

Assessor's Parcel Number: N/A

Date: DECEMBER 23, 2015

Recording Requested By:

Name: JEANE COX, COMMUNITY DEVELOPMENT

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

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

Real Property Transfer Tax: \$ N/A



KAREN ELLISON, RECORDER

CONTRACT #2015.257  
(Title of Document)

# CONTRACT FOR SERVICES BY AN INDEPENDENT CONTRACTOR

A CONTRACT BETWEEN

**DOUGLAS COUNTY  
P.O. BOX 218  
MINDEN, NV 89423**

AND

**KIMLEY HORN AND ASSOCIATES, INC.  
5370 KIETZKE LANE SUITE 201  
RENO, NV 89511**

FILED  
2015. 257  
2015 DEC 23 AM 9:25  
DOUGLAS COUNTY  
CLERK  
B. [Signature]

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 Kimley Horn and Associates, Inc., a Nevada corporation ("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 personal 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, licensed, 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 and shall continue until the tasks identified in Attachment A – Scope of Services have been completed. All tasks, professional services, and related schedule thresholds are provided in Attachment A – Scope of Services, unless otherwise requested in writing by the Community Development Director or County Engineer.

**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:

Kimley Horn and Associates, Inc. has entered into a contract with Douglas County to perform work from December 2015 through May 2016 or until either party terminates the agreement per Section 6 of this contract and requests that the 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  
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 professional services to be performed are generally described as TMDL Support. All tasks, services, and related schedule thresholds are provided in Attachment A – Scope of Services, unless otherwise requested in writing by the Community Development Director or County Engineer, and incorporated herein.

**5. PAYMENT FOR SERVICES.** Contractor agrees to provide the services set forth in Paragraph 4, and in accordance to Scope of Services provided in Attachment A, at a cost not to exceed Twenty Five Thousand, nine hundred twenty Dollars (the “Contract Price”). In addition, the County does not agree to reimburse Contractor for travel expenses and per diem allowances. 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 by Contractor may only be made for reimbursement of actual cash disbursed by Contractor. 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 terminate the Contract at any time provided that 30 days’ notice is provided.

**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. 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. The mediator and court will recognize any offers of judgment made by a Party pursuant to Nevada law.

**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.

**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 and all claims, causes of action or liability to the

extent arising from the willful misconduct or negligent performance of this contract by Contractor or Contractor's agents or employees.

**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: County Engineer  
1594 Esmeralda Ave.  
Post Office Box 218  
Minden, Nevada 89423  
Telephone: (775) 782-6227

**To Contractor:** Kimley Horn and Associates, Inc.  
Karin Peternel  
5370 Kietzke Lane Suite 201  
Reno Nevada, 89511  
Telephone 775-200-1959

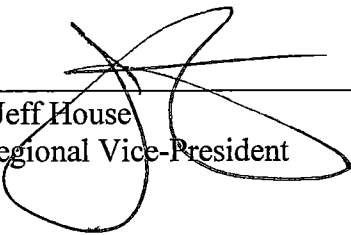
**21. CONFLICT OF INTEREST.** By signing the Contract, Contractor agrees that any information obtained from Douglas County, in whatever form, will not be divulged to other competing interests without the permission of the County Manager. In the event of a breach of this provision, Douglas County may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



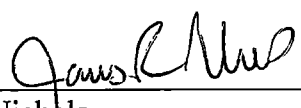
from the Contract. Contractor must notify Douglas County of any other contracts or projects Contractor is working on that may impact Douglas County.

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

Kimley Horn and Associates Inc.

By:  12/15/2015  
Name: Jeff House (Date)  
Title: Regional Vice-President

**Douglas County**

By:  12/18/15  
Jim R. Nichols (Date)  
Douglas County Manager

## ATTACHMENT A SCOPE OF WORK

December 10, 2015

Mimi Moss, Community Development Director  
Erik Nilssen, County Engineer  
Douglas County Community Development  
1594 Esmeralda Drive  
Minden, NV 89423

**Re: Professional Services Agreement for TMDL Support Services**

Dear Ms. Moss and Mr. Nilssen:

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") is pleased to submit this Scope to Douglas County Community Development ("Client") for providing support services to fulfill Lake Tahoe TMDL requirements for Douglas County, Nevada. Our Project Understanding, Scope of Services, Schedule, and Fees are provided below.

Douglas County, Nevada, requires assistance from Kimley-Horn to meet TMDL milestones according to an Interlocal Agreement (ILA) with the Nevada Division of Environmental Protection (NDEP) using the revised (2015) Lake Tahoe TMDL Tools. This scope of work includes registering some catchments in accordance with the ILA to meet the first milestone goal of 41 Credits by August, 2016; begin revising the baseline load by modeling catchments in the revised PLRM, and providing training assistance to the new Stormwater Program Manager upon hire. The following key items outline the deliverables required for Douglas County to successfully implement the TMDL milestone of August, 2016:

- a. Register 3 types of catchments before the end of 2015/Feb 2016
- b. Prepare Annual Report (March, 2016)
- c. Revise all baseline models (July, 2016)
- d. Register remaining catchments identified in the SLRP (August, 2016)
- e. Revise ILA (August, 2016)

Work provided in this Scope include items a, b, and progress toward completion of c. Additional work will be necessary to finalize items c, d and e.

Specific tasks proposed to be performed as part of this project are as follows:

**TASK 1) Register Catchments to meet TMDL load reduction milestones.** NDEP requests that one type of each treatment (private parcel BMP, road operations, water quality improvement project) be registered prior to December 31, 2015. Some leeway may be afforded in this task due to contract time constraints but should be discussed with NDEP (suggested February 1, 2016). It is recommended that the Cave Rock WQIP and North Benjamin Drive catchments be registered to meet this requirement. Although Pinewild HOA has already been registered, meeting the private parcel



BMP requirement, staff will also try to register additional private parcel BMP catchments (DCA, EWCA, EWCC), and water quality improvement projects Logan Creek and Lakeridge. Based on initial PLRM modeling, this may result in approximately 35 Credits.

*Deliverable: Registration of catchments using BMP RAM, Road RAM, PLRM and the Credit Accounting Platform.*

*Approximate number of hours: 134*

*Compensation: \$21,440*

Task 2) *Revise Baseline Load using PLRM V2.* All Lake Tahoe jurisdictions must recalculate their baseline load estimate using the revised PLRM V2. This can be done in a phased process while other catchments are being registered. It is estimated that 40 hours can be spent to revise these models toward redefining the baseline of approximately half of the catchments in Douglas County.

*Deliverable: Begin Revising Baseline Loads for Catchments not scheduled for registration in first milestone.*

*Approximate number of hours: 20*

*Compensation: \$3,200*

Task 3) *Prepare Annual Stormwater Report by March 15, 2016.* The purpose of this report is to comply with Section 4 of the ILA, as well as the NDEP letter "Clarification of & Partial Delay in Implementation of Interlocal Agreement Commitments", dated November 25, 2013. This report summarizes Douglas County's load reduction activities undertaken during water year 2015 (October 1, 2014 through September 30, 2015) in an effort to meet the credit target established in the ILA.

*Deliverable: Annual Stormwater Report for Water Year 2015.*

*Approximate number of hours: 8*

*Compensation: \$1,280*

**Total Compensation: \$25,920**

The compensation assigned to each task is only an estimate and can be reallocated between tasks as necessary and upon written permission from the County.

We appreciate the opportunity to provide these services to you. Please contact us if you have any questions.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.

  
Jeff House, CFM  
Regional Vice-President

	Completion Date	Cummulative	
		Hours	Cost
TMDL	Register catchments ** Includes Road RAM, BMP RAM, PLRM and CAP	0	0
	PW01	11/20/2015	0
	DCA (PP BMP)	2/1/2016	8
	N. Benj. Dr (road ops)	1/1/2016	34
	Cave Rock (WQIP)	2/1/2016	58
	Logan Creek	3/1/2016	82
	EWCA (PP BMPs)	3/1/2016	88
	EWCC (PP BMPs)	4/1/2016	1600
	Lakeridge (WQIP)	5/1/2016	5760
TMDL	Revise Baseline for catchments not being registered	3/1/2016	108
TMDL	Prepare Annual Report	3/15/2016	116
			\$ 21,440 Task 1
			\$ 1,280 Task 2
			\$ 25,920 Task 3 TOTAL

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

23<sup>rd</sup> day of Dec, 2015

By *[Signature]* Deputy