

DOC # 0766262  
06/30/2010 09:57 AM Deputy: GB

**OFFICIAL RECORD**

Requested By:

DC/COMMUNITY DEVELOPMENT

Assessor's Parcel Number: N/A

Date: JUNE 30, 2010

Recording Requested By:

Douglas County - NV  
Karen Ellison - Recorder

Page: 1 OF 8 Fee: 0.00  
BK-0610 PG- 6077 RPTT: 0.00



Name: JEANE COX, COMMUNITY DEVELOPMENT

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

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

Real Property Transfer Tax: \$ N/A

**AGREEMENT #2010.151**

(Title of Document)

FILED

NO. 2010.151

2010 JUN 30 AM 9:05

TEO THUAN  
CLERK

**AGREEMENT  
BETWEEN  
DOUGLAS COUNTY, NEVADA  
AND  
PEEK CONSTRUCTION COMPANY**

Whereas, Douglas County Nevada (hereinafter OWNER) is a political subdivision of the State of Nevada, and is statutorily authorized to enter into contracts for construction projects, and;

Whereas Peek Construction Company (hereinafter CONTRACTOR) is a construction company licensed as a general contractor in Nevada, and;

Whereas CONTRACTOR has submitted a bid in accord with the Lake Village Phase II Water Quality Improvement Project Construction Specifications and Contract Documents (hereinafter Contract Documents) as prepared by OWNER, and;

Whereas, CONTRACTOR submitted a responsive and responsible Bid in the amount of \$1,241,781.50 for the Lake Village Phase II Water Quality Improvement Project as outlined in the Contract Documents.

Now therefore, it is the intention of the OWNER and CONTRACTOR to enter into an Agreement to have CONTRACTOR complete all of the work as specified or indicated in the Contract Documents.

**ARTICLE 1 - WORK**

1.01 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The **Lake Village Phase II Water Quality Improvement Project (EIP) Project #679** consists of the construction of a reinforced concrete pipe storm drain system along portions of Lake Village Drive and Echo Drive. The storm drain system includes 15-inch, 18-inch, and 24-inch diameter RCP, 48-inch diameter manholes, curb inlets, concrete curb & gutter and valley gutter, precast water quality vaults, detention basins, concrete revetment systems for roadside drainage channels, stacked rock walls, and slope revegetation.

**ARTICLE 2 - THE PROJECT**

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows: Earthwork, storm drain, paving, tree removal, revegetation and associated work.

**ARTICLE 3 - ENGINEER**

3.01 The Project has been designed by: Nichols Consulting Engineers  
1885 S. Arlington Avenue, Suite 11  
Reno, NV 89509

who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities, and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

## ARTICLE 4 - CONTRACT TIMES

### 4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

### 4.02 *Dates for Substantial Completion and Final Payment*

A. The Work will be substantially completed on or before September 16, 2011, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions on or before September 30, 2011.

### 4.03 *Liquidated Damages*

A. CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER seven hundred fifty dollars, (\$750.00) for each day that expires after the time specified in paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 4.02 for completion and readiness for final payment or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER three hundred dollars (\$300.00) for each day that expires after the time specified in paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

B. In the event that the CONTRACTOR fails to pay OWNER the specified liquidated damages amount within thirty (30) days of CONTRACTOR's being notified of said damages, OWNER may deduct the amount of the assessed liquidated damages from the final payment or retention withheld pursuant to Article 14 of the General Conditions.

## ARTICLE 5 - CONTRACT PRICE

5.01 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined below:

A. for all Unit Price Work, an amount equal to the sum of the established Unit Price for each separately identified item of Unit Price Work times the estimated quantity of that item, as indicated in the attached Bid Schedule;

B. as provided in paragraph 11.03 of the General Conditions estimated quantities are not guaranteed, and determinations of actual quantities and classification are to be made by ENGINEER as provided in paragraph 9.08 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03 of the General Conditions.

## ARTICLE 6 - PAYMENT PROCEDURES

### 6.01 *Submittal and Processing of Payments*

A. CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

A. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, on or about the Friday following either the first or third Thursday of each month, depending upon the timing of submittals and approvals, as provided in paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments will be measured by the schedule of values established in paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions:

a. 90% of Work completed (with balance being retainage). If Work has been 50% completed as determined by ENGINEER, and if the character and progress of the Work have been satisfactory to OWNER and ENGINEER, OWNER, on recommendation of ENGINEER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no retainage on account of Work subsequently completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100% of the Work completed less the aggregate of payments previously made; and

b. 90% of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

2. Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 90% of the Work completed, less such amounts as ENGINEER shall determine in accordance with paragraph 14.02.B.5 of the General Conditions and less 100 % of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 *Final Payment*

A. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.

**ARTICLE 7 - INTEREST**

7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate that was in place at the time of the execution of the project. The interest rate shall be determined by the interest rate paid by Bank of America, Minden branch on a certificate of deposit time deposit.

**ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS**

8.01 In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. CONTRACTOR has carefully studied all (if any): (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions.

CONTRACTOR accepts the determination set forth in paragraph SC-4.2 of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to rely as provided in paragraph 4.2 of the General Conditions. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site.

E. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto.

F. CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

G. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.

H. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

I. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

**ARTICLE 9 - CONTRACT DOCUMENTS**

**9.01 Contents**

- A. The Contract Documents consist of the following:
1. This Agreement (pages AG-1 to AG-7, inclusive);
  2. Performance Bond (pages 1 to 3, inclusive);
  3. Payment Bonds (pages 1 to 3, inclusive);
  4. Other Bonds (pages N/A to N/A, inclusive);
  5. General Conditions (pages GC-1 to GC-44, inclusive, not attached);
  6. Supplementary Conditions (pages SC-1 to SC-16, inclusive, not attached);
  7. Specifications as listed in table of contents of the Project Manual (not attached);
  8. Drawings (not attached) consisting of a cover sheet and sheets numbered G-1 through C-20, inclusive with each sheet bearing the following general title Lake Village Phase II Water Quality Improvement Project;
  9. Addenda (numbers 1 to 3, inclusive);
  10. Exhibits to this Agreement (enumerated as follows):
    - a. Notice to Proceed (pages 1 to 1 inclusive, not attached)
    - b. CONTRACTOR's Bid (pages BF-1 to BF-11, inclusive, not attached).
    - c. Documentation submitted by CONTRACTOR prior to Notice of Award (pages N/A to N/A, inclusive, not attached).
  11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
    - a. Written Amendments
    - b. Work Change Directives
    - c. Change Order(s)
  12. Part 2 and Part 3 of the "Standard Specifications for Public Works Construction, Washoe County, City of Sparks, City of Reno, Carson City, City of Yerington," 2007 Edition, incorporated by reference.
- B. The documents listed in paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.04 of the General Conditions.

**ARTICLE 10 - MISCELLANEOUS**

**10.01 Terms**

A. Terms used in this will have the meanings indicated in the General Conditions.

**10.02. Assignment of Contract**

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

**10.03 Successors and Assigns**

A. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

**10.04 Severability**

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

**10.05 Legal**

A. In the event that there is any litigation relative to the interpretation or enforcement of this Agreement or any of the Contract Documents, any such matter must be litigated in the Ninth Judicial District Court of Nevada.

**10.06 Notices**

A. All notices, documents and or payments regarding this Agreement and Contract shall be sent to the following:

OWNER  
Douglas County  
C/O Ed Mason, PE  
1594 Esmeralda Ave., P.O. Box 218  
Minden, NV 89423

CONTRACTOR  
Peek Construction Company  
Attn: Bill Gettman  
2606 East La Madre Way  
North Las Vegas, NV 89081

**10.07 Effective Date of the Agreement**

A. Both OWNER and CONTRACTOR agree that this Agreement and Contract as outlined in the Contract Documents become effective immediately upon the signing of this Agreement by both parties.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have caused this Agreement for the Lake Village Phase II Water Quality Improvement Project to be executed and intend to be bound by the provisions of this Agreement as well as the Contract set forth in the Contract Documents.

Dated this 17th day of June, 2010.

DOUGLAS COUNTY, NEVADA - OWNER  
Michael A. Olson  
Michael A. Olson, Chairman  
Board of County Commissioners

STATE OF NEVADA    )  
                                   )SS.  
COUNTY OF DOUGLAS)

On the 17th day of June, 2010, Michael A. Olson personally appeared before me, Theodore Thran, Douglas County Clerk, and acknowledged to me that, in conformance with the direction of the Board of Douglas County Commissioners' meeting of June 17, 2010, he executed the above instrument on behalf of Douglas County, a political subdivision of the State of Nevada.

Theodore Thran  
Theodore Thran, Douglas County Clerk  
William Sudell Clerk to the Board

Dated 14th day of June, 2010.  
Michael Peek  
On authority with and on behalf of  
Peek Construction Company

STATE OF NEVADA    )  
                                   )SS:  
COUNTY OF DOUGLAS)

On this 14th day of June, in the year 2010 before me, Michael Peek / Notary Public, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is (are) subscribed to this instrument, and acknowledge that he (she/they) executed it.

WITNESS my hand and official seal.  
Edeane Lawson My Commission Expires: 08-10-2011  
Notary's Signature

**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: June 30, 2010  
William Sudell Clerk of the 9th Judicial District Court of the State of Nevada in and for the County of Douglas.

By Carol M. Peck Deputy

