same effect as original signatures of the parties. Also, this Contract may be executed in counterparts, all of which shall be deemed originals and with the same effect as if all parties had signed the original. The signatories to this Contract are authorized to execute this instrument on behalf of the respective parties.

K. Mediation. The parties recognize that differences sometimes arise in the course of a relationship and wish to avoid litigation. Accordingly, all claims, disputes and other matters in question between Contractor and Owner arising out of or relating to this Contract or the breach thereof, the Project, or the Work ("disputes") shall first be submitted to negotiation. Disputes claimed by either party must be made by written notice promptly upon the recognition of the event giving rise to such claim. If after thirty (30) calendar days from the date the dispute arose negotiations prove unsuccessful in whole or in part,



any remaining disputes shall be submitted to a mediator and the mediation shall be performed expeditiously by a mediator located in Elko County, Nevada. In the event a mediator cannot be located in Elko County, Nevada, the parties agree to split the cost for a mediator to travel to Elko County, Nevada to mediate such claims.

Pending final resolution of any dispute, including mediation in accordance with this Section, Contractor shall proceed diligently with performance of the Work to the extent it is unrelated to the dispute and the subject matter of the dispute does not inhibit the progress of the Work generally and Owner shall continue to make payments to Contractor in accordance with this Agreement to the extent unrelated to the dispute. To the extent necessary in light of the circumstances, the Contract Time shall be extended by the period of time necessary to resolve any dispute. Such performance by Contractor and payment by Owner shall not operate to waive or estop either party from pursuing the claim which gave rise to the dispute.

If the mediation does not occur within ninety (90) calendar days of such dispute, or if the mediation is conducted and all disputes are not therein resolved, then either party may file an action in the Fourth Judicial District Court, Elko, County, Nevada. All applicable statutes of limitations and the like shall be tolled while the requirements of this provision are pending, but only as to the disputes hereby submitted for negotiation or mediation.

L. Approval by City Council and Execution by City Official (s). Notwithstanding any other provision herein contained, this Contract shall not be binding on the Owner until it has been approved by the City Council and executed by its authorized official(s).

***[Remainder of page intentionally left blank.  
Signature Page Immediately Follows]***



**CITY OF ELKO**  
1751 College Avenue, Elko, NV 89801  
(775) 777-7100 \* [www.elkocity.com](http://www.elkocity.com)

**IN WITNESS WHEREOF**, the parties have executed this Contract as of the day and year first hereinabove written.

**OWNER:**

**CITY OF ELKO**

By: \_\_\_\_\_  
**MAYOR**

**CONTRACTOR (Company Name) :**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
**KELLY WOOLDRIDGE, City Clerk**



**4.0 EXHIBITS**

**EXHIBIT 1 - BID FORM**

**THIS FORM, FULLY COMPLETED, MUST BE USED FOR ALL BIDS**

**TO THE CITY OF ELKO, NEVADA:**

The undersigned bidder hereby offers, in the amount stated in Exhibit 1 – Bid Form, to furnish all labor, materials, tools, equipment, apparatus, facilities, transportation, incidental items and permits (except as otherwise stated in the Contract Documents) for the construction of the Project, described as follows:

**THE CITY OF ELKO  
 MUNICIPAL SWIMMING POOL REPAIR PROJECT - 2019**

The bidder agrees that the work will be performed in accordance with the Contract Documents together with incidental items necessary to complete the work to be constructed in accordance with the Contract, any and all Exhibits to the Contract, Exhibit 16 – Technical Specifications, Exhibit 8 – Project Construction Plans and also in accordance with the "Standard Specifications and Details for Public Works Construction", 2016 Revised Edition, and amendments (Orange Book) as adopted by the City of Elko, Nevada.

Item No. & Work Description	Quantity	Unit	Unit Price	Bid Amount
1. BASE BID - Mobilization and Demobilization to and from the project site @ _____ _____ per Lump Sum.	1	LS	LS	\$ _____
2. BASE BID – Demolition and Disposal of including, but not limited to northern wall/roof translucent panel roofing, glass exterior wall, slab on grade, brick veneer and mounted lighting fixtures including all labor, materials & equipment @ _____ _____ per Lump Sum.	1	LS	LS	\$ _____
3. BASE BID – Roof/wall replacement including concrete frost wall and all labor, materials, supplies, and equipment. @ _____ _____ per Lump Sum.	1	LS	LS	\$ _____



4. BASE BID – 4” Concrete slab on grade replacement including all labor, materials, supplies and equipment. @ _____ _____per Lump Sum.	11.5	CU/YD		\$ _____
5. BASE BID – Install building new lighting on northern wall including all labor, materials, supplies and equipment. @ _____ _____per Lump Sum.	1	LS	LS	\$ _____

**TOTAL BASE BID AMOUNT (BID ITEMS NO. 1 – NO. 5) IN NUMBERS =**

\$ \_\_\_\_\_

**TOTAL BASE BID AMOUNT (BID ITEMS NO. 1 – NO. 5) IN WRITTEN FORM =**

\_\_\_\_\_  
 \_\_\_\_\_

**BASE BID INSTRUCTIONS:** The Base Bid amount is to be stated in legible figures only and is the total amount bid for the entire contract work, including all applicable taxes. Any alteration, erasure or change must be clearly indicated and initialed by the bidder. The bidder agrees that the following, without limitation, may, in the City’s discretion, constitute grounds for rejecting this bid as non-responsive: (1) one or more blanks are not filled in; (2) the bid form is not signed by an authorized representative of the bidder; (3) any words or figures are not legible; (4) there are discrepancies in the figures (to include arithmetical errors); (5) the bid is not submitted with a compliant bid bond; (6) the bidder supplies false information on this bid form; or (7) the bidder fails to provide information required by this bid form or Nevada law.

**COMMUNICATIONS WITH CITY:** All communications with the City regarding this Project until the time a contract is executed by the City shall be directed to the Office of the Elko City Clerk. In the event the City determines that a bidder has attempted to communicate with any City official or employee in violation of the preceding sentence, the City may, in its discretion, reject that bid (even after a Notice of Award has been issued) on the ground that rejection of the bid serves the public interest.



**CERTIFICATION OF FAMILIARITY WITH PROJECT AND CONTRACT REQUIREMENTS:**

The bidder certifies that it has inspected the location where the Project will be performed, has read and is thoroughly familiar with the Project and the Contract documents, and has received and thoroughly reviewed the following Addenda and/or other documents from the City in relation to this Project: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**BIDDER ACKNOWLEDGES RECEIPT OF THE ADDENDA AND OTHER DOCUMENTS REFERENCED ABOVE!**

**BID BOND:** As a condition of the privilege to bid on this Project, the bidder shall submit with its bid a bid bond, executed by a surety company authorized to do business in the State of Nevada, in an amount equal to TEN PERCENT (10%) of the amount of the Base Bid plus all additive alternates. Should the bidder be awarded the contract and thereafter fail to enter into a written contract for the Project upon request by the City, the bidder shall thereupon forfeit and the City shall retain the full amount of the bid bond, which shall be a penalty and not damages.

**CONTRACTOR’S LICENSE:** The bidder certifies that it holds a valid Nevada State Contractor’s license, as follows:

**LICENSE CLASSIFICATION:** \_\_\_\_\_

**LICENSE NUMBER:** \_\_\_\_\_

**CITY OF ELKO BUSINESS LICENSE:** The bidder certifies that it holds a valid City of Elko Business License, as follows, or will obtain one prior to the time of Contract execution:

**LICENSE TYPE:** \_\_\_\_\_

**LICENSE NUMBER:** \_\_\_\_\_

**RESOLUTION:** If the bidder is a limited liability company or corporation, the bidder must include with its bid an appropriate resolution authorizing the signatory to this document to





sign and submit this bid, and execute a contract for performance of the Project on behalf of the Limited Liability Company or Corporation.

**EFFECT OF AWARD:** An award constitutes conditional acceptance of a bid, subject to the City of Elko executing and delivering to the winning bidder a fully executed copy of the Public Works Contract. Prior to the delivery of a fully executed copy of the Public Works Contract, the Elko City Council may, in its discretion, decide to reject all bids and perform the work itself, rebid the Project or not proceed with the Project.

**WINNING BIDDER:** The winning bidder will be determined accordance with Chapter 338 of the Nevada Revised Statutes. The City reserves the right, in its sole discretion, to waive minor technical defects or irregularities in bids provided the waiver does not give a competitive advantage to one bidder over another.

**PROTEST RIGHTS:** Under Nevada law, a person who bids on a public works contract may file a notice of protest regarding the awarding of the contract with the authorized representative designated by the public body within five (5) business days after the date the recommendation to award a contract is issued by the public body or its authorized representative. Bidders are advised to consult Nevada Revised Statutes 338.142 for requirements applicable to protests of awards of public works contracts.

**BIDDER INFORMATION AND SIGNATURE:**

**DATED** this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**NAME OF BIDDER:** \_\_\_\_\_

**TYPE OF ENTITY (e.g., partnership, corporation):**\_\_\_\_\_

**COMPLETE ADDRESS AS SHOWN ON THE OFFICIAL WEBSITE OF THE NEVADA STATE CONTRACTOR’S BOARD (THIS ADDRESS WILL BE USED FOR ALL WRITTEN CORRESPONDENCE WITH THE BIDDER UNLESS OTHERWISE AUTHORIZED BY THE CITY):**

\_\_\_\_\_  
\_\_\_\_\_



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**AUTHORIZED SIGNATURE:** \_\_\_\_\_

**PRINT OR TYPE NAME:** \_\_\_\_\_

**OFFICIAL TITLE OR CAPACITY:** \_\_\_\_\_

\*\*\*\*\*End of Exhibit 1 – Bid Proposal Form Document \*\*\*\*\*



**EXHIBIT 2 - BID PROPOSAL GUARANTEE**  
**(To Accompany Bid Form)**

KNOW ALL MEN BY THESE PRESENTS, THAT WE, THE UNDERSIGNED,

\_\_\_\_\_, as PRINCIPAL,

and \_\_\_\_\_, as SURETY,

are hereby held and firmly bound unto the CITY OF ELKO, NEVADA, as OWNER in the penal sum of at least **ten (10%) percent** of the total amount of bid equal to:

\_\_\_\_\_  
(Written Form)

(Numbers) \$\_\_\_\_\_ for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

The condition of the above obligation is such that whereas the Principal is herewith submitting to the CITY OF ELKO, NEVADA, a certain Bid for the:

**THE CITY OF ELKO**  
**MUNICIPAL SWIMMING POOL REPAIR PROJECT - 2019**

NOW, THEREFORE,

(a) If the Principal shall not withdraw said Bid within thirty (30) calendar days after the opening of the same, or

(b) If said Bid shall be rejected, or in the alternate,

(c) If said Bid shall be accepted and the Principal shall within **twenty (20) calendar days** after receipt of Notice of Award, execute and deliver a contract in the form of Contract specified in the Contract Documents (properly completed in accordance with said Bid) and shall furnish a bond with good and sufficient surety or sureties for his faithful performance of said Contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, then this obligation shall be void, otherwise the same shall remain in force and effect and the Principal and Surety will pay unto the Owner the penal sum hereof; it being expressly understood and agreed that the liability of the Surety for any and



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all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of the time within which the OWNER may accept such Bid; and said Surety does not hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_;

PRINCIPAL: \_\_\_\_\_

SURETY: \_\_\_\_\_

BY: \_\_\_\_\_

(SEAL)



**EXHIBIT 3 - EXPERIENCE QUALIFICATIONS**  
**(To Accompany Bid Form)**

By signing this form, the Bidder verifies that he/she has been engaged in the contracting business under the present business name for the previous five (5) years.

The Bidder must have previous experience in work similar to the Project. In order to demonstrate this to the City, the Bidder must provide references and contract amounts for previous projects of similar type and complexity to the Project. These references and contract amounts must have been parties to the same contracts as Bidder with respect to projects of this type.

**Similar Projects**

YEAR	CONTRACT AMOUNT	TYPE OF WORK	LOCATION & FOR WHOM PERFORMED	CONTACT NAME	PHONE #

In addition to the above references (unless the same), the Bidder must list references and contract amounts for recent projects that have been satisfactorily completed, together with the corresponding information requested in the following table:

**Recent Projects**

YEAR	CONTRACT AMOUNT	TYPE OF WORK	LOCATION & FOR WHOM PERFORMED	CONTACT NAME	PHONE #



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By signing this form, the Bidder verifies that he/she has never failed to satisfactorily complete a contract to which he/she was a party, except as follows (attached additional sheets if required):

---

The following is a list of property, plant and equipment owned by the Bidder which is definitely available for use on the proposed work if needed:

Attach additional sheets if required.

SIGNED: \_\_\_\_\_

DATE: \_\_\_\_\_



**EXHIBIT 4 - DESIGNATION OF SUBCONTRACTORS**

**FIVE PERCENT LIST  
 NRS 338.141(1)(b)  
 (To Accompany Bid)**

State law requires that the prime contractor on this project submit a "5% List" with his or her bid. The 5% List must include the name of the prime contractor and the name of each first tier subcontractor who will provide labor or a portion of the work for which the prime contractor and (if applicable) the first tier subcontractor will be paid an amount exceeding 5 percent of the prime contractor's total bid.

**A PRIME CONTRACTOR BIDDING ON A PUBLIC WORK MUST INCLUDE HIS OR HER NAME ON THE 5% LIST!**

**IMPORTANT: A BID WITHOUT A TIMELY, COMPLETE AND CORRECT 5% LIST THAT COMPLIES WITH NRS 338.141 WILL BE AUTOMATICALLY DEEMED NOT RESPONSIVE!**

The 5% List must also contain a description of the labor or portion of the work which the prime contractor will perform and which each first tier subcontract will provide to the prime contractor. In order to help you complete the 5% List, the City is providing you with this form.

**IMPORTANT: THE PRIME CONTRACTOR MUST BE INCLUDED ON THIS LIST OR THE BID WILL BE REJECTED!**

Name of Prime Contractor/First Tier Subcontractor(s)	Contractor's License Number	Description of Labor or Work	Percentage of Work Done

*(Use additional sheets if necessary)*





**ONE PERCENT LIST  
NRS 338.141(1)(b)(2)  
(To Accompany Bid)**

State law requires that if a prime contractor's bid is one of the three lowest bids, within 2 hours after bid opening the prime contractor must submit a "1% List" if the prime contractor is employing a first tier subcontractor who will provide labor or a portion of the work who will not be paid an amount exceeding \$250,000.

**IMPORTANT: A BID WITHOUT A TIMELY, COMPLETE AND CORRECT 1% LIST THAT COMPLIES WITH NRS 338.141 WILL BE AUTOMATICALLY DEEMED NOT RESPONSIVE!**

The 1% List must contain the name and contractor's license number of each first tier subcontractor who will provide labor or a portion of the work for which the first tier subcontractor will be paid 1 percent of the prime contractor's total bid or \$50,000, whichever is greater.

A prime contractor must include his or her name on the 1% List, together with:

- (1) a description of the labor or portion of the work that the prime contractor will perform; or
- (2) a statement that the prime contractor will perform all work other than that being performed by a subcontractor listed on the 5% List or the 1% List.

The 1% List must contain a description of the labor or portion of the work which each first tier subcontract will provide to the prime contractor. In order to help you complete the 1% List, the City is providing you with this form.

**IMPORTANT: THE PRIME CONTRACTOR MUST BE INCLUDED ON THIS LIST!**

<b>Name of Prime Contractor/First Tier Subcontractor(s)</b>	<b>Contractor's License Number</b>	<b>Description of Labor or Work</b>	<b>Percentage of Work Done</b>

***(Use additional sheets if necessary)***





**EXHIBIT 6 - CERTIFICATION OF BIDDER REGARDING PENALTIES FOR NON-COMPLIANCE WITH NEVADA PREVAILING WAGE REQUIREMENTS**

The undersigned bidder, proposed contractor or subcontractor certifies that:

1. This contract is for a public work project as set forth in Nevada Revised Statutes Chapter 338.
2. A contractor engaged on public works shall forfeit, as a penalty to the public body in behalf of which the contract has been made and awarded to the contractor, not less than \$20 nor more than \$50 for each calendar day or portion thereof that each workman employed on the public work:
  - (a) Is paid less than the designated rate for any work done under the contract, by the contractor or any subcontractor under him.
  - (b) Is not reported to the labor commissioner and the public body awarding the contract as required pursuant to NRS 338.070.
3. If a penalty is imposed pursuant to this section, the costs of the proceeding, including investigative costs and attorney's fees, may be recovered by the labor commissioner.

---

Name of Bidder

---

Name and Title of Authorized Representative

---

Signature

---

Date



**EXHIBIT 7 - FRINGE BENEFIT PLAN, FUND OR PROGRAM DISBURSEMENT  
INFORMATION**

CONTRACTOR: \_\_\_\_\_

CONTACT: \_\_\_\_\_ PHONE: \_\_\_\_\_

Classification \_\_\_\_\_

<u>Paid per hour</u>	<u>Name, Address and Telephone Number of Fund Manager</u>
\$ _____ Vacation	_____ _____ _____
\$ _____ Health and Welfare	_____ _____ _____
\$ _____ Pension	_____ _____ _____
\$ _____ Apprentice/training	_____ _____ _____
\$ _____ Other	_____ _____ _____

Classification \_\_\_\_\_

<u>Paid per hour</u>	<u>Name, Address and Telephone Number of Fund Manager</u>
\$ _____ Vacation	_____ _____ _____
\$ _____ Health and Welfare	_____ _____ _____



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\$ \_\_\_\_\_ Pension

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\$ \_\_\_\_\_ Apprentice/training

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---

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\$ \_\_\_\_\_ Other

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***EXHIBIT 8 - DRAWINGS***  
**(PROJECT CONSTRUCTION DRAWINGS)**



**EXHIBIT 9 - PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS:

That we \_\_\_\_\_  
(name of contractor)

are a \_\_\_\_\_  
(corporation, partnership or individual)

hereinafter called "Principal" and \_\_\_\_\_  
(Surety)

of \_\_\_\_\_, State of \_\_\_\_\_,

hereinafter called the "Surety", are held and firmly bound unto the CITY OF ELKO, of ELKO COUNTY, NEVADA, hereinafter called "Owner" in the penal sum of:

\_\_\_\_\_ Dollars  
(Written Form)

(Numbers) \$ \_\_\_\_\_ in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents for the faithful performance of a certain written Contract entered into between the Principal and the Owner, dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a copy of which is incorporated herein by reference, and made a part hereof as if fully copied herein, for the construction of the **MUNICIPAL SWIMMING POOL REPAIR PROJECT - 2019**.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that, if the Principal shall in all respects, well, truly and faithfully perform such contract and the Principals, duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without notice to the Surety, and if the Principal shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, and if their Principal shall save, indemnify and keep harmless the Owner against all loss, damages, claims, liabilities, judgments, costs and expenses which may accrue against the Owner in consequence of the awarding of said Contract, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract





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or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in three (3) counterparts, each one of which shall be deemed an original, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

PRINCIPAL: \_\_\_\_\_

BY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY, STATE & ZIP CODE: \_\_\_\_\_

ATTEST:

PRINCIPAL SECRETARY: \_\_\_\_\_

(SEAL)

WITNESS AS TO PRINCIPAL: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY, STATE & ZIP CODE: \_\_\_\_\_

SURETY: \_\_\_\_\_

BY: \_\_\_\_\_



**ATTORNEY-IN-FACT**

ADDRESS: \_\_\_\_\_

CITY, STATE & ZIP CODE: \_\_\_\_\_

ATTEST:

SURETY SECRETARY: \_\_\_\_\_

(SEAL)

WITNESS AS TO SURETY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY, STATE & ZIP CODE: \_\_\_\_\_

NOTE: Date of Bond must not be prior to date of Contract.

- (1) Correct Name of Contractor.
- (2) A Corporation, a Partnership or an Individual, as case may be.
- (3) Correct Name of Surety.

If Contractor in Partnership, all partners should execute bond.

**IMPORTANT:** Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Nevada.



**EXHIBIT 10 - PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS:

That we \_\_\_\_\_  
(name of contractor)

are a \_\_\_\_\_  
(corporation, partnership or individual)

hereinafter called "Principal" and \_\_\_\_\_  
(Surety)

of \_\_\_\_\_, State of \_\_\_\_\_,

hereinafter called the "Surety", are held and firmly bound unto the CITY OF ELKO, of ELKO COUNTY, NEVADA, hereinafter called "Owner" in the penal sum of:

\_\_\_\_\_ Dollars

(\$\_\_\_\_\_) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that Whereas, the Principal entered into a certain contract with the Owner, dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a copy of which is incorporated hereby by reference, and made a part hereof as if fully copied herein for the construction of the **MUNICIPAL SWIMMING POOL REPAIR PROJECT - 2019**.

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations supplying or furnishing labor or materials to the Principal, or to any of the Principals' subcontractors in the prosecution of the work provided for in said Contract, and any authorized extension or modification thereof, including but not limited to any amounts due for materials, supplies, lubricants, oil, gasoline, fuels, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor, performed in such work whether by, to, or for Principal or subcontractor or subcontractors of the Principal, then this obligation shall be void; otherwise to remain in full force and effect.

The Principal and Surety hereby further bind themselves, their successors, heirs, executors, administrators, and assigns, jointly and severally, to repay the owner any sum which the owner may be compelled to pay as a result of non-payment for labor or material



furnished for the work embraced by said Contract.

The Principal and Surety hereby further agree that not only said Owner may sue on this bond, but that subject to the provisions hereinafter set out, any individual, firm, partnership, association or corporation, (hereinafter called claimant), who has performed labor or furnished materials to or for the Principal or its subcontractor or subcontractors in the prosecution of the work provided for in the Contract for which this bond is given, and who has not been paid in full before the expiration of ninety (90) calendar days after the date on which the claimant performs the last of such labor or furnished the last of such materials for which the claimant claims payment, may bring an action on this bond in the claimant's own name to recover any amount due the claimant for such labor or materials, and may prosecute such action to final judgment and have execution on the judgment.

Provided, however, that any claimant who has a direct contractual relationship with any subcontractor of the Principal, but no contractual relationship, express or implied, with such Principal, may bring an action on this bond only:

- A. If the claimant has within thirty (30) calendar days after furnishing the first of such materials or performing the first of such labor, served on the Principal a written notice which shall inform the Principal of the nature of the materials being furnished or to be furnished, or the labor performed or to be performed, and identifying the person contracting for such labor or materials and the site for the performance of such labor or furnishing such materials; and
- B. After giving written notice to such principal within ninety (90) calendar days from the date on which the claimant performed the last of the labor or furnished the list of such materials for which the claimant claims payment.

Each written notice shall state with substantial accuracy the amount claimed and the name of the person for whom the work was performed or the material supplied, and shall be served by being sent by registered mail, postage prepaid, in an envelope addressed to such Principal at any place in which the Principal maintains an office or conducts business, or at the Principal's residence.

PROVIDED, FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

PROVIDED, FURTHER, that no final settlement between the Owner and the Principal shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.



IN WITNESS WHEREOF, this instrument is executed in three (3) counterparts, each one of which shall be deemed an original, on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

PRINCIPAL: \_\_\_\_\_

BY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY, STATE & ZIP CODE: \_\_\_\_\_

ATTEST:

(SEAL)

PRINCIPAL SECRETARY: \_\_\_\_\_

WITNESS AS TO PRINCIPAL: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY, STATE & ZIP CODE: \_\_\_\_\_

SURETY: \_\_\_\_\_

BY: \_\_\_\_\_

ATTORNEY-IN-FACT

ADDRESS: \_\_\_\_\_

CITY, STATE & ZIP CODE: \_\_\_\_\_

ATTEST:

SURETY SECRETARY: \_\_\_\_\_

(SEAL)



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WITNESS AS TO SURETY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY, STATE & ZIP CODE: \_\_\_\_\_

NOTE: Date of Bond must not be prior to date of Contract.

- (1) Correct Name of Contractor.
- (2) A Corporation, a Partnership or an Individual, as case may be.
- (3) Correct Name of Surety.

If Contractor in Partnership, all partners should execute bond.

**IMPORTANT:** Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Nevada.



**EXHIBIT 11 - NOTICE OF AWARD**

TO: \_\_\_\_\_ DATE: \_\_\_\_\_

\_\_\_\_\_

PROJECT: **MUNICIPAL SWIMMING**

**POOL REPAIR PROJECT - 2019.**

\_\_\_\_\_

\_\_\_\_\_

**YOU ARE HEREBY NOTIFIED** that the City of Elko has accepted your bid for the above Project in the amount of \$\_\_\_\_\_, which amount includes the Additive Alternates identified in this Notice of Award.

Within **TWENTY (20)** calendar days of receipt this Notice of Award, you must complete, sign and deliver to the City of Elko: (1) this Notice of Award with the fully executed Acceptance of Notice; (2) the Public Works Contract, executed by a person authorized to sign on your behalf; (3) the Performance Bond; (4) the Payment Bond; and (5) evidence of all insurance required to perform the Project. If you fail to meet any of these requirements, the City of Elko will be entitled, in its discretion, to consider all of your rights arising out of its acceptance of your bid as abandoned and as a forfeiture of your Bid Bond, entitling the City of Elko to the full amount of the Bid Bond. The City of Elko will also be entitled to such other rights as may be allowed by law.

You are further advised that this Award constitutes conditional acceptance of your bid, subject to the City of Elko executing and delivering to you a fully executed copy of the Public Works Contract. Prior to the delivery of a fully executed copy of the Public Works Contract, the Elko City Council may, in its discretion, decide to reject all bids (including your bid) and perform the work itself, rebid the Project or not proceed with the Project.

If indicated below, the scope of this Project is subject to the following Additive Alternates (attach additional sheets if necessary):





<b>ALTERNATE NUMBER</b>	<b>DESCRIPTION</b>	<b>AMOUNT</b>



All communications with the City regarding this Project through the time a contract is executed by the City shall be directed to the Office of the Elko City Clerk. In the event the City determines that a bidder has attempted to communicate with any City official or employee in violation of the preceding sentence, the City may, in its discretion, reject that bid (even after a Notice of Award has been issued) on the ground that rejection of the bid serves the public interest.

**DATED** this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CITY OF ELKO**

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**ACCEPTANCE OF NOTICE**

Receipt of this Notice of Award is hereby acknowledged this \_\_ day of \_\_\_\_\_  
20\_\_.

**CONTRACTOR (BIDDER):** \_\_\_\_\_

**AUTHORIZED SIGNATURE:** \_\_\_\_\_

**PRINTED NAME OF SIGNATORY:** \_\_\_\_\_

**TITLE OF SIGNATORY:** \_\_\_\_\_



CITY OF ELKO  
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(775) 777-7100 \* [www.elkocity.com](http://www.elkocity.com)

**EXHIBIT 12 - NOTICE TO PROCEED**

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE: \_\_\_\_\_  
PROJECT: **MUNICIPAL SWIMMING  
POOL REPAIR PROJECT  
- 2019**

You are hereby notified to commence work in accordance with the Agreement dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and you are to complete construction **Seventy-five (75) calendar days** from the written notification to proceed.

Contractor: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Company Representative

DATE: \_\_\_\_\_

Title: \_\_\_\_\_

Owner: CITY OF ELKO, NEVADA

By: \_\_\_\_\_

DATE: \_\_\_\_\_

Title: \_\_\_\_\_

\*\*\*\*\*

**RETURN SIGNED COPY TO:**

City of Elko  
Clerk's Office  
1751 College Avenue  
Elko, Nevada 89801

along with aforementioned document(s) requested.



**CITY OF ELKO**  
1751 College Avenue, Elko, NV 89801  
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***EXHIBIT 13- STANDARD SPECIFICATIONS AND DETAILS FOR PUBLIC WORKS  
CONSTRUCTION (ORANGE BOOK), 2016 REVISED EDITION***

A hard copy of this document is not attached to the Contract. The complete document can be viewed at the following URL:

<http://www.rtcwashoe.com/wp-content/uploads/2018/01/2016-Version-Revision-No.-9.pdf>



## **EXHIBIT 14 - GENERAL PROVISIONS**

### **PROJECT SPECIFICATIONS:**

The "*STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION*", 2016 Revised Edition, (Orange Book) as amended by the City of Elko shall be the Project Specifications. All sections shall apply except as specifically deleted or modified by these Supplementary Conditions or the Technical Specifications. Wherever these specifications refer to the agency, this reference shall mean the CITY OF ELKO and wherever these specifications refer to the Engineer, this reference shall mean **the City or authorized representative**.

### **LAWS, RULES, REGULATIONS, HEALTH, SAFETY AND OSHA TRAINING REQUIREMENTS:**

#### **Laws, Rules and Regulations**

All workmanship and materials shall comply with all applicable laws, codes, rules and regulations, and the Contractor shall comply with all safety regulations which are applicable to his work, and particular attention for applicability shall be given to the United States Department of Labor Occupational Safety and Health Administration (OSHA) Standards, and the regulations of the State of Nevada in which the job is located. The responsibility for complying with all such laws, codes, rules and regulations, and safety standards shall be the responsibility of the Contractor. If the City is fined for any Contractor violations, these costs will be fully reimbursed by the Contractor.

#### **Safety**

In accordance with all OSHA safety regulations (29 CFR Part 1910 - 1926 inclusive) and the City of Elko's Safety and Confined Space programs, the Contractor shall be solely and completely responsible for conditions of the job site, including safety of all personnel and property during the performance of the work: to include supplying their personnel with proper personnel protective equipment (PPE), first aid kit, fire extinguishers, confined space equipment and air monitors, underground metal utility detectors, tools, necessary equipment and materials. This requirement will apply continuously and not be limited to normal working hours on City of Elko property.

The City will require of all Contractors the 30-hour supervisor and 10-hour employee OSHA certification training in CFR 1926 Construction Safety and Health before the work begins. All Contractors shall be responsible for the required certified training on equipment, tools, confined space and safety training, PPE, etc. The Contractor will produce these training documents as requested by the City.

#### **Health and Safety in Employment**

All applicable provisions in NRS Chapter 618 shall be incorporated in the construction practices for all employees directly engaged in the completion of any City of Elko project(s).



**CITY OF ELKO**  
1751 College Avenue, Elko, NV 89801  
(775) 777-7100 \* [www.elkocity.com](http://www.elkocity.com)

***EXHIBIT 15 - SPECIAL OR SUPPLEMENTAL PROVISIONS***



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***EXHIBIT 16 - TECHNICAL SPECIFICATIONS***



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***EXHIBIT 17 - PREVAILING WAGE RATES – ELKO COUNTY OR DAVIS-BACON  
(ATTACHED)***





**EXHIBIT 18 – PREFERENTIAL BIDDER STATUS AFFIDAVIT**

**PREFERENTIAL BIDDER STATUS AFFIDAVIT FOR BIDS SUBMITTED IN ACCORDANCE WITH NRS 338.0117 VALUED \$250,000 OR MORE**

**Although the City of Elko prefers this form is submitted with the bid response, this form may be submitted within two (2) hours of the bid opening.**

**Note: The Certificate of Eligibility for Preferential Bidder Status issued by the State Contractor’s Board must be submitted with the bid response.**

I, \_\_\_\_\_ (“Affiant”), on behalf of \_\_\_\_\_ (“Contractor”), swear and affirm that in order to be in compliance with NRS 338.0117, and be eligible to receive a preference in bidding for Project No. \_\_\_\_\_, Project Name \_\_\_\_\_ (“Project”),

certify that for the duration of the project, collectively, and not on any specific day:

- a) At least 50 percent of the workers employed on the public work, including, without limitation, any employees of the contractor, applicant or design-build team and of any subcontractor engaged on the public work, will hold a valid driver’s license or identification card issued by the Department of Motor Vehicles of the State of Nevada;
- b) All vehicles used primarily for the public work will be:
  - 1. Registered and partially apportioned to Nevada pursuant to the International Registration Plan, as adopted by the Department of Motor Vehicles pursuant to NRS 706.826; or,
  - 2. Registered in this State;
- c) If applying to receive a preference in bidding pursuant to subsection 3 of NRS 338.1727 or subsection 2 of NRS 408.3886, at least 50 percent of the design professionals working on the public work, including, without limitation, employees of the design-build team and of any subcontractor or consultant engaged in the design of the public work, will have a valid driver’s license or identification card issued by the Department of Motor Vehicles of the State of Nevada; and,
- d) The contractor, applicant or design-build team and any subcontractor engaged on the public work will maintain and make available for inspection within this State his or her records concerning payroll relating to the public work.

If the Contractor fails to comply with any requirement of this Affidavit, a public body may recover, by civil action against the party responsible for a failure to comply with a requirement of this affidavit, a penalty as described below for a failure to comply with a requirement of this affidavit. If a public body recovers a penalty pursuant to this subsection, the public body shall report to the State Contractors’ Board the date of the failure to comply, the name of each entity which failed to comply and the cost of the contract to which the entity that failed to comply was a party. The Board shall maintain this information for not less than 6 years. Upon request, the Board shall provide this information to any public body or its authorized representative.



If a contractor, applicant or design-build team submits this affidavit, receives a preference in bidding described in this affidavit and is awarded the contract as a result of that preference, the contract between the contractor, applicant or design-build team and the public body, each contract between the contractor, applicant or design-build team and a subcontractor and each contract between a subcontractor and a lower tier subcontractor must provide that:

- a) If a party to the contract causes the contractor, applicant or design-build team to fail to comply with a requirement of this affidavit, the party is liable to the public body for a penalty in the amount of 1 percent of the cost of the largest contract to which he or she is a party;
- b) The right to recover the amount determined pursuant to paragraph (a) by the public body pursuant to this affidavit may be enforced by the public body directly against the party that caused the failure to comply with a requirement of this affidavit; and,
- c) No other party to the contract is liable to the public body for a penalty.

By: \_\_\_\_\_ Title: \_\_\_\_\_  
(Print name of Affiant)

Signature of Affiant: \_\_\_\_\_ Date: \_\_\_\_\_

Signed and sworn to (or affirmed) before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by \_\_\_\_\_ (name of Affiant).

State of _____	)	_____
	)ss.	Notary Signature
County of _____	)	STAMP & SEAL

**Proof of Authorization to Sign Affidavit**

The person must establish his/her actual authority to act on behalf of the business organization. The individual must be the person indicated in the table below and provide written documentation clearly indicating the person’s position within that business organization. If the individual signing the Affidavit is an employee of the business organization, written documentation, on organization letterhead, clearly indicating the person’s authority to act on behalf of the business organization must be provided. The written documentation must be signed by the authorized person identified on the table.

If the individual making application for the business organization is not one of the persons identified in the table or an authorized employee, a valid power of attorney executed by an authorized person on behalf of the business organization must be provided. The power of attorney must be made not more than 90 days before the Affidavit is signed.



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BUSINESS ENTITY	PERSON WHO HAS AUTHORITY TO COMPLETE AFFIDAVIT
Sole Proprietorship	Sole Proprietor
Partnership	A Partner
Corporation	1. Director, if authorized 2. Executive Officer as indicated in the Article of Incorporation
Limited Liability Company	1. Member, if Member-Managed LLC 2. Manager, if Manager-Managed LLC