

UP  
/ Co Mgr

DOC # 0720625  
03/31/2008 03:10 PM Deputy: dw  
OFFICIAL RECORD  
Requested By:  
DC/COUNTY MANAGERS OFFICE

Assessor's Parcel Number:  N/A

Date:  MARCH 28, 2008

Recording Requested By:

Name:  COUNTY MANAGER'S OFFICE

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Real Property Transfer Tax: \$  N/A

Douglas County - NV  
Werner Christen - Recorder  
Page: 1 Of 8 Fee: 0.00  
BK-0308 PG-7651 RPTT: 0.00



AGREEMENT #2008.062   
(Title of Document)

FILED

NO. 2008.062

DOUGLAS COUNTY, NEVADA  
SPECIAL ASSESSMENT DISTRICT NO. 4  
(CLEAR CREEK)

2008 MAR 28 PM 2:42

BARBARA J. GRIFFIN  
CLERK

PRELIMINARY WORKS EXPENSE AGREEMENT

*[Signature]*  
DEPUTY

This Preliminary Works Expense Agreement is between Douglas County, Nevada (the "County") and Clear Creek LLC (collectively the "Developers"), who are the owners or control the owners of all of the property proposed to be assessed in the proposed Douglas County, Nevada Special Assessment District No. 4 (Clear Creek) and is made as of the 21<sup>st</sup> day of February, 2008.

**WHEREAS**, Developers have petitioned the County to form Douglas County, Nevada Special Assessment District No. 4 (Clear Creek) (the "District"); and

**WHEREAS**, the County has determined that the project contemplated in the District, i.e., street projects, water projects and sanitary sewer projects (the "Project", as more particularly described in the first sentence of Section 1 hereof) will serve a public purpose; and

**WHEREAS**, in order to determine whether to create and finance the District, certain studies, right-of-way acquisitions, engineering design work, and environmental, permitting, and other preliminary work (collectively the "Preliminary Work", as more particularly described in the second sentence of Section 1 hereof) must be done; and

**WHEREAS**, the Developers have agreed to fund the cost of the Preliminary Work prior to the time of creation of the District; and

**WHEREAS**, the Developers desire to be reimbursed for amounts advanced to the County pursuant to this Agreement from the proceeds of bonds issued to fund the District, and the County is agreeable to such reimbursement provided that: (1) the bonds are issued, consistent with the County's Special Assessment Guidelines (adopted by the Board of County Commissioners of the County on February 21, 2008) and NRS 271.710 through 271.730, (2) there are bond proceeds available to pay such reimbursements, taking into account other amounts required or expected to be paid with those proceeds; and (3) the reimbursement is otherwise consistent with federal and State law and County policy; and

**WHEREAS**, the Developers understand that this agreement does not obligate the County to issue Bonds, and that if the County does not issue Bonds for the District, the Developers will not be reimbursed for the costs advanced pursuant to this Agreement, but the Developers will, in that event, be entitled to any transferable work product of any work performed with money advanced under this Agreement.

**NOW, THEREFORE, IN CONSIDERATION OF MUTUAL COVENANT AGREEMENTS CONTAINED IN THIS AGREEMENT, THE PARTIES HERETO AGREE AS FOLLOWS:**

**Section 1. Project and the Preliminary Work.** The Project is to provide street projects, water projects and sanitary sewer projects in the Clear Creek area of the County. In connection with that Project, the following tasks need to be done prior to creation of the District:

- A. A [ \_\_\_\_\_ ] study must be completed;
- B. Right-of-ways on which the improvements are to be located must be acquired;
- C. Engineering design work and assessment engineering for the improvements must be completed; and
- D. Any necessary environmental, wetlands, archeological, Corp of Engineers and other studies and permitting need to be accomplished so that improvements can be definite, right-of-way acquired and the Project constructed.

All of the above work will be done by or at the direction of the Developers with the consent of the County except as provided in Sections 3 and 4 below.

**Section 2. Timetable, Developers' Input.** An estimated timetable for performance of the improvements described in Section 1 will be provided by the Developers within 60 days of the execution of this Agreement, but it is understood by the parties that this is an estimate only and is no way binding on any parties. The Developers will keep the County informed of progress on the Preliminary Work and allow the County to meet with it and the Developer's consultants to provide input and suggestions with respect to each of the above steps. This Section obligates the Developers to allow the County the opportunity to present their suggestions.

**Section 3. Consultants.** The County agrees to consult with Developers prior to the hiring of consultants for the Preliminary Work and allow Developers' input into the decision to hire the consultants and into the form of the contract or contracts with those consultants. The Developers hereby consent to the use of and execution of contracts with Manhard Consulting LTD, as the assessment engineer for the District and James Q. Hutchinson, MAI, Hutchinson Valuation, Inc., as the appraiser for the District. No consultant, the cost of which is to be paid pursuant to this Agreement, will be hired without the consent of the Developers, but that consent will not be unreasonably withheld. After the County has proposed the retention of a consultant and mailed a copy of the proposed contract with the consultant to the Developers, Developers shall have 15 days to object thereto, and if no objection is delivered to the County in writing within that 15 day period, the Developers will be conclusively presumed to have consented to the retention of that Consultant on the terms specified in the proposed contract.

**Section 4.** Developers' Participation in Right-of-Way Acquisition. The County agrees that as development proceeds, the Developers may approach property owners to attempt to obtain the right-of-ways required for the Project, and County agrees to cooperate with Developers in this effort. (This does not commit the County to exercise its power of eminent domain for any parcels.) It is understood that to the extent Developers so obtain rights-of-way or options thereto, the County will not expend its own efforts in obtaining options or rights-of-way for the same parcels. Developers understand that the County is able to reimburse them only for rights-of-way which are actually used for the Project, and if the Developers acquire any rights-of-way or options to rights-of-way which, for whatever reason, are not ultimately used for the Project, that particular cost is not eligible for reimbursement.

**Section 5.** Costs and Expenses. All of the County's costs for performing the Preliminary Work, including the cost of any consultant as described in the Section 3, the County's out-of-pocket costs in connection with performing these tasks (such as the cost of mailing, express deliveries, printing, etc.), and a reasonable charge for the County's in-house costs calculated by multiplying the County's standard in-house billing rates times the number of hours actually expended in working on the above tasks, will be billed to and paid by the Developers.

**Section 6.** Budgets. The Developer will prepare a budget for the Preliminary Work at least annually within 2 months of the execution hereof and thereafter prior to July 1 of each year, which the County will have the right to review and comment upon. The final budget, however, shall be based on the decision of the County.

**Section 7.** Quarterly Statements. The Developer shall submit to the County on or about the time the first annual budget is completed and thereafter on the 15th day of the second month of each calendar quarter, a statement of the Developers' estimated costs and expenditures to be made for the Preliminary Work during the next ensuing calendar quarter plus or minus the amounts described in Section 8 hereof. The first statement shall also include all costs and expenses incurred prior to the submission of that statement to the County, and an estimate of costs and expenses to be incurred thereafter until the completion of the then current calendar quarter.

**Section 8.** Adjustments; Due Dates. Statements will also include as an addition or subtraction, as the case may be, the difference between the billed estimated cost (previously paid by the Developer) of Preliminary Work for the preceding calendar quarter and the actual amount of costs and expenses for Preliminary Work during that preceding calendar quarter. Statements rendered by the County shall be due and payable by the Developers without further demand or notice, on the 30th calendar day after the statement is mailed by the County. All checks for expenses hereunder must be received by the Public Works Department at the below address by no later than 3:00 p.m. on the due date.

**Section 9.** Termination. In the event the Developers notify the County in writing to cease the Preliminary Work or the Developers does not pay the amount specified in any statement

when due, the Preliminary Work shall be terminated. The County shall then wind up all work on the Preliminary Work and request its consultants to wind up all of their work on the Preliminary Work. The Developers shall be responsible to pay to the County an amount equal to all of the County's costs incurred in performing the Preliminary Work to the date the Preliminary Work is terminated and the cost of winding up work on the Preliminary Work incurred by the County and its consultants; but the Developers shall not be responsible for the payment of the costs of any other services with respect to Preliminary Work performed thereafter. The County shall render to the Developers a final statement which will specify the amount owed by the Developers which has not theretofore been paid, and if the amount theretofore paid by the Developers is sufficient to pay all expenses and there remains a positive balance, the final statement shall so state, and a check for the positive balance shall be forwarded by the County within 30 calendar days after mailing of the final statement. In the event that the Developers owe funds pursuant to this section, those amounts are due and payable without further notice or demand, on the 30th calendar day after a statement is mailed by the County. On a termination as provided in this section, the schedule described in Exhibit A to this contract or any amendment thereto, or re-estimate thereof, is then terminated and the County shall have no obligation to recommence work on the Preliminary Work except upon mutual written agreement of both parties, based on a new schedule. Developers understand that if work ceases pursuant to this section, the County may commit its resources to other projects; consequently, County can not commit that it will be able to recommence work on the Preliminary Work at any particular time.

**Section 10. Billing Disputes.** Should the Developers in good faith contest whether or not an expenditure which has been billed on a statement to the County is a valid expenditure for Preliminary Work, they shall nevertheless pay to the County the amount of that expenditure when due. The Developers may, after making the payment, appeal to the Public Works Director, describing in writing the reasons that it feels a particular expenditure is not an appropriate expenditure for the Preliminary Work. The Public Works Director shall render his decision with respect to the Developers' appeal to the Developers in writing. The decision of the Public Works Director shall be final and binding on the Developers.

**Section 11. Late Payments.** All payments made after the due date shall include interest at a rate equal to the Prime Rate (or average Prime Rate, if more than one) as published in the Wall Street Journal applicable to the period for which the payment is late, plus 2% per annum.

**Section 12. Notices.** All notices, statements, suggestions, objections and payments made hereunder shall be tendered to the following addresses by first class mail, or by overnight delivery service, and shall be deemed received on the day after they are mailed or deposited with the overnight delivery service:



If to the County: Douglas County, Nevada  
PO Box 218  
Minden, Nevada 89423

If to Developers: Clear Creek LLC  
Clear Creek LLC  
990 Ironwood Drive  
Minden, NV 89423  
Attention: Jim Taylor

**Section 13. Copies of County Notices.** A copy of any notice, suggestion or objection delivered to the County hereunder shall also be mailed to:

County Manager

and

Douglas County District Attorney

**Section 14. Copies of Developers' Notices.** A copy of any notice, bill, or budget delivered to the Developers hereunder shall also be forwarded to:

**Section 15. Indemnification.**

**A.** The Developers agree to protect, indemnify, defend and hold the County, its officers or employees and agents and each of them harmless from and against any and all claims, losses, expenses, suits, actions, decrees, judgments, awards, attorneys' fees, and court costs which the County, its officers, employees or agents or any combination thereof may suffer or which may be sought against or recovered or obtained from the County, its officers, employees or agents or any combination thereof as a result of or by reason of or arising out of or in consequence of: (i) any actions undertaken pursuant to this Agreement; or (ii) any act or omission negligent or otherwise of the Developers or any of their subcontractors, agents or anyone who is directly employed by or acting in connection with the Developers or any of their subcontractors, or agents, in connection with the Project. If the Developers fail to do so, the County shall have the right but not the obligation to defend the same and charge all of the direct or incidental costs of such defense including any attorneys fees or court costs to and recover the same from the Developers.

**B.** No indemnification is required to be paid by the Developers for any claim, loss or expense arising from the willful misconduct or gross negligence of the County or its officers or employees.

C. The provisions of this section shall survive the termination of this Agreement. It is not intended by the parties hereto that this indemnification provision revive any claim of or extend any statute of limitations which has run against any third party.

**Section 16. No Third Party Beneficiaries.** None of the provisions of this Agreement is intended to authorize the owners of any property assessed, the general public, or any member thereof, or any other person a third party beneficiary hereunder or to authorize anyone who is not a party to this Agreement to maintain any suit for any claim or other matter pursuant to this Agreement.

**Section 17. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the County and the Developers and their respective successors and assigns. No assignment of this Agreement or any right or obligation hereunder by either Developers hereto or by the County shall be valid unless the other parties hereto consent to such assignment in writing.

**Section 18. Inspection of Books and Records.** The County will permit the Developers to inspect its books and records pertaining to the Preliminary Work, including but not limited to, information relating to amounts budgeted and expended, interest earned, and balances of funds held by the County.

**Section 19. Entire Agreement.** This Agreement, including the exhibit hereto, constitutes the entire agreement of the parties hereto. This Agreement may be modified by the parties hereto but only by a written instrument signed by each party.

**Section 20. No Waivers.** No failure or delay on the part of either party in enforcing any provision shall operate as a waiver thereof, nor shall any single or partial enforcement of any provision hereof preclude any other or further enforcement or the exercise of any other right, power or remedy that either party may have.

**Section 21. Attorneys' Fees.** If the County incurs attorneys' fees or expenses or any other fees and expenses in connection with the actual or overtly threatened breach by the Developers of any provision hereof or in enforcing the provisions hereof, the County shall be entitled to recover such fees and expenses from the Developers.

**Section 22. Partial Invalidity.** If any provision of this Agreement is deemed to be invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provisions hereof that can be given effect without the invalid or unenforceable provision and the County and Developers agree to replace such invalid or unenforceable provision with a valid provision which has, as nearly as possible, the same effect.

**Section 23. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada.


**Section 24. No County Obligation.** Nothing herein obligates the County to expend any money other than funds paid by the Developers for the purposes hereof and funds derived from the sale of Bonds hereafter issued for the District which are available for expenditures. Nothing herein obligates the County to issue the bonds. Nothing herein obligates the County to approve the application to be filed by the Developers or to proceed with the District if the application is not submitted or approved by the County.


**Section 25. Term.** Except as otherwise provided in Section 13 hereof, this Agreement shall be in effect from the date and year first mentioned above until the earlier (i) the date this Agreement is terminated pursuant to Section 9 hereof, but not before all amounts due hereunder are paid by the Developer, (ii) the date the Preliminary Work is completed and all amounts due hereunder by the Developers are paid, or (iii) the date this Agreement is succeeded by a definitive financing agreement among the parties hereto or their successors for the District.

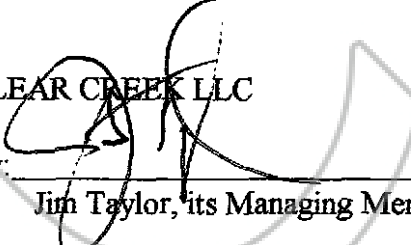
**Section 26. Power of Parties Signing Agreement.** The persons executing this Agreement hereby state and acknowledge that they are authorized and empowered to do so on behalf of the party so designated.

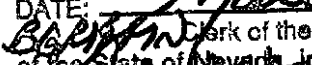
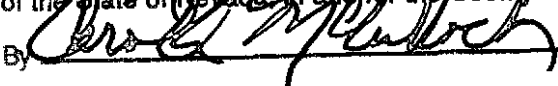
**IN WITNESS WHEREOF** the County and the Developers have caused this Financing Agreement to be executed as of the day and year first mentioned above.

DOUGLAS COUNTY, NEVADA

  
\_\_\_\_\_  
Chairman  
Board of County Commissioners  
Douglas County, Nevada

(SEAL)  
  
\_\_\_\_\_  
County Clerk *By: Andrea Condon*  
Douglas County, Nevada

CLEAR CREEK LLC  
  
By: \_\_\_\_\_  
Jim Taylor, its Managing Member

SEAL  
**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: March 28, 2008  
 Clerk of the 3rd Judicial District Court  
of the State of Nevada, in and for the County of Douglas.  
By:  Deputy