

Doc Number: **0848979**

09/03/2014 01:15 PM

OFFICIAL RECORDS

Requested By:
DC/PUBLIC WORKS

Assessor's Parcel Number: N/A

Date: SEPTEMBER 3, 2014

Recording Requested By:

DOUGLAS COUNTY RECORDERS
Karen Ellison - Recorder

Page: 1 of 14 Fee: \$ 0.00

BK: 0914 Pg: 519



Deputy ar

Name: EILEEN CHURCH, PUBLIC WORKS
(JE)

Address: _____

City/State/Zip: _____

Real Property Transfer Tax: \$ N/A

CONTRACT #2014_179

(Title of Document)

CONTRACT FOR SERVICES BY AN INDEPENDENT CONTRACTOR

A CONTRACT BETWEEN

DOUGLAS COUNTY, NEVADA

AND

KLEINFELDER, INC.

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TED THRAN
CLERK
COUNTY

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FILED

This Contract for Services by an Independent Contractor (the "Contract") is entered into by and between Douglas County, a political subdivision of the State of Nevada, through the Board of County Commissioners (the "County"), and Kleinfelder, Inc. ("Contractor"). The County and Contractor are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

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

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

NOW, THEREFORE, in consideration of the mutual promises and covenants herein made, the County and Contractor mutually agree as follows:

1. TERM AND EFFECTIVE DATE OF CONTRACT. The Contract will become effective on the date it is approved and signed by representatives of both Parties. Time is of essence for performance of the professional services described herein and all tasks must be completed by Friday, October 31, 2014. Notwithstanding the foregoing, timeliness shall be an obligation secondary to the duty to provide the Services in accordance with the professional Standard of Care.

2. INDEPENDENT CONTRACTOR STATUS. The Parties agree Contractor will have the status of an independent contractor and that the Contract, by explicit agreement of the Parties, incorporates and applies the provisions of NRS 333.700, as necessarily adapted to the Parties, including the express understanding that Contractor is not an employee of the County 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 Contractor or the County to the public employee's retirement system;
- (5) Accumulation of vacation leave or sick leave; and
- (6) Unemployment compensation coverage provided by the County if the requirements of NRS 612.085 for independent contractors are met.

3. INDUSTRIAL INSURANCE. Contractor further agrees that, prior to the commencement of any work and as a precondition to any obligation of the County to make any payment under the Contract, Contractor will provide the County with a work certificate and/or a certificate issued by a qualified insurer in accordance with NRS 616B.627. Contractor also agrees that, prior to commencing any work under the Contract, Contractor will complete and provide evidence to the County that Contractor has made the following written request to Contractor's insurer:

Kleinfelder has entered into a contract with Douglas County to perform work through Friday, October 31, 2014 and requests that an authorized insurer provide to Douglas County: (1) A certificate of coverage issued pursuant to NRS 616B.627 and (2) Notice of any lapse in coverage or nonpayment of coverage that the Contractor is required to maintain.

The certificate and notice should be mailed to:

Douglas County
Public Works Department
Post Office Box 218
Minden, Nevada 89423

Contractor agrees to maintain all required workers' compensation coverage throughout the entire term of the Contract. If Contractor does not maintain the required coverage throughout the entire term of the Contract, Contractor agrees that the 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 at the sole discretion of the County. 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, insurance 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 the County may order the Contractor to stop work, suspend the Contract, or terminate the Contract at the sole discretion of the County.

4. SERVICES TO BE PERFORMED. The Parties agree that the Contractor will perform the following services:

- A. Perform engineering to determine slope stabilization of the existing channel along the south side of Johnson Lane at the box culvert across from Vicki Lane and prepare Plans, Specifications, and Estimate of the preferred alternative for

construction. The full scope and phases is described in Exhibit A. Exhibit B includes the Engineer's Standard Hourly Rate Schedule.

5. PAYMENT FOR SERVICES. Contractor agrees to provide the services set forth in Paragraph 4 on a time and materials cost not to exceed twenty one thousand, seven hundred fifty Dollars (\$21,750) (the "Contract Price"). Unless Contractor has received a written exemption from the County, Contractor shall submit monthly requests for payment for services performed under this Contract. 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 maximum expected fee for the services and tasks set forth in Paragraph 4.

6. TERMINATION OF CONTRACT. Either Party may terminate the Contract if either Party fails to correct any breach of the terms of the Contract within 30 days after receiving notice of such breach and having been given a reasonable opportunity to cure the breach.

7. NONAPPROPRIATION. All payments required pursuant to the Contract are contingent upon the availability of County funds. In accordance with NRS 354.626 and any other applicable provision of law, the financial obligations between the Parties will not exceed those monies appropriated and approved by the County for the Contract for the then current fiscal year under the Local Government Budget Act. The Contract will terminate and the County's obligations will be extinguished if the County fails to appropriate the necessary funding.

Nothing in the Contract will be construed to provide Contractor with a right of payment from any entity other than the County. Any funds budgeted by the County pursuant to the terms of the Contract that are not paid to Contractor will automatically revert to the County's discretionary control upon the completion, termination, or cancellation of the Contract. The County will not have any obligation to re-award or to provide, in any manner, the unexpended funds to Contractor. Contractor will have no claim of any sort to the unexpended funds.

8. CONSTRUCTION OF CONTRACT. The Contract will be construed and interpreted according to the laws of the State of Nevada. There will be no presumption for or against the drafter in interpreting or enforcing the Contract. In the event a dispute arises between the Parties, the Parties promise and agree to first meet and confer to resolve any dispute. If such meeting does not resolve the dispute, then the Parties agree to mediate any dispute arising from or relating to the Contract before an independent mediator mutually agreed to by the parties. The fee, rate or charge of the mediator will be shared equally by the Parties, who will otherwise be responsible for their own attorney's fees and costs. If mediation is unsuccessful, litigation may only proceed before a department of the Ninth Judicial Court of the State of Nevada in and for the County of Douglas that was not involved in the mediation process and attorney's fees and costs will be awarded to the prevailing party at the discretion of the court.

9. COMPLIANCE WITH APPLICABLE LAWS. Contractor promises and agrees to 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 the Contract, including, but not limited

to, all federal, state, and local accounting procedures and requirements, all hazardous materials regulations, and all immigration and naturalization laws.

10. ASSIGNMENT. Contractor will neither assign, transfer nor delegate any rights, obligations or duties under the 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 the Contract will be subject to inspection, examination and audit by the County, including, but not limited to, the contracting agency, the County Manager, the District Attorney, and, if applicable, the Comptroller General of the United States, or any authorized representative of those entities.

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 the Contract (the "Materials") will be the exclusive property of the County and all such materials will be remitted and delivered, at Contractor's expense, to the County by Contractor upon the completion, termination or cancellation of the contract. Alternatively, if the County provides its written approval to Contractor, the Materials must be retained by Contractor for a minimum of six years after Contractor's receipt of the final payment from County 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 will promptly remit and deliver the materials, at Contractor's expense, to the County. Unless the County has requested the remittance and delivery by Contractor of the Materials, Contractor will not use, willingly allow or cause to have such Materials used for any purpose other than the performance of Contractor's obligations under the terms of the Contract without the prior written consent of the County. The Materials are not intended to be suitable for re-use by the County or others on extensions of the project or any other project. Any re-use, without the prior written verification or adaptation by the Contractor for the specific purpose intended, will be at County's sole risk and without liability or legal exposure to Contractor.

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

14. INDEMNIFICATION. Contractor agrees to indemnify, and save and hold the County, its agents and employees harmless from any claims, causes of action or liability to the proportionate extent caused by or resulting from Contractor's negligent performance of the Services pursuant to the terms of the Contract by Contractor or Contractor's agents or employees. Contractor's obligation to indemnify and defend County shall be contingent upon a judicial finding of professional negligence on the part of Contractor, and in proportion to the degree to which such negligence has contributed to the total damages.

15. MODIFICATION OF CONTRACT. The Contract and the attached exhibits constitute the entire agreement and understanding between the Parties and may only be modified by a written amendment signed by both of the Parties.

16. AUTHORITY. The Parties represent and warrant that they have the authority to enter into this agreement.

17. STANDARD OF CARE. Contractor will perform all services in a manner consistent with that level of care and skill ordinarily exercised by other members of Contractor's profession currently practicing in the same locality under similar conditions.

18. WAIVER OF LIEN. Contractor understands and agrees that the services it will render to the County are not intended for the improvement of real property or to otherwise grant any rights to Contractor pursuant to NRS chapter 108.

19. THIRD PARTY BENEFICIARY. Nothing contained in this Agreement is intended to convey any rights or to create a contractual relationship with any third party or to otherwise allow a third party to assert a cause of action against either Contractor or County.

20. NOTICES. All notices, requests, demands and other communications hereunder must be in writing and will be deemed delivered when sent via certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

To County:

Douglas County
Attn: Public Works Director
1120 Airport Road, F2
Post Office Box 218
Minden, Nevada 89423
Telephone: (775) 782-6227

To Contractor:

Kleinfelder, Inc.
1170 Financial Blvd., Suite 300
Reno, Nevada 89502
Telephone: (775) 689-7800

21. CONFLICT OF INTEREST. By signing the Contract, Contractor agrees that any information obtained from Douglas County, in whatever form, will not be divulged to other competing interests without the permission of the County Manager. In the event of a breach of this provision, Douglas County may immediately withdraw, without penalty or any payment, from the Contract. Contractor must notify Douglas County of any other contracts or projects Contractor is working on that may impact Douglas County.

IN WITNESS WHEREOF, the Parties hereto have caused the Contract to be signed and intend to be legally bound thereby.

Kleinfelder, Inc.

By: Nancy Walker 8/22/2014
Nancy Walker - Vice President (Date)

Nancy Walker, Vice President
Name/Title

Douglas County

By: [Signature] 8/26/14
Larry Werner - Interim County Manager (Date)



Exhibit A

August 13, 2014
File No.: MG150629

Mr. Jon Erb, Project Manager
Douglas County Public Works
1615 8th Street
Minden, NV, 89423

**Subject: Revised Proposal for Civil Engineering Services
Erosion Repair – Slope Stabilization of Existing Ditch
Johnson Lane and Vicky Lane
Douglas County, Nevada**

Dear Mr. Erb:

Kleinfelder is pleased to present this proposal to provide civil engineering services for the above-referenced project. This proposal is based upon phone calls and email correspondence between July 25 and August 4, 2014. As requested by you, Kleinfelder will prepare plans and specifications for repair to the area of erosion that occurred recently to the roadside ditch southeast of the intersection of Johnson Lane and Vicky Lane. This proposal includes minor wording changes to our initial proposal dated August 6, 2014.

Kleinfelder is committed to providing quality service to its clients, commensurate with their wants, needs, and desired level of risk. If a portion of this proposal does not meet your needs, or if those needs have changed, Kleinfelder stands ready to consider appropriate modifications, subject to the standards of care to which we adhere as professionals. Modifications such as changes in scope, methodology, scheduling, and contract terms and conditions may result in changes to the risks assumed by the client, as well as adjustments to our fees.

PROJECT DESCRIPTION

During a recent thunderstorm, a flood in the roadside ditch at Johnson Lane and Vicky Lane caused erosion and steepening of the embankment located northeast of the existing box culvert inlet. The erosion has resulted in an approximate 8-foot-high slope that is in the range of 0.75H:1V and is starting to undercut the guard rail posts along Johnson Lane. Due to the geometry of the culvert, it may not be possible to widen the north bank close to the culvert inlet, and therefore a retaining wall or similar design option would be recommended to stabilize the bank while not restricting the ditch flow. It is our understanding that the south bank of the ditch, which is approximately vertical, may not be widened due to a fence line and presumed property line at the top of the embankment. Kleinfelder would propose to develop stabilization measures for the channel that maintain the maximum flow allowed by the existing box culvert. Upon review of as-builts of the existing ditch and culvert, provided by the County, Kleinfelder will (to the extent possible) provide recommendations to the County for ditch stabilization. These construction restrictions will be considered in our recommended approach to repair the ditch.

PROPOSED SCOPE OF SERVICES

This proposal includes a phased approach of services in order to provide flexibility of project development, client coordination, and cost considerations. Phase 1 includes the development of existing site topography (topo), the determination of feasible solutions and options for repair and protection of the north slope, and identification of approximate costs of construction for up to 3 design recommendations. Upon County approval of a recommended design approach, Phase 2 services will provide construction plans for the on-site improvements. Phases 1 and 2 require land survey services, engineering ACAD base file coordination and plan preparation.

Phase 1 Services – Existing Conditions and Conceptual Alternatives for Design

Kleinfelder will contract with a local surveyor to develop and coordinate base file preparation. A site plan with existing topo will be developed from the intersection of Johnson Lane and Vicky Lane to approximately 300 feet upstream (east) from the culvert. We will perform hand augering/probing at several locations in the channel to attempt to determine the thickness of loose slough in the base of the channel to competent dense soil.

Kleinfelder will prepare at least 3 alternative erosion remediation approaches for the referenced site to review with Douglas County. These layouts are anticipated to be hand sketches, or digitally rendered over the existing site topo.

During the Phase 1 Services, we understand that Douglas County will verify all property lines and Right-of-Way limits in the area prior to Phase 2 commencement. We will have this information surveyed in and staked in the field. Verification of the property line will also determine if widening of the ditch is allowable within private property. Verification of the Right-of-Way line will determine if widening of the ditch is permitted within agency limits. Easement research or easement modification required for construction activities or permitting is not included in the Phase 1 services. We request that Douglas County provide any existing design information for the box culvert.

Based on conversations with County staff, it is our understanding that the drainage ditch has a large drainage tributary area and may not be currently designed to accommodate all design flows. Phase 1 services will include review of the existing culvert underneath Johnson Lane to determine existing capacity of the culvert. Tributary area research or additional drainage calculations, including ditch analysis, are not included in this scope.

Kleinfelder will prepare a high level opinion of probable costs for budgetary purposes for the 3 alternative layouts. We will discuss alternatives with County staff in a telephone conference prior to developing Phase 2 final plans.

Phase 2 Services - Civil Engineering Construction Documents

Upon alternative selection from the County, Kleinfelder will provide civil engineering services for onsite improvements, consisting of preparation of plan sheets and calculations, not to exceed 3 sheets, as shown below. Our costs assume some sort of pre-cast block retaining wall or channel lining will be required which will require design and detailing. If a simpler solution is available, our costs will be reduced accordingly.

1. Cover and Note Sheet. Specifications, to the extent required, will refer to the Standard Specifications for Public Works Construction, latest edition and will be addressed via notes on the cover page.
2. Grading and Retaining Wall Plan: Based on alternative selection, provide retaining wall detail and cross section or other structures, if needed.
3. Detail Sheet.

All plans will be prepared at 1:20 scale, unless greater detail is needed in certain areas of the site. All sheets will be plotted on ANSI D (22 inch x 34 inch) size paper. Kleinfelder company CAD standards will be used for this project, and the plans will be prepared using Civil 3D 2013 software

Based on the Phase 1 alternative selection process with the County, a detailed scope of services and budget for Phase 2 will be finalized upon Phase 1 approval.

Phase 2 deliverables will include: 90% Design Submittal, and 100% Construction/Final/Bid Set Submittal to Douglas County. We expect Douglas County to provide comments on our 90% and 100% design submittals, which will be addressed by Kleinfelder as part of developing the final plans.

FEE ARRANGEMENT

For the proposed civil engineering services presented above, our budget for this project is as shown below and will be billed monthly. The total budget indicated below is on a Time and Materials basis, not to exceed for the full fee amount.

Phase No.	Description	Fee
1	Phase 1 Services – Existing Conditions and Conceptual Alternatives for Design Note: Phase 1 includes field survey services	\$9,000
2	Phase 2 Services - Civil Engineering Construction Documents	\$12,750
	TOTAL	\$21,750

ASSUMPTIONS / EXCLUSIONS

- It is our understanding that the south bank of the ditch, which is approximately vertical, may not be widened due to a fence line and presumed property line at the top of the embankment. We assume that Douglas County will verify if they own the property on the south side of the ditch and whether any widening or slope protection of the south side of the ditch is permitted.
- Our services do not include research or design of dry utilities or mechanical utilities (gas, electric, telecommunications, fiber optic, etc.); however, we can provide these services as needed for an additional fee.
- Our services do not include capacity studies of the existing ditch, culvert, or tributary basins.
- Our services do not include Traffic Engineering or construction staging plans for Johnson Lane or Vicky Lane.

- Our services do not include any additional offsite improvements, street dedications, reports, studies, surveys, or other tasks required as a result of agency requirements, which are not described above, shall be considered additional services.
- Encroachment/Removal Documents required by the agency having jurisdiction for any points of connection, are not included as part of this proposal and shall be considered additional services.
- Our services do not include the preparation or mapping of new easements.
- Our services do not include any preliminary work associated with County or County Government project approval, including but not limited to, plans, meetings, reports, and applications, except as noted in scope.
- Bid documents, other than Civil Engineering Construction Documents produced from Phase 2, are not included as part of this proposal and shall be the responsibility of the client.
- Kleinfelder shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the project site, including but not limited to, asbestos, polychlorinated biphenyl (PCB) or other toxic substances. Testing, recommendations, and specifications for the handling of hazardous materials are excluded from this proposal. If needed, Kleinfelder can provide these services for an additional fee.
- Location and existence of utilities and services shall be based on record drawings and visible field evidence. No liability shall be assumed by Kleinfelder for location of existing utilities and services. The above scope of services does not include underground utility locating services, but we can provide this if needed for an additional fee.
- Landscape and irrigation design are not included as part of this scope.
- All deposits, fees, and charges required by any reviewing agency shall be the responsibility of the Client.

LIMITATIONS

Our work will be performed in a manner consistent with that level of care and skill ordinarily exercised by other members of Kleinfelder's profession practicing in the same locality, under similar conditions and at the date the services are provided. Our conclusions, opinions, and recommendations will be based on a limited number of observations and data. It is possible that conditions could vary between or beyond the data evaluated. Kleinfelder makes no guarantee or warranty, express or implied, regarding the services, communication (oral or written), report, opinion, or instrument of service provided.

This proposal is valid for a period of 45 days from the date of this proposal. This proposal was prepared specifically for the client and its designated representatives and may not be provided to others without Kleinfelder's express permission.

Regulations and professional standards applicable to Kleinfelder's engineering services are continually evolving. Techniques are, by necessity, often new and relatively untried. Different professionals may reasonably adopt different approaches to similar problems. As such, our services are intended to provide the client with a source of professional advice, opinions, and recommendations based on our limited number of field observations and tests, collected and performed in accordance with the generally accepted engineering practice that exists at the time our services are rendered and may depend on, and be qualified by, information gathered previously by others and provided to Kleinfelder by the client.

Kleinfelder offers various levels of investigative and engineering services to suit the varying needs of different clients. Although risk can never be eliminated, more detailed and extensive studies will yield more information, which may help understand and manage the level of risk involved. Since detailed study and analysis involves greater expense, our clients participate in determining levels of service that provide adequate information for their purposes at acceptable levels of risk. More extensive studies could be performed to reduce these uncertainties.

Kleinfelder appreciates the opportunity to provide assistance to you on this project. If you have questions or require additional information, please contact the undersigned (775) 689-7800.

Sincerely,

KLEINFELDER, INC.

Nancy Walker, V.P.

for

Brian D. Stup, PE
Senior Principal Civil Engineer

Jonathan Pease

Jonathan Pease, Ph.D., P.E.
Senior Geotechnical Engineer

KLEINFELDER 2014 FEE SCHEDULE

PROFESSIONAL STAFF RATES*

Professional.....	\$ 108/ hour
Staff Professional.....	\$ 120/ hour
Project Professional.....	\$ 150/ hour
Principal Professional.....	\$ 165/ hour
Senior Principal Professional.....	\$ 210/ hour
Project Manager.....	\$ 155/ hour
Senior Project Manager.....	\$ 210/ hour
Designer/Drafter.....	\$ 108/ hour
Senior Designer/Drafter.....	\$ 122/ hour
Project Controls Professional.....	\$ 115/ hour
Senior Project Controls Professional.....	\$ 169/ hour

TECHNICAL STAFF RATES

Technician.....	\$ 65/ hour
Senior Technician.....	\$ 82/ hour
Inspector.....	\$ 90/ hour
Senior Inspector.....	\$ 110/ hour
Construction Manager.....	\$ 147/ hour

ADMINISTRATIVE STAFF RATES

Administrator.....	\$ 68/ hour
Project Administrator.....	\$ 105/ hour

Minimum Charges for Office Time Per Day..... One Hour at Applicable Rate

Kleinfelder reserves the right to adjust the fee schedule on projects not completed within 180 days from the contract signature date.

Public works projects or projects receiving public funds may be subject to Prevailing Wage laws. The above rates do not apply to projects subject to prevailing wages. Hourly rates for those projects will be supplied separately.

* Applies to all professional rates including but not limited to civil, mechanical, chemical, electrical, geotechnical and environmental engineers; industrial hygienists; geologists; hydrogeologists; hydrologists; and computer specialists.

Hourly rates assume that other direct costs will be billed and reimbursed by the client. Kleinfelder reserves the right to adjust the fee schedule on projects where other direct costs are not reimbursed.

COPY

Douglas County

State of Nevada

CERTIFIED COPY

I certify that the document to which this certificate is attached is a full and correct copy of the original record on file in the Clerk-Treasurer's Office on this

31st day of Sept 2014
By [Signature] Deputy