

Assessor's Parcel Number: N/A

Date: JUNE 18, 2012

Recording Requested By:

Douglas County - NV
Karen Ellison - Recorder
Page: 1 of 12 Fee: 0.00
BK-0612 PG- 4051 RPTT: 0.00



Name: JEANE COX, COMMUNITY DEVELOPMENT

Address: _____

City/State/Zip: _____

Real Property Transfer Tax: \$ N/A

CONTRACT #2012.115
(Title of Document)

FILED
2012.115

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

A CONTRACT BETWEEN DOUGLAS COUNTY

2012 JUN 18 AM 11:57

AND

R.O. ANDERSON ENGINEERING, INC.
P O BOX 2229
MINDEN, NEVADA 89423

FILED
JUN 18 2012
CLERK
DOUGLAS COUNTY

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

WHEREAS, it is deemed that the personal services of Contractor herein specified are both necessary and desirable and in the best interests of Douglas County; and

WHEREAS, Contractor represents that he is duly qualified, equipped, staffed, ready, willing and able to perform and render the personal services hereinafter described;

NOW, THEREFORE, in consideration of the agreements herein made, the parties mutually agree as follows:

1. EFFECTIVE DATE AND TERM OF CONTRACT. This contract shall not become effective until and unless approved by the Douglas County Board of County Commissioners or Purchasing and Contracts Administrator, whichever is required. Contractor must perform and complete all work within the time periods set forth in Exhibit A.

2. INDEPENDENT CONTRACTOR STATUS. The parties agree that Contractor shall have the status of an independent contractor and that this contract, by explicit agreement of the parties, incorporates and applies the provisions of Nev.Rev.Stat. (NRS) 333.700 (formerly 284.173), as necessarily adapted, to the parties, including that Contractor is not a County employee and that:

There shall 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; and
- (6) Unemployment compensation coverage provided by the County if the requirements of Nev.Rev.Stat. (NRS) 612.085 for independent contractors are met.

3. INDUSTRIAL INSURANCE.

A. Unless the Contractor complies with Paragraph (¶) B below, 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 and/or a certificate issued by a qualified insurer in accordance with Nev.Rev.Stat. (NRS) § 616B.627. Contractor also agrees, prior to commencing any work under the contract, to complete and to provide the following written request to the insurer:

R.O. Anderson Engineering, Inc., has entered into a contract with Douglas County to perform work from June 15, 2012 to December 15, 2012 and requests that the authorized insurer provide to Douglas County; 1) a certificate of coverage issued pursuant to Nev.Rev.Stat. (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:

Douglas County
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 the 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.

B. 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 Nev.Rev.Stat (NRS) 616B.659, has not elected to be included within the terms, conditions and provisions of chapters 616A to 616D, inclusive, of Nev.Rev.Stat. (NRS); and
2. Is otherwise in compliance with those terms, conditions and provisions.

4. SERVICES TO BE PERFORMED. The parties agree that the personal services to be performed are as follows: R.O. Anderson, Inc., shall provide land surveying services for the abandonment of Bougainvillea Drive as identified in Exhibit A.

5. PAYMENT FOR SERVICES. Contractor agrees to provide the personal services set forth in Paragraph (¶) 4 at a cost of \$12,000.00. In addition the County does not agree to reimburse the Contractor for per diem. Unless Contractor has received a written exemption from the County, Contractor shall submit monthly requests for payment for services performed under this agreement. Requests for payment by Contractor may only be made for reimbursement of actual cash disbursed. Requests for payment shall be submitted no later than fifteen (15) days after the end of a month and must include a detailed summary of the expenditures reported in a form that supports the approved budget. Specifically, Contractor agrees to provide with each request for payment a schedule of actual expenditures for the period, cumulative total expenditures for the entire contract, and a comparison of cumulative total expenditures to the approved budget.

6. TERMINATION OF CONTRACT. Either party may revoke this contract without cause after the first year, provided that a revocation shall not be effective until 60 days after a party has served written notice upon the other party.

7. NONAPPROPRIATION. All payments under this contract are contingent upon the availability to the County of the necessary funds. In accordance with Nev.Rev.Stat. (NRS) § 354.626 and any other applicable provision of law, the financial obligations under this contract between the parties shall not

exceed those monies appropriated and approved by the County for this contract for the then current fiscal year under the Local Government Budget Act. This contract shall terminate and the County's obligations under it shall be extinguished if the County fails to appropriate monies.

Nothing in this contract shall be construed to provide Contractor with a right of payment over any other entity. Any funds obligated by the County under this contract that are not paid to Contractor shall automatically revert to the County's discretionary control upon the completion, termination, or cancellation of the agreement. The County shall not have any obligation to re-award or to provide, in any manner, the unexpended funds to Contractor. Contractor shall have no claim of any sort to the unexpended funds.

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

9. COMPLIANCE WITH APPLICABLE LAWS. Contractor shall 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.

10. ASSIGNMENT. Contractor shall neither assign, transfer nor delegate any rights, obligations or duties under this contract without the prior written consent of the County.

11. COUNTY INSPECTION. The books, records, documents and accounting procedures and practices of Contractor related to this contract shall 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.

12. 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 shall be the exclusive property of the County and all such materials shall 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 shall promptly remit and deliver the materials, at Contractor's expense, to the County, unless the County has requested remittance and delivery by Contractor of the items. Contractor shall not use, willingly allow or cause to have such materials used for any purpose other than the performance of Contractor's obligations under this contract without the prior written consent of the County.

13. PUBLIC RECORDS LAW. Contractor expressly agrees that all documents ever submitted, filed, or deposited with the County by Contractor (including those remitted to the County by Contractor pursuant to Paragraph (¶) 15), unless designated as confidential by a specific statute of the State of Nevada, shall be treated as public records pursuant to Nev.Rev.Stat. (NRS) ch. 239 and shall be available for inspection and copying by any person, as defined in Nev.Rev.Stat. (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 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



BK- 0612

PG- 4056

0804235 Page: 6 Of 12 06/18/2012

May 15, 2012

RECEIVED
MAY 15 2012
Douglas County Manager**Via Electronic and U.S. Mail**

Steve Mokrohisky, County Manager
DOUGLAS COUNTY
1594 Esmeralda Avenue
Minden, Nevada 89423

**Professional Surveying Services for
Survey/Abandonment of Bougainvillea Drive**

Dear Mr. Mokrohisky:

This letter is provided in response to your request for a fee proposal with respect to land surveying services for the abandonment of Bougainvillea Drive located north of Buckeye Road in Minden, Nevada. Assessor's records indicate that the right-of-way is adjacent to property currently owned by the Town of Minden, the Winhaven Homeowner's Association, and the Frieda Lane Homeowner's Association, further identified by Assessor's Parcel Numbers 1320-29-212-006, 1320-29-212-064, and 1320-29-212-061.

As a follow up to our original meeting with Mimi Moss, Community Development Director, I have met with Bruce Scott, Town of Minden Engineer, to review the most recent landscaping and utility plan proposed for the area to be abandoned. According to Mr. Scott, it is his recollection that the Town of Minden will acquire all abandoned right-of-way. Based on these discussions, we propose the following scope of services:

- **Task 1 – Review of Record Maps; Access and Easement Coordination for Abandonment**

In order to prepare the legal descriptions and exhibits for processing of the abandonment of Bougainvillea Drive, R.O. Anderson will coordinate with the local utility companies in order to identify all existing public utility easements. Per our discussions with Bruce Scott, we will need to evaluate the existing utilities in the current right-of-way and coordinate with utility providers to satisfy their needs for easements. Part of this task will include obtaining signatures from said providers for abandonment of any easements as required by the Douglas County Community Development abandonment application.

Additionally, Mr. Scott advised that the original park design also included asphalt driveway access to two adjacent parcels, one owned by Lee Rathbun and the other the Seeman Trust. Mr. Scott has agreed to approach both Mr. Rathbun and the Seeman Trust to verify whether these access easements are still required. If so, access easements will also need to be drafted and recorded.

This task will also include completion of a field survey, preparation of the abandonment petition and signature coordination with adjacent property owners, and preparation of the legal descriptions and exhibits description for processing of the abandonment

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Dear Mr. Mokrohisky
May 15, 2012
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application. Our scope of work does not include presentation of the abandonment application to the Board of Commissioners or meetings with the Winhaven or the Frieda Lane Homeowner's Associations.

- **Task 2 – Right-of-Way Dedication**

Based upon the field survey in Task 1, R.O. Anderson will prepare an exhibit and legal description for inclusion in a grant deed (prepared by others) for the new section of Bougainvillea Drive to be dedicated to the County. During the right-of-way analysis, R.O. Anderson will ensure that Frieda Lane continues to have access to Bougainvillea Drive.

- **Task 3 – Record of Survey**

R.O. Anderson will prepare a tentative Record of Survey to be presented to the Board of Commissioners along with the abandonment application. The final Record of Survey will be completed after the abandonment resolution is approved to reflect approved changes and document the monumentation of new right-of-way and property lines.

The billing for this engagement shall be \$6,000 for **Task 1**, \$1500 for **Task 2**, and \$4,500 **Task 3**, totaling a lump sum fee of \$12,000. This amount excludes costs for title reports for all adjacent properties, which will need to be provided by you. We retain complete discretion in assigning personnel within the firm to complete this assignment.

The professional service fees, as set forth above, do not include provisions for additional professional services that may be necessary or determined to be desirable, such as presentation or attendance at public meetings. If you wish us to perform these services or if additional supporting professional services are required, these costs will be billed in addition to the above-described scope of services on an hourly basis. Prior to incurring such expenses, your review and authorization will be requested.

Our firm maintains a strict time accounting system within which each employee logs the actual time required and the tasks accomplished. These time slips are maintained by our office administrator and are available for your inspection upon request. The ultimate billing will not exceed the parameter set out above without receiving your prior authorization. You will be billed monthly based on the percentage of the assignment determined to be complete. The balance is due within 30 days of receipt. Interest will accrue on any unpaid balance at a rate of 1-1/2% per month. If a legal proceeding is initiated to collect the balance due, you will be required and agree to pay, in addition to the unpaid balance and interest, any costs and attorney fees incurred. If at any time you wish to discuss any matter relating to our billing policies or a specific invoice, we encourage you to contact us immediately.

Based upon a review of our current work schedule, we would anticipate completion of **Task 1** within four weeks of your authorization to proceed. The anticipated delivery date is contingent upon receiving all necessary owner provided documentation in a timely manner. We will require and do hereby request all information and documentation that you, as our client, may have

R O Anderson

Dear Mr. Mokrohisky
May 15, 2012
Page 3 of 3

relative to the subject property including previous land surveys, title reports, easements, historic agreements and any other items that may affect the assignment. **Task 2** will be completed within two weeks of **Task 1**. **Task 3** will be completed within three weeks of the recordation of the resolution for abandonment. Unexpected delays over which we have no control may also affect the delivery date.

All professional land surveying services provided by this firm will be performed using the standard of care and skill ordinarily used by members of land surveying profession practicing under similar circumstances at the same time and in the same locality. The firm makes no warranties, express or implied, or otherwise, in connection with the assignment.

This fee proposal and estimated date of delivery, as set forth herein, are valid for a period of 20 days from the date of this letter, after which this firm can no longer guarantee the amount of the fee nor the anticipated delivery date.

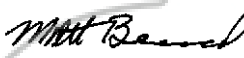
All correspondence provided by our firm will be sent to you via electronic mail unless you indicate otherwise in the space below.

Please review this letter carefully. Should you have any questions or concerns after reviewing these documents, please contact me directly. Upon your approval, please sign your acknowledgement and acceptance at the bottom of this document and return it to our office. After receiving an executed copy of this document, we will initiate our efforts.

We appreciate being considered for this project. If you have any additional questions, please contact us.


Yours faithfully,

R.O. ANDERSON ENGINEERING, INC.


Matthew P. Bernard, PLS 11172
Director of Surveying

Cc: Mimi Moss, AICP, Community Development Director

ACKNOWLEDGED AND ACCEPTED:


Steve Mokrohisky, County Manager

5-25-12
Date

Please send all correspondence to my mailing address. I do not wish to use electronic mail.

**R.O. ANDERSON ENGINEERING, INC. (CONSULTANT)
TERMS OF SERVICE AND AGREEMENT
FOR
PROFESSIONAL SERVICES**

ARTICLE 1 - SERVICES OF CONSULTANT

1.01 Scope

- A. CONSULTANT shall provide the Basic and Additional Services set forth herein and described more fully in the scope of services or within the engagement letter.
- B. Upon this Agreement becoming effective, CONSULTANT is authorized to begin Basic Services.

ARTICLE 2 - CLIENT'S RESPONSIBILITIES

2.01 General

CLIENT shall have the responsibilities set forth herein;

- A. Provide all criteria and full information as to CLIENT's requirements for the PROJECT, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which CLIENT will require to be included in the Drawings and Specifications.
- B. Assist CONSULTANT by placing at CONSULTANT's disposal all available information pertinent to the PROJECT including previous reports and any other data relative to design or construction of the PROJECT.
- C. Furnish to CONSULTANT, as required for performance of CONSULTANT's basic services, the following:
1. Data prepared by or services of others, including without limitation borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment;
 2. Appropriate professional interpretations of all of the foregoing;
 3. Environmental assessment and impact statements, if required by any governmental authority;
 4. Previous property, boundary, easement, right-of-way, topographic and utility surveys;
 5. Property descriptions;
 6. Zoning, deed and other land use restrictions; and,
 7. Other special data or consultations not covered in Section 2;
- All of which CONSULTANT may use and rely upon in performing services under this AGREEMENT.
- D. Arrange for access to and make all provisions for CONSULTANT to enter upon public and private property as required for CONSULTANT to perform services under this AGREEMENT.
- E. Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by CONSULTANT, obtain advice of an attorney, insurance counselor and other consultants as CLIENT deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of CONSULTANT.
- F. Furnish approvals and permits from all governmental authorities having jurisdiction over the PROJECT and such approvals and consents from others as may be necessary for completion of the PROJECT.
- G. Give prompt written notice to CONSULTANT whenever CLIENT observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT's services, or any defect or nonconformance in the work of any Contractor.
- H. Bears all costs incident to compliance with the requirements of Article 2.

ARTICLE 3 - TIMES FOR RENDERING SERVICES

3.01 General

- A. CONSULTANT's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion. Unless specific periods of time or specific dates for providing services are specified, CONSULTANT's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.
- B. If specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided, and if such periods of time or dates are changed through no fault of CONSULTANT, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If CLIENT has requested changes in the scope, extent, or character of the Project, the time of performance of and compensation for CONSULTANT's services shall be adjusted equitably.

3.02 Suspension

- A. If CLIENT fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if CONSULTANT's services are delayed through no fault of CONSULTANT, CONSULTANT may suspend services after giving seven days written notice to CLIENT.

ARTICLE 4 - PAYMENTS TO CONSULTANT

4.01 Methods of Payment for Services and Reimbursable Expenses of CONSULTANT

- A. *For Basic Services.* CLIENT shall pay CONSULTANT for Basic Services performed or furnished, on a lump sum basis as stated in the engagement letter.
- B. *For Reimbursable Expenses.* In addition to payments provided for in paragraphs 4.01.A, CLIENT shall pay CONSULTANT for Reimbursable Expenses incurred by CONSULTANT and CONSULTANT's Consultants at cost + 10% for said reimbursable expenses.

4.02 Other Provisions Concerning Payments

- A. *Preparation of Invoices.* Invoices will be prepared in accordance with CONSULTANT's standard invoicing practices and will be submitted to CLIENT by CONSULTANT, unless otherwise agreed. The amount billed in each invoice will be calculated based upon the CONSULTANT's estimate of the percentage complete for the billing period.
- B. *Payment of Invoices.* Invoices are due and payable upon receipt. If CLIENT fails to make any payment due CONSULTANT for services and expenses within 30 days after receipt of CONSULTANT's invoice therefore, the amounts due CONSULTANT will be

increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, CONSULTANT may, after giving seven days written notice to CLIENT, suspend services under this Agreement until CONSULTANT has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

- C. Disputed *invoices*. In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.
- D. *Payments Upon Termination*.
1. In the event of any termination under paragraph 6.06, CONSULTANT will be entitled to invoice CLIENT and will be paid for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.
 2. In the event of termination by CLIENT for convenience, or by CONSULTANT for cause, CONSULTANT, in addition to invoicing for those items identified in subparagraph 4.02.D.1, shall be entitled to invoice CLIENT and shall be paid a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination.

ARTICLE 5 - OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

- A. CONSULTANT's opinions of probable Construction Costs provided for herein are to be made on the basis of CONSULTANT's experience and qualifications and represent CONSULTANT's best judgment as an experienced and qualified professional generally familiar with the industry. However, since CONSULTANT has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, CONSULTANT cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by CONSULTANT. If CLIENT wishes greater assurance as to probable Construction Cost, CLIENT shall employ an independent cost estimator.

5.02 Opinions of Total Project Costs

- A. CONSULTANT assumes no responsibility for the accuracy of opinions of Total Project Costs.

ARTICLE 6 - GENERAL CONSIDERATIONS

6.01 Standards of Performance

- A. The standard of care for all professional services performed or furnished by CONSULTANT under this Agreement will be the care and skill ordinarily used by members of CONSULTANT's profession practicing under similar circumstances at the same time and in the same locality. CONSULTANT makes no warranties, express or implied, under this Agreement or otherwise, in connection with CONSULTANT's services.
- B. CONSULTANT shall be responsible for the technical accuracy of its services and documents resulting therefrom, and CLIENT shall not be responsible for discovering deficiencies therein. CONSULTANT shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in CLIENT-furnished information.
- C. CONSULTANT shall perform or furnish professional services in all phases of the Project to which this Agreement applies. CONSULTANT shall serve as CLIENT's prime professional for the Project. CONSULTANT may employ such CONSULTANT's Consultants as CONSULTANT deems necessary to assist in the performance or furnishing of the services. CONSULTANT shall not be required to employ any CLIENT's Consultant unacceptable to CONSULTANT.
- D. CONSULTANT and CLIENT shall comply with applicable Laws or Regulations and CLIENT-mandated standards. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to CLIENT's responsibilities or to CONSULTANT's scope of services, times of performance, or compensation.
- E. CLIENT shall be responsible for, and CONSULTANT may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data and other information furnished by CLIENT to CONSULTANT pursuant to this Agreement. CONSULTANT may use such requirements, reports, data, and information in performing or furnishing services under this Agreement.
- F. CLIENT shall make decisions and carry out its other responsibilities in a timely manner and shall bear all costs incident thereto so as not to delay the services of CONSULTANT.
- G. During the Construction Phase, if any, CONSULTANT shall not supervise, direct, or have control over Contractor's work, nor shall CONSULTANT have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.
- H. CONSULTANT neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- I. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (Document No. 1910-8, Latest Edition) unless both parties mutually agree to use other General Conditions.

6.02 Authorized Project Representatives

- A. Contemporaneous with the execution of this Agreement, CONSULTANT and CLIENT shall designate specific individuals to act as CONSULTANT's and CLIENT's representatives with respect to the services to be performed or furnished by CONSULTANT and responsibilities of CLIENT under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party.

6.03 Design without Construction Phase Services

- A. It is understood and agreed that if CONSULTANT's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services, and that such services will be provided by CLIENT, then CLIENT assumes all responsibility for interpretation of the Contract Documents and for construction observation or review and waives any claims against the CONSULTANT that may be in any way connected thereto.

6.04 Use of Documents

- A. All Documents are instruments of service in respect to this Project, and CONSULTANT shall retain an ownership and property interest therein (including the right of reuse at the discretion of the CONSULTANT) whether or not the Project is completed.
- B. Copies of OWNER-furnished data that may be relied upon by CONSULTANT are limited to the printed copies (also known as hard copies) that are delivered to the CONSULTANT. Files in electronic media format of text, data, graphics, or of other types that are furnished by CLIENT to CONSULTANT are only for convenience of CONSULTANT. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- C. Copies of Documents that may be relied upon by CLIENT are limited to the printed copies (also known as hard copies) that are signed or sealed by the CONSULTANT. Files in electronic media format of text, data, graphics, or of other types that are furnished by CONSULTANT to CLIENT are only for convenience of CLIENT. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- D. When transferring documents in electronic media format, CONSULTANT makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software packages, operating systems, or computer hardware differing from those used by CONSULTANT at the beginning of this Project.
- E. CLIENT may make and retain copies of Documents for information and reference in connection with use on the Project by CLIENT. Such Documents are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaption by CONSULTANT, as appropriate for the specific purpose intended, will be at CLIENT's sole risk and without liability or legal exposure to CONSULTANT or to CONSULTANT's Consultants. CLIENT shall indemnify and hold harmless CONSULTANT and CONSULTANT's Consultants from all claims, damages, losses and expenses, including attorney's fees arising out of or resulting therefrom.
- F. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- G. Any verification or adaption of the Documents for extensions of the Project or for any other project will entitle CONSULTANT to further compensation at rates to be agreed upon by CLIENT and CONSULTANT.

6.05 Insurance

- A. CONSULTANT shall procure and maintain professional liability insurance with an aggregate limit of \$1,000,000.
- B. CLIENT shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause CONSULTANT and CONSULTANT's Consultants to be listed as additional insured with respect to such liability and other insurance purchased and maintained by Contractor for the Project.
- C. At any time, CLIENT may request that CONSULTANT, at CLIENT's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those otherwise provided. If so requested by CLIENT, with the concurrence of CONSULTANT, and if commercially available, CONSULTANT shall obtain and shall require CONSULTANT's Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by CLIENT.

6.06 Termination

- A. The obligation to provide further services under this Agreement may be terminated:
 - 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. By CONSULTANT:
 - 1) upon seven days written notice if CONSULTANT believes that CONSULTANT is being requested by CLIENT to furnish or perform services contrary to CONSULTANT's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the CONSULTANT's services for the Project are delayed or suspended for more than 90 days for reasons beyond CONSULTANT's control.
 - 3) CONSULTANT shall have no liability to CLIENT on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

6.07 Controlling Law

- A. This Agreement is to be governed by the laws of the state of Nevada.

6.08 Successors, Assigns, and Beneficiaries

- A. CLIENT and CONSULTANT each is hereby bound and the partners, successors, executors, administrators and legal representatives of CLIENT and CONSULTANT (and to the extent permitted by paragraph 6.08.B the assigns of CLIENT and CONSULTANT) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.
- B. Neither CLIENT nor CONSULTANT may assign, sublet, or transfer any rights under or interest (including, but without limitation, monies that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to any assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by CLIENT or CONSULTANT to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.

6.09 Dispute Resolution

- A. CLIENT and CONSULTANT agree to negotiate all disputes between them in good faith for a period of 45 days from the date of notice prior to exercising their rights under other provisions of this Agreement, or under law. In the absence of such an agreement, the parties agree to submit the matter to confidential non-binding mediation. If such mediation efforts are not successful, the parties agree to submit the dispute to confidential binding arbitration. The Federal Arbitration Act shall then govern this arbitration clause and any and all related court proceeding(s) shall be sealed.

B. **Attorney's Fees and Costs:** The prevailing party in such a dispute shall be awarded all costs and attorney's fees incurred through all appeals and enforcement of judgment or award, including, without limitation, all costs and attorney's fees in related contempt proceedings, garnishments, execution, levy, debtor and third-party examinations, bankruptcy litigation and discovery, whether before, after or during any trial.

6.10 Hazardous Environmental Condition

- A. CLIENT represents to CONSULTANT that to the best of its knowledge a Hazardous Environmental Condition does not exist.
- B. CLIENT has disclosed to the best of its knowledge to CONSULTANT the existence of all Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Material located at or near the Site, including type, quantity and location.
- C. CLIENT acknowledges that CONSULTANT is performing professional services for CLIENT and that CONSULTANT is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the Site in connection with CONSULTANT's activities under this Agreement.

6.11 Allocation of Risks

- A. **Indemnification**
 1. To the fullest extent permitted by law, CONSULTANT shall indemnify and hold harmless CLIENT, CLIENT's officers, directors, partners, and employees from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of CONSULTANT or CONSULTANT's officers, directors, partners, employees, and CONSULTANT's Consultants in the performance and furnishing of CONSULTANT's services under this Agreement.
 2. To the fullest extent permitted by law, CLIENT shall indemnify and hold harmless CONSULTANT, CONSULTANT's officers, directors, partners, employees, and CONSULTANT's Consultants from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of CLIENT or CLIENT's officers, directors, partners, employees, and CLIENT's consultants with respect to this Agreement or the Project.
 3. To the fullest extent permitted by law, CONSULTANT's total liability to CLIENT and anyone claiming by, through, or under CLIENT for any cost, loss, or damages caused in part by the negligence of CONSULTANT and in part by the negligence of CLIENT or any other negligent entity or individual, shall not exceed the percentage share that CONSULTANT's negligence bears to the total negligence of CLIENT, CONSULTANT, and all other negligent entities and individuals.

6.12 Notices

A. Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

6.13 Survival

A. All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

6.14 Severability

A. Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon CLIENT and CONSULTANT, who agree that the Agreement 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.

6.15 Waiver

A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

ARTICLE 7 - EXHIBITS AND SPECIAL PROVISIONS

7.01 Exhibits Included

A. CONSULTANT's engagement letter and scope of services.

7.02 Total Agreement

A. This Agreement (consisting of pages 1 to 4, inclusive, together with the Exhibits (identified above) constitutes the entire agreement between CLIENT and CONSULTANT and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

Read and Acknowledged:

Initial Consultant: MB Client: SM

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 18 2012
THIRAN Clerk of the 9th Judicial District Court
of the State of Nevada, in and for the County of Douglas.
By [Signature] Deputy