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OFFICIAL RECORD

Requested By:
DC/COUNTY MANAGERS OFFICE

Douglas County - NV
Werner Christen - Recorder

Page: 1 Of 7 Fee: 0.00
BK-0108 PG- 4347 RPTT: 0.00



Assessor's Parcel Number: N/A

Date: JANUARY 18, 2008

Recording Requested By:

Name: COUNTY MANAGER'S OFFICE

Address: _____

City/State/Zip: _____

Real Property Transfer Tax: \$ N/A

CONTRACT #2008.009

(Title of Document)

FILED

NO. 2008.009

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR 2008 JAN 18 AM 9:39

A Contract between DOUGLAS COUNTY

and

**EISSMANN-PENCE ARCHITECTURE /
LANDSCAPE ARCHITECTURE, LTD.**

PO Box 6099
Gardnerville, NV 89460

BARBARA J. GRIFFIN
CLERK
BY *[Signature]* DEPUTY

Douglas County, a political subdivision of the State of Nevada, from time to time requires the services of independent contractors; and

The services of Contractor specified in this agreement are both necessary and desirable and in the best interests of Douglas County; and

Contractor represents that he is duly qualified, equipped, staffed, ready, willing and able to perform and render the services described in this agreement.

In consideration of the mutual agreements made in this agreement, the parties agree as follows:

1. EFFECTIVE DATE OF CONTRACT. This contract will not become effective until and unless approved by the Douglas County Board of County Commissioners.

2. INDEPENDENT CONTRACTOR STATUS. The parties agree that Contractor will have the status of an independent contractor and that this contract, by explicit agreement of the parties, incorporates and applies the provisions of NRS 284.713, as necessarily adapted, to the parties, including that Contractor is not a County employee and that

There will be no:

- (1) Withholding of income taxes by the County;
- (2) Industrial insurance coverage provided by the County;
- (3) Participation in group insurance plans which may be available to employees of the County;
- (4) Participation or contributions by either the independent contractor or the County to the public employees' retirement system;
- (5) Accumulation of vacation leave or sick leave;
- (6) Unemployment compensation coverage provided by the County if the requirements of NRS 612.085 for independent contractors are met.

3. INDUSTRIAL INSURANCE. Contractor further agrees, as a precondition to the performance of any work under this contract and as a precondition to any obligation of the County to make any payment under this contract, to provide the County with a work certificate or a certificate issued by a qualified insurer in accordance with NRS 616B.627. Contractor also agrees, prior to commencing any work under the contract, to complete and to provide the following written request to a qualified insurer:



EISSMANN-PENCE ARCHITECTURE / LANDSCAPE ARCHITECTURE, LTD.

has entered into a contract with Douglas County to perform work from December 20, 2007 to project completion and requests that the insurer provide to Douglas County 1) a certificate of coverage issued pursuant to NRS 616B.627 and 2) notice of any lapse in coverage or nonpayment of coverage that the contractor is required to maintain. The certificate and notice should be mailed to:

Scott McCullough
Douglas County Project Manager
Post Office Box 218
Minden, Nevada 89423

Contractor agrees to maintain required workers compensation coverage throughout the entire term of the contract. If contractor does not maintain coverage throughout the entire term of the contract, contractor agrees that County may, at any time the coverage is not maintained by contractor, order the contractor to stop work, suspend the contract, or terminate the contract. For each six month period this contract is in effect, contractor agrees, prior to the expiration of the six month period, to provide another written request to a qualified insurer for the provision of a certificate and notice of lapse in or nonpayment of coverage. If contractor does not make the request or does not provide the certificate before the expiration of the six month period, contractor agrees that County may order the contractor to stop work, suspend the contract, or terminate the contract.

Contractor may, in lieu of furnishing a certificate of an insurer, provide an affidavit indicating that he is a sole proprietor and that:

1. In accordance with the provisions of NRS 616B.659, has not elected to be included within the terms, conditions and provisions of chapters 616A to 616D, inclusive, of NRS; and
2. Is otherwise in compliance with those terms, conditions and provisions.

4. SERVICES TO BE PERFORMED. The parties agree that the services to be performed are as follows: Architectural services from design development to construction close out (see attached Exhibit A; letter dated December 10, 2007 with scope of services)

5. PAYMENT FOR SERVICES. Contractor agrees to provide the services set forth in paragraph (4) at a cost of not to exceed a total cost of **\$368,928.00**. Contractor agrees to submit billings to the County which will be paid within a reasonable time.

6. TERMINATION OF CONTRACT. This contract may be revoked without cause by either party prior to the date set forth in paragraph (2), provided that a revocation will not be effective until 30 days after a party has served written notice upon the other party. Contractor will be paid for amounts due and not previously paid to Contractor for work satisfactorily completed in accordance with the contract. No amount will be allowed or paid for anticipated profit or costs on unperformed services or other unperformed work.

7. CONSTRUCTION OF CONTRACT. This contract will be construed and interpreted according to the laws of the State of Nevada.



8. COMPLIANCE WITH APPLICABLE LAWS. Contractor must fully and completely comply with all applicable local, state and federal laws, regulations, orders, or requirements of any sort in carrying out the obligations of this contract, including, but not limited to, all federal, state, and local accounting procedures and requirements and all immigration and naturalization laws.

9. ASSIGNMENT. Contractor may not assign, transfer or delegate any rights, obligations or duties under this contract without the prior written consent of the County.

10. COUNTY INSPECTION. The books, records, documents and accounting procedures and practices of Contractor related to this contract will be subject to inspection, examination and audit by the County, including, but not limited to, the contracting agency, the County Manager, the District Attorney, and, if applicable, the Comptroller General of the United States, or any authorized representative of those entities.

11. DISPOSITION OF CONTRACT MATERIALS. Any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials prepared by or supplied to Contractor in the performance of its obligations under this contract will be the exclusive property of the County and all materials must be remitted and delivered, at Contractor's expense, by Contractor to the County upon completion, termination or cancellation of this contract. Alternatively, if the County provides its written approval to Contractor, any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials prepared by or supplied to Contractor in the performance of its obligations under this contract must be retained by Contractor for a minimum of six years after final payment is made and all other pending matters are closed. If, at any time during the retention period, the County, in writing, requests any or all of the materials, then Contractor must promptly remit and deliver the materials, at Contractor's expense, to the County. Contractor will not use, willingly allow or cause to have the materials used for any purpose other than the performance of Contractor's obligations under this contract without the prior written consent of the County.

12. PUBLIC RECORDS LAW. Contractor expressly agrees that all documents ever submitted, filed, or deposited with the County by Contractor, unless designated as confidential by a specific statute of the State of Nevada, will be treated as public records pursuant to NRS 239 and must be available for inspection and copying by any person, as defined in NRS 0.039, or any governmental entity. Contractor expressly and indefinitely waives all of its rights to bring, including but not limited to, by way of complaint, interpleader, intervention, or any third party practice, any claims, demands, suits, actions, judgments, or executions, for damages or any other relief, in any administrative or judicial forum, against the County or any of its officers or employees, in either their official or individual capacity, for violations of or infringement of the copyright laws of the United States or of any other nation.

13. INSURANCE. Contractor will carry and maintain in effect during the performance of services under this contract professional liability insurance, general liability insurance, and such other insurance coverage normally carried by Contractor insuring against the injury, loss, or damage to persons and property caused by Contractor's activities. Contractor must maintain in effect at all times during the performance under this contract all specified insurance coverage with insurers and forms of policy satisfactory to the County, acceptance of which will not be unreasonably withheld.

Contractor will provide the County with certificates of insurance for coverage listed



below and endorsements affecting coverage required by the contract within 10 calendar days after the notice to proceed is issued by the County. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer and who is licensed by the State of Nevada.

(1) Each insurance company's rating as shown in the latest Best's Key rating guide must be fully disclosed and entered on the required certificate of insurance. The adequacy of the insurance supplied by Contractor, including the rating and financial health of each insurance company providing coverage, is subject to the approval of the County.

(2) Contractor's insurance will be primary as respects the County and its officers and employees.

(3) Contractor's general liability insurance policies must provide coverage for Contractor's contractual liability to the County. The parties further agree that Contractor or its insurance carrier must provide the County with 30 days advance notice of cancellation of the policies.

(4) All deductibles and self-insured retentions must be fully disclosed in the certificates of insurance.

(5) If aggregate limits of less than \$2,000,000 are imposed on bodily injury and property damage, the Contractor must maintain umbrella liability insurance of at least \$1,000,000. All aggregates must be fully disclosed on the required certificate of insurance.

(6) Contractor must obtain and maintain, for the duration of this contract, general liability insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work under this contract by Contractor or its agents, representatives, or employees.

(7) General liability coverage will be on a "per occurrence" basis only and not "claims made." The coverage must be provided either on a Commercial General Liability Form A or a Broad Form Comprehensive General Liability form. Policies must include, but need not be limited to, coverage for bodily injury, personal injury, broad form property damage, premises operations, severability of interest, products and completed operations, contractual and independent contractors. General liability insurance policies must be endorsed to include the County as an additional insured. Subject to ¶ 6 of this section, Contractor must maintain limits of no less than \$1,000,000 combined single limit per occurrence for bodily injury (including death), personal injury, and property damages.

(8) Contractor must obtain and maintain professional liability coverage in a form acceptable to the County in an amount of \$500,000 per claim, \$500,000 annual aggregate. If Contractor's retention or deductible is greater than \$25,000, Contractor must demonstrate upon request of the County to the County's satisfaction Contractor's ability to fund the retention or deductible. The County and its officers and employees must be expressly covered as additional insureds, if the policy allows such an addition and at the cost of the County.

(9) If contractor fails to maintain any of the required insurance coverage, then the County will have the option to declare Contractor in breach and terminate the contract, or the County may purchase replacement insurance or pay the premiums that are due on existing policies in order that the required coverage is maintained. Contractor is responsible for any payments made by the County to obtain or maintain such insurance,

and the County may collect the same from Contractor or deduct the amount paid from any sums due Contractor under this contract.

(10) The specified insurance requirements do not relieve Contractor of its responsibility or limit the amount of its liability to the County or other persons, and Contractor is encouraged to purchase such additional insurance as it deems necessary.

(11) Contractor is responsible for and required to remedy all damage or loss to any property, including property of the County, caused in whole or in part by Contractor or anyone employed, directed, or supervised by Contractor.

14. DISPUTE RESOLUTION. To resolve a dispute, either party will first provide to the other party, in writing, full documentation to explain its stated position. The parties will then attempt to resolve the dispute through good faith efforts and negotiation. If the dispute is not resolved within 30 days, either party may request that the dispute be submitted to the County Manager for negotiation and resolution. In the event that resolution cannot be reached through negotiation with the County Manager, the dispute must be submitted to non-binding mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association, unless the parties mutually agree otherwise.

15. INDEMNIFICATION. Contractor agrees to defend, indemnify and hold harmless the County, its employees, officers and agents from any liabilities, damages, losses, claims, actions or proceedings, including without limitation, reasonable attorney fees, that are caused by the negligence, errors, omissions, recklessness or intentional misconduct of the design professional or its employees or agents in the performance of this contract. County agrees to defend, indemnify and hold harmless the Contractor, its employees, officers and agents from any liabilities, damages, losses, claims, actions or proceedings, including without limitation, reasonable attorney fees, that are caused by the negligence, errors, omissions, recklessness or intentional misconduct of the County or its employees or agents.

16. MODIFICATION OF CONTRACT. This contract constitutes the entire contract between the parties and may only be modified by a written amendment signed by the parties and approved by the Board of County Commissioners.

17. SUSPENSION AND DEBARMENT REQUIREMENTS FOR FEDERAL CONTRACTS. For federally-funded public works, the bidder certifies, by submission of this bid or acceptance of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this bid that it will include this clause without modification in all lower tier transactions, solicitations, bids, contracts, and subcontracts. Where the bidder, contractor or any lower tier participant is unable to certify to this statement, it must attach an explanation to the solicitation or proposal.

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The Parties have executed this agreement as of the date written above and intend to be legally bound by it.

DOUGLAS COUNTY

CONTRACTOR

**EISSMANN-PENCE ARCHITECTURE /
LANDSCAPE ARCHITECTURE, LTD.**

Daniel C. Hall 1-16-08
(Date)

Ralph E. Eissmann
By: Ralph E. Eissmann 12/28/07
President (Date)

Approved as to form by:

Robert J. Morris
Deputy District Attorney

CERTIFIED COPY

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

DATE: January 18, 2008
Clerk of the 9th Judicial District Court
of the State of Nevada, in and for the County of Douglas.

6 By Robert J. Morris Deputy

SEAL

