

Recorder's Office Cover Sheet

Recording Requested By:

Name: Courtney Walker

Department: Public Works



KAREN ELLISON, RECORDER

Type of Document: (please select one)

- Agreement
- Contract
- Grant
- Change Order
- Easement
- Other

specify: _____

NO. 2022.080

5/3/22
DATE

DOUGLAS COUNTY CLERK
MINDEN, NV

BY [Signature] DEPUTY

CONTRACT FOR PRODUCTS AND SERVICES BY AN INDEPENDENT CONTRACTOR

A CONTRACT BETWEEN

DOUGLAS COUNTY, NEVADA

AND

IMPACT CONSTRUCTION

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 (the "County"), and ***Impact Construction, a Nevada Corporation*** (NV #0070995A) ("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 ("Effective Date"). Unless earlier terminated as set forth in paragraph 7, the terms of this Contract shall remain in effect until the work set forth in Paragraph 4 has been completed. Time is of the essence in this Contract.

2. INDEPENDENT CONTRACTOR STATUS. The Parties agree that Contractor, his associates and employees shall have the status of an independent contractors and that this contract, by explicit agreement of the parties, incorporates and applies the provisions of NRS 333.700, as necessarily adapted to the parties, including that Contractor is not a Douglas County employee 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 independent contractor or the County to the public employees' 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.

Contractor and County agree to the following rights and obligations consistent with an independent contractor relationship between the Parties:

- a. Contractor has the right to perform services for others during the term of this Agreement.
- b. Contractor has the sole right to control and direct the means, manner and method by which the services required by this Agreement will be performed.
- c. Contractor shall not be assigned a work location on County premises.
- d. Contractor, at Contractor's sole expense, will furnish all equipment and materials used to provide the services required by this Agreement.
- e. Contractor, at Contractor's sole expense, has the right to hire assistants as subcontractors, or to use Contractor's employees to provide the services required by this Agreement.
- f. Contractor or Contractor's employees or contract personnel shall perform the services required by this Agreement, and Contractor agrees to the faithful performance and delivery of described services in accordance with the time frames contained herein; County shall not hire, supervise or pay any assistants to help Contractor.
- g. Neither Contractor nor contractor's employees or contract personnel shall receive any training from County in the skills necessary to perform the services required by this Agreement.
- h. County shall not require Contractor or Contractor's employees or contract personnel to devote full time to performing the services required by this Agreement.
- i. Contractor understands that Contractor is solely responsible to pay any federal and state taxes and/or any social security or related payments applicable to money received for services provided under the terms of this contract. Contractor understands that an IRS Form 1099 will be filed by County for all payments County makes to Contractor.

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:

Impact Construction has entered into a contract with Douglas County to perform services through approximately May 2, 2022, 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
Courtney Walker, Douglas County Public Works
ATTN: Stormwater Program Manager
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.

Contractor may, in lieu of furnishing a certificate of an insurer, provide an affidavit indicating that he is a sole proprietor and that:

- A. In accordance with the provisions of NRS 616B.659, has not elected to be included within the terms, conditions and provisions of chapters 616A to 616D, inclusive, of NRS; and
- B. Is otherwise in compliance with those terms, conditions and provisions

4. SERVICES TO BE PERFORMED. The Parties agree that the Contractor will perform services related to: the supply and installation of two (2) driveway culverts at 2805 Vicky Lane. The Materials and Services are more particularly described and shall be completed in accordance with the requirements set forth in Exhibit A hereto.

5. PAYMENT FOR SERVICES. Contractor agrees to provide the services set forth in Paragraph 4 for a total cost not to exceed twenty-three thousand one-hundred twenty dollars (\$ 23,120) (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. WARRANTY. Contractor agrees and hereby provides, warrants and represents each of the following with respect to any services provided under this Contract: the services, installations, or work performed under this Contract shall be free of defects in material and workmanship for a period of 365 days following the completion of such work. This term shall not be construed as a limitation on any other remedies that might be available to the County. The services will be provided in a professional and workman like manner and in conformity with the professional standards for comparable services in the industry, and shall comply with the applicable specifications or other requirements set forth in this Agreement.

7. TERMINATION OF CONTRACT. Either Party may terminate the Contract for cause if the other 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.

8. LICENSING. Contractor agrees to maintain any required licenses to perform any services for County. The failure to maintain any required license will result in immediate termination of this Contract.

9. GENERAL LIABILITY INSURANCE. Douglas County's liability coverage will not extend to the Contractor and Contractor is required to acquire and maintain general liability insurance in the minimum amount of \$1,000,000 during the term of this Contract at Contractor's sole expense. Proof of insurance must be sent to the Douglas County Manager. Such proof of insurance must be provided at least annually throughout the term of this Contract and Douglas County must be notified at least 30 days in advance of any cancellation or nonrenewal of such insurance.

10. 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.

11. 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. The Contract Documents consist of this document, and Exhibit A. The Parties agree to be bound by the terms, conditions and

specifications set forth in all Contract Documents, except as specifically modified or amended. The terms of the Contract Documents shall, to the extent reasonably practical, be read as complimentary to one another. In the event of an irreconcilable conflict between the terms of the Contract Documents, the terms of this document shall prevail, thereafter the terms of Exhibit A.

12. DISPUTE RESOLUTION. 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.

13. 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.

14. ASSIGNMENT. Contractor will neither assign, transfer nor delegate any rights, obligations or duties under the Contract without the prior written consent of the County.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. AUTHORITY. The Parties represent and warrant that they have the authority to enter into this agreement. Each signatory individually warrants that he or she is authorized to sign on behalf of the party for whom he or she is signing.

21. 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.

22. 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.

23. 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.

24. FORCE MAJEURE. Neither Party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder due to protests, strikes, legal impossibility, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, emergencies or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event, the intervening cause must not be through the fault of the Party asserting such an excuse, and the excused Party is obligated to promptly perform in accordance with the terms of this Agreement after the intervening cause ceases.

25. **WAIVER.** The County's failure to insist upon Contractor's performance of any obligation hereunder shall not constitute a waiver of the County's right to enforce that obligation and the County may require compliance with that obligation or any other obligation at any time.

26. **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 Public Works
Attn: Stormwater Program Manager
Post Office Box 218
Minden, Nevada 89423

To Contractor: Impact Construction
PO Box 59
Gardnerville, NV 89410

27. **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.

Impact Construction

By:  _____ 4-26-22
Zack Doane, Contractor (Date)

Douglas County

By:  _____ 4/27/22
Patrick Cates, County Manager (Date)

Exhibit A

Impact Construction

PO Box 59

Gardnerville, NV 89410

Estimate

Date	Estimate #
4/13/2022	694

Name / Address
cwalker@douglasnv.us

Project
2805 Vicki Ln., Min...

Description	Qty	Rate	Total
JOB: 2805 VICKI LANE, MINDEN - CULVERT REPLACEMENT			
Mobilize/Demobilize	1	1,650.00	1,650.00
Traffic control	3	1,500.00	4,500.00
Demo, remove & disposal of culverts & approaches	1	4,300.00	4,300.00
Place 60 LF of 18" CMP with 4 F.E.S.	60	107.00	6,420.00
Place, grade & compact 6" Type II Aggregate Base for approach - 500 sq ft	500	5.50	2,750.00
Place 6" County approved concrete approach - 500 sq ft	500	7.00	3,500.00
We look forward to working with you!		Total	\$23,120.00

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

3rd day of May, 2022

By Clayton Balda Deputy