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Page: 1 of 10 Fee: \$ 0.00

Bk: 0413 Pg: 5158



Deputy: pk

Assessor's Parcel Number: N/A

Date: APRIL 18, 2013

Recording Requested By:

Name: EILEEN CHURCH, PUBLIC WORKS

Address: _____

City/State/Zip: _____

Real Property Transfer Tax: \$ N/A

AGREEMENT #2013.064

(Title of Document)

This page added to provide additional information required by NRS 111.312 Sections 1-2. (Additional recording fee applies)

This cover page must be typed or legibly hand printed.

**AGREEMENT BETWEEN OWNER AND CONTRACTOR
FOR A CONSTRUCTION CONTRACT WITH A STIPULATED PRICE**

FILED
2013.064

2013 APR 18 AM 11:33

THIS AGREEMENT is by and between Douglas County, a political subdivision of the State of Nevada ("Owner") and Herback General Engineering, LLC. ("Contractor").
CLERK
DEPUTY

Owner and Contractor hereby agree as follows:

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:

Construction of piping, electrical, control systems and structural improvements to connect and make operational the Montana Well No. 1 to the water distribution system and compliant with NDEP standards.

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:

Construction of piping, electrical, control systems and structural improvements to connect and make operational the Montana Well No. 1 to the water distribution system

ARTICLE 3 – ENGINEER

3.01 The Project has been designed by Douglas County Public Works (Engineer), which 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 the 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 *Days to Achieve Substantial Completion and Final Payment*

A. Work will be substantially completed within 45 days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 60 days after the date when the Contract Times commence to run. In the event that Substantial Completion extends beyond May 31, 2013, the well pump and piping from the pump to the

distribution system must be operational no later than May 31, 2013 for the project to be substantially complete.

4.03 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above 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 \$500 for each day that expires after the time specified in Paragraph 4.02 above 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 Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$500 for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment.

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 pursuant to Paragraphs 5.01.A and 5.01.B:

A. Total of All Bid Prices (Unit Price Work): \$347,213.95

1. 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 actual quantity of that item.
2. The Bid prices for Unit Price Work set forth as of the Effective Date of the Agreement are based on estimated quantities. As provided in paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer as provided in Paragraph 9.07 of the General Conditions.

B. Work shall include the following items:

1. Base Bid (See section 00415)
 - a. Bid Schedule 1
 - b. Bid Schedule 2
 - c. Bid Schedule 3
 - d. Bid Schedule 4

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, based solely on the basis of Contractor's Applications for Payment, in accordance with paragraph 14.02.C.1 of the General Conditions as modified by the Supplementary Conditions.

1. Progress payments will be made for ninety-five percent (95%) of the amount of each invoice, until fifty percent (50%) of the Work required by this Agreement. All such payments will be measured by the schedule of values established in paragraph 2.05.A.3 of the General Conditions (and in the case of Unit Price Work based on the number of units completed). After fifty percent (50%) of the Work required by this Agreement have been performed, the Owner may pay to the Contractor any of the remaining progress payments without withholding additional retainage if, in the Engineer's sole discretion, satisfactory progress is being made on the Services in accordance with NRS 338.515. If the Engineer determines that such satisfactory progress is being made, the Owner may pay any amount of retainage withheld from progress payments made during the Contractor's completion of the first fifty percent (50%) of Work required by this Agreement on the condition that if a subcontractor performed a portion of the Work, the Engineer determined that such Work was in compliance with this Agreement, the subcontractor submits to the Contractor a release of a mechanics lien for the portion of Work so completed, and a release of any applicable mechanics lien from each of the subcontractor's subcontractors and suppliers, and the amount of retainage the Owner pays is in proportion to the Work which the subcontractor performed. If the Contractor is paid for any retainage for Work completed by its subcontractors, the Contractor must pay to the subcontractor any retainage it held pursuant to NRS 338.555. If the Engineer determines that satisfactory progress is being made on the Work and does not withhold any amount pursuant to NRS 338.525, the Owner may pay ninety-seven and one-half percent (97.50%) of the amount of each invoice after completion of the first fifty percent (50%) of the Work and will release to the Contractor fifty percent (50%) of the retainage withheld from invoices received for the first fifty percent (50%) of Work completed. If the Engineer determines that satisfactory progress is not being made on the Work and does withhold an amount pursuant to NRS 338.525, the Owner may pay ninety-five percent (95%) of the amount of each invoice after completion of the first fifty percent (50%) of the Services and will continue to withhold the retainage withheld from invoices received for the first fifty percent (50%) of Services completed. The final audit shall be performed after the release of the retainage and may cause an adjustment of payments to the Owner or to the Contractor.

2. Except as otherwise provided in NRS 338.525, the Owner will pay the Contractor the actual cost of the supplies, materials and equipment, that are identified in Contract; have been delivered and stored at the location; and in the time and manner specified in the

Contract by the Contractor or subcontractor or supplier for use in the Work; and are in short supply or were specially made project.

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 Paragraph 14.07.

ARTICLE 7 – INTEREST

All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate equal to the rate quoted by at least three insured banks, credit unions or savings and loan associations in this State as the highest rate paid on a certificate of deposit whose duration is approximately 90 days on the first day of the quarter.

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: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."
- E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on: (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor’s safety precautions and programs.

- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that 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 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.
- I. 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 1 to 2, inclusive).
 - 2. Performance bond (pages 1 to 3, inclusive).
 - 3. Payment bond (pages 1 to 3, inclusive).
 - 4. Other bonds (pages NA to NA, inclusive).
 - a. Bid Bond (pages 1 to 2, inclusive).
 - b. NA (pages NA to NA, inclusive).
 - c. NA (pages NA to NA, inclusive).
 - 5. General Conditions (pages 1 to 62, inclusive).
 - 6. Supplementary Conditions (pages 1 to 16, inclusive).
 - 7. Specifications as listed in the table of contents of the Project Manual.
 - 8. Drawings consisting of 24 sheets with each sheet bearing the following general title:
Montana Well No. 1 Upgrades.
 - 9. Addenda (numbers 1 to 1, inclusive).
 - 10. Exhibits to this Agreement (enumerated as follows):
 - a. Bid Form (Section 00410, inclusive)

- b. Bid Schedule (Section 00415, inclusive)
 - c. List of Proposed Subcontractor's (Section 00420, inclusive)
 - d. Qualification Statement (Section 00425, inclusive)
 - e. Bid Bond
 - f. Contractor's List of Subcontractor's (Section 00440, inclusive)
11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
- a. Certificate(s) of Insurance
 - b. Notice to Proceed (pages 1 to 1, inclusive).
 - c. Work Change Directives. Change Orders.
 - d. Part 2 and 3 of the "Standard Specifications for Public Works Construction, Regional Transportation Commission of Washoe County, Carson City, Churchill County, City of Reno, City of Sparks, City of Yerington, Washoe County" 2012 Edition.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above.
- C. 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 Agreement will have the meanings stated in the General Conditions and the Supplementary 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 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 1. "Corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "Fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "Collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "Coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Legal*

- A. In the event that any dispute cannot be resolved by the parties, then any litigation regarding the interpretation or enforcement of this Agreement or any of the Contract Documents must be litigated in the appropriate court with jurisdiction, located in Douglas County, Nevada.

10.07 *Fair employment practices*

- A. In connection with the performance of work under this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, creed, color,

national origin, sex, sexual orientation, gender identity or expression, or age, including, without limitation, with regard to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including, without limitation, apprenticeship.

- B. The Contractor further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.
- C. Any violation of such provision by the Contractor constitutes a material breach of Contract.

10.08 *Non-Appropriation.*

- A. All payments under this contract are contingent upon the availability to the County of the necessary funds. In accordance with 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.
- B. 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.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on APRIL 4, 2013 (which is the Effective Date of the Agreement).

OWNER:

Douglas County, Nevada

By: [Signature]

Title: Chair Do Co Board Commission

[Signature]

Attest: _____

Clerk/Treasure for the Board of

Title: Commissioners

Address for giving notices:

Douglas County Public Works

PO Box 218, 1120 Airport Rd. #F-2

Minden, NV 89423

BY [Signature]
CLERK TO THE BOARD

CONTRACTOR

Herback General Engineering, LLC.

By: [Signature]

Title: Owner

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: [Signature]

Title: Office Administrator

Address for giving notices:

Herback General Engineering, LLC

2531 Nowlin Road

Minden, NV 89423

License No.: 33090 A
(Where applicable).

Name of Agent and address for service of process:

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: Apr 18, 2013
Clerk of the 9th Judicial District Court of the State of Nevada, in and for the County of Douglas.

By [Signature] Deputy