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Department: Community Development



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KAREN ELLISON, RECORDER

Type of Document: (please select one)

- Agreement
- Contract
- Grant
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specify: _____

CONTRACT FOR SERVICES BY AN INDEPENDENT CONTRACTOR

A CONTRACT BETWEEN

DOUGLAS COUNTY, NEVADA

AND

**R.O. ANDERSON ENGINEERING INC
1603 ESMERALDA AVENUE
MINDEN, NV 89423**

FILED

NO. 2020.022

1/24/2020

DATE

DOUGLAS COUNTY CLERK
MINDEN, NV

BY nl 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. Lic. # NV19921072789 ("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 December 31, 2020.

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;
- (6) Unemployment compensation coverage provided by the County if the requirements of NRS 612.085 for independent contractors are met.

Additionally, the Contractor is not in the classified or unclassified service of the County and has none of the rights or privileges available to officers, employees or other appointees of the County.

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 through June 30, 2020 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
Community Development 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 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 described below. The work specified below remaining from the original task items will be performed for a total fee of \$15,931.70.

4.1 Task 01 Floodplain Hydraulic Evaluation (\$7,013.50)

Since it is anticipated that the trail will be constructed at approximately existing

grading, it is assumed that the impact to the floodplain will be negligible. The Engineer will perform a floodplain impact analysis to confirm this assumption as well as provide a specific design at locations where the trail alignment crosses irrigation and drainage facilities such as sloughs and ditches. The analysis will use the topographic survey as well as LiDAR topography as may be necessary. The results of the analysis will be presented in a letter report. This effort contemplates a draft and a final report based upon review comments received. The fee for this task is \$7,013.50.

4.2 Task 02 Engineering Design (\$6,742.20)

This task encompasses the main elements of design, bidding and construction services including the geotechnical report, the civil improvement plans, bid process and services during construction. The specific scope of services is more fully described below:

- Geotechnical Report. This report will be sub-consulted with a locally based geotechnical engineering firm. The effort will include research, field exploration, field and laboratory testing, and engineering analyses to allow formulation of geotechnical recommendations for design and construction of the bike path. Existing geotechnical reports for other projects in the area will also be reviewed, as available, to supplement information obtained during the investigation. This effort contemplates a draft and final report based upon review comments received.

- Civil Improvement Plans. The Engineer will prepare civil design drawings for the scope of work as described at the beginning of this section. The plans will be developed at the 30%, 60% and 90% levels prior to preparation of the final 100% plans. The final plans will be prepared to a level appropriate for permitting, bidding and construction and are proposed to consist of the following:

- C01 — Cover Sheet: This page shall include general information regarding the project such as vicinity map, sheet index, approval signature block, large scale site plan to show overall extents of work, summary of project information such as name, zoning, ownership, adjacent property owners, floodplain etc.

- C02 — Legend Sheet: This page includes general and specific notes regarding construction, a legend defining the various line types, symbols, abbreviations, hatching etc. used within the plan set, definition of horizontal and vertical control.

- C03 — Existing Conditions and Temporary Erosion Control: This sheet shows the existing conditions of the project area and also provides a plan for temporary erosion control, temporary traffic control, limits of demolition in general, specific demolition requirements, specification of existing improvements that need to be protected during construction and what best management practices should be employed.

- C04— C16 Plan and Profile: A plan and profile of the centerline alignment of the path will be provided at a normal engineering scale (1"=20' anticipated). The stationing and off-set of the major portions of work will be identified including the approximate vertical alignment of the path. Additional horizontal and vertical control will be set at intersections and slough crossings.

- C17 Construction Details: Construction details for each main element of work will be provided. Generally, construction details for items such as a trail pavement section, sidewalk, culverts, street crossings, signage and striping, temporary erosion control and BMPs. Standard County details will be used to the extent possible, special details will be created for elements of work not covered by standard details.

- C18 Construction Details: See description of Sheet C17.

- C19 Construction Details: See description of Sheet C17.

Bid Process. The Engineer contemplates services during the bid process to include the following effort: review and respond to requests for information; and assistance with preparation of addenda as may be necessary.

- Services During Construction. The Engineer will provide supplemental support to the County during the construction phase of the project. The Engineer will be available to answer questions that may arise during construction from the County, contractors and

permitting agencies. Once construction is complete the will prepare record documents including final inspection, preparation of as-built drawings, and letter of acceptance. The fee for this task is \$6,742.20

4.3 Task 05 Permitting Assistance (\$1,444.00)

This project is anticipated to require local, state and federal permitting efforts. This task contemplates preparation of the various applications and attendance at meetings as specifically noted:

- Douglas County Site Improvement Permit
 - Application
 - Itemized engineer's estimate of probable construction costs
- Town of Minden
 - Plan Review Application
 - Attendance at one regularly scheduled board meeting
- Town of Gardnerville
 - Plan Review Application
 - Attendance at one regularly scheduled board meeting
- Water Conveyance Advisory Committee (WCAC)
 - Application
 - Attendance at one regularly scheduled meeting
- State of Nevada
 - Stormwater Pollution Prevention Plan (SWPPP)
Application/Plan
 - Notice of Intent to Discharge
Completion of on-line application
- Army Corps
 - USACE 404 application

The fee for this task is \$1,444.00

4.4 Task 04 Fiber Infrastructure Design (\$732.00)

The Engineer will provide an infrastructure design for fiber lines along the path alignment. The design will be for conduit and pull-boxes only. The plans will detail number, size and material of conduits and pull-boxes including the horizontal and vertical locations as well as installation details. This task also contemplates adding the fiber infrastructure element of the project to the bid schedule, specifications and cost estimate. The fee for this task is \$732.00.

5. PAYMENT FOR SERVICES. Contractor agrees to provide the services set forth in Paragraph 4 and all subparagraphs on a time and materials cost not to exceed fifteen thousand, nine hundred and thirty-one Dollars and seventy cents (\$15,931.70) (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 agree s 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. Provided, however, that except as otherwise set forth in this Contract, early termination will not relieve a Party of any obligation that became due prior to the date of termination.

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.

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, defend, and save and hold the County, its agents and employees harmless from any and all claims, causes of action or liability arising from or related to Contractor's negligent performance pursuant to the terms of the 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: Community Development Director
1594 Esmeralda Ave
Post Office Box 218
Minden, Nevada 89423
Telephone: (775) 782-6230

To Contractor: R.O. Anderson Engineering Inc.
Attn: Robert O. Anderson
1603 Esmeralda Ave
PO Box 2229
Minden, NV 89423
Telephone: (775) 215-5010

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.

R.O. Anderson Engineering Inc.

By: Robert O. Anderson, Pres. 12-12-19
(Date)

ROBERT O. ANDERSON, PRESIDENT
Name/Title

Douglas County

By: [Signature] 11/8/20
~~William D. Pezacki, Chairman, Board of County Commissioners Douglas County~~ (Date)
PATRICK CATES, COUNTY MANAGER

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

24th day of January, 20 20

By [Signature] Deputy