

Assessor's Parcel Number:  N/A

Date:  JUNE 14, 2017

Recording Requested By:

Name:  JEANE COX, COMMUNITY DEVELOPMENT

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

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

Real Property Transfer Tax: \$  N/A



00056882201708999680090093

KAREN ELLISON, RECORDER

AMENDED CONTRACT #2017.090

(Title of Document)

**SECOND AMENDMENT  
CONTRACT FOR SERVICES BY AN INDEPENDENT CONTRACTOR**

A CONTRACT BETWEEN  
**DOUGLAS COUNTY**  
P.O. BOX 218  
MINDEN, NV 89423  
(775) 782-9821  
"COUNTY"

AND

**R.O. ANDERSON ENGINEERING INC.**  
1603 ESMERALDA AVENUE  
P.O. BOX 2229  
MINDEN, NV 89423  
"CONTRACTOR"

FILED  
NO. 2017-095  
2017 JUN 14 PM 2:55  
DOUGLAS COUNTY  
CLERK  
DEPUTY

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 R.O. Anderson Engineering 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 professional 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. EFFECTIVE DATE OF CONTRACT.** This contract shall not become effective until and unless approved by the Douglas County Board of County Commissioners. Time is of essence for performance of the professional services described herein. The term of the Contract shall run from August 21, 2014 through ~~December 31, 2016~~ December 31, 2018. This Contract may be extended, provided both parties agree in writing, which must be attached as an Amendment to this Contract. If extended, all provisions of this Contract remain in effect.

**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:

R.O. Anderson Engineering Inc. has entered into a contract with Douglas County to perform work from August 21, 2014 to August 21, 2015 December 31, 2018 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  
Attn: Douglas County Engineer  
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 the professional services to be performed are complete design and engineering services for the Martin Slough Shared Use Path from the Gilman Ponds in Gardnerville to the Martin Slough Trail Head in Minden as further described in the attached Exhibit A, which is incorporated herein. The Shared Use Path is anticipated to be a 10-foot wide paved path with 2-foot gravel shoulders on either side. The total length of the Shared Use Path is approximately 2.61 miles.

**5. PAYMENT FOR SERVICES.** Contractor agrees to provide the services set forth in Paragraph 4 at a cost not to exceed One Hundred Forty Seven Thousand and Ninety-Six Dollars (\$147,096) (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. The requests for payments shall be verified by the County Manager or his designee. Requests for payment submitted pursuant to this Contract shall be paid within thirty (30) days.

**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 written notice of such breach and having been given an opportunity to cure the breach. The County may terminate the Contract without cause provided that termination shall not be effective until 30 days after the County has served written notice upon the Contractor. All monies due and owing up to the point of termination shall be paid by the Agency, unless the contract is terminated pursuant to paragraph 21.

**7. NON-APPROPRIATION.** All payments required pursuant to the Contract are contingent upon the availability of County funds and Nevada Department of Transportation grant funding. 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, Nevada Department of Transportation, 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. Any files, books, reports, studies, photographs, negatives or other documents, data, drawings or other materials prepared by 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 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 shall save, hold harmless, and indemnify Agency, its officers, agents and employees, from and against all claims, causes of action, liabilities, expenses and costs, including reasonable attorneys' fees, for injury or death of any person or damage to property arising out of or connected with work performed under this Agreement resulting from any negligent acts, errors or omissions, whether negligent or otherwise, of Contractor, its officers, agents, subcontractors or employees.

**15. MODIFICATION OF CONTRACT.** This 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 Avenue  
Post Office Box 218  
Minden, Nevada 89423  
Telephone: (775) 782-9063

**To Contractor:** R.O. Anderson Engineering Inc.  
Attn: ~~Jeremy Hutchings~~ **ROBERT O. ANDERSON**  
1603 Esmeralda Ave  
P.O. Box 2229  
Minden, NV 89423  
Telephone: (775) 215-5010

**21. CONFLICT OF INTEREST.** By signing the Contract, Contractor agrees that any information obtained from the 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, the County may immediately withdraw, without penalty or any payment, from the Contract. Contractor must notify the County of any other contracts or projects Contractor is working on that may impact or interfere with this Contract y.

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

By:   
Douglas County  
5/12/17  
(Date)

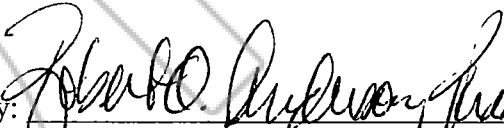
By:   
Contractor  
6-8-17  
(Date)

EXHIBIT 'A'

DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION  
WASHINGTON, D.C. 20535

NO. 100-44388-100

100-44388-100

100-44388-100





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

27th day of June, 2017

By: [Signature] Clerk