

Recorder's Office Cover Sheet

Recording Requested By:

Name: Rick Robillard

Department: Public Works



SHAWNYNE GARREN, RECORDER

Type of Document: (please select one)

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

specify: _____

CONTRACT FOR SERVICES BY AN INDEPENDENT CONTRACTOR

A CONTRACT BETWEEN

DOUGLAS COUNTY, NEVADA

AND

CONSTRUCTION MATERIALS ENGINEERS, INC.

FILED
NO. 2023. 219
9/13/23
DATE
DOUGLAS COUNTY CLERK
MINDEN, NV
AL 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 *Construction Materials Engineers, Inc.*, a *Nevada Corporation* registered with the Nevada Secretary of State ("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"). Time is of the essence in this Contract. *All work required in Paragraph 4 of this Contract shall be finally completed by no later than December 31, 2023*

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:

Construction Materials Engineers, Inc. has entered into a contract with Douglas County to perform services related to construction period services for the Cave Rock Water System Improvement Project –Booster Pump Station and Lincoln Highway through December 31, 2023, 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
ATTN: Rick Robillard
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 services related to construction period services for the Cave Rock Water System Improvement Project Booster Pump Station and Lincoln Highway. The Services are more particularly described and shall be completed in accordance with the requirements set forth in Exhibit A dated July 21, 2023 hereto.

5. PAYMENT FOR SERVICES. Contractor agrees to provide the services set forth in Paragraph 4 on a time and materials basis, not to exceed a total of One Hundred Ninety Nine Thousand Eight Hundred and Fifteen Dollars (\$33,320.00) (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.

7. TERMINATION OF CONTRACT. Either Party may terminate the Contract 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. 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.

9. 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 Exhibits 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.

10. 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.

11. 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.

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

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. **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.

24. **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):

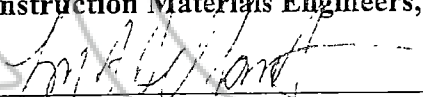
To County: Douglas County
Attn: Public Works, Senior Civil Engineer
Post Office Box 218
Minden, Nevada 89423

To Contractor: Construction Materials Engineers, Inc.
300 Sierra Manor Drive, Suite 1
Reno, NV 89511


25. **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.

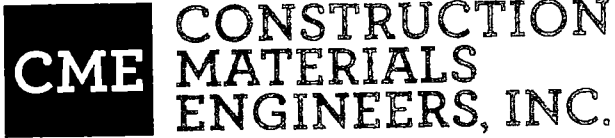
IN WITNESS WHEREOF, the Parties hereto have caused the Contract to be signed and intend to be legally bound thereby.

Construction Materials Engineers, Inc.

By:  8-09-24
Name: Jon A. Del Santo (Date)
Title: Secretary/Treasurer

Douglas County

By:  09/07/2023
Name: Jenifer Davidson (Date)
Title: County Manager



300 Sierra Manor Drive, Suite 1
Reno, NV 89511

July 21, 2023

Scott McCullough, PE
DOUGLAS COUNTY PUBLIC WORKS
1323 Waterloo Lane
Gardnerville, Nevada 89410

**RE: Douglas County Public Works
Cave Rock Drive Waterline Replacement – Phase 3B
2023 Construction Season
Douglas County, Nevada
Contract Administration Services**

Dear Mr. McCullough:

CME, Inc. is pleased to provide this cost proposal for construction administration services on the referenced project.

It is understood that our scope of work is to provide construction administration services including part-time construction contract administration, full time on-site inspection services, and material testing when required. To the extent that this is possible, a significant degree of cost savings is recognized by the avoidance of extra personnel on site, therefore we propose to provide one inspector to perform the construction observation and a portion of the materials testing as required per the project specifications and the approved project plans. An additional part-time technician is included for periodic trips to the site during peak construction activities. Our total scope of work is outlined in the attached Exhibit A – Construction Period Service Scope of Work.

A detailed outline including construction administration time, construction inspection total trips, hours per trip and associated fees is attached for your review. The attached scope of work will include daily field reports describing construction and materials testing activities with transmittals to the project administrator. Daily written summaries of the inspection dialogues and materials testing results will be provided weekly.

Based on the scope of work provided and the anticipated construction schedule, we will provide our services on a time and expense basis not to exceed \$33,320.00. An additional five percent contingency has been included in project costs.

Our services are dependent on your construction schedule and the scope of work provided. Any changes to your schedule or the anticipated scope may result in a change in cost. All services outside the attached estimate will be provided on a time and expense basis in accordance with our current standard fee schedule.

Scott McCullough
DOUGLAS COUNTY PUBLIC WORKS
July 21, 2023
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We appreciate the opportunity to provide our construction contract administration services. Please do not hesitate to call if you have any questions or comments.

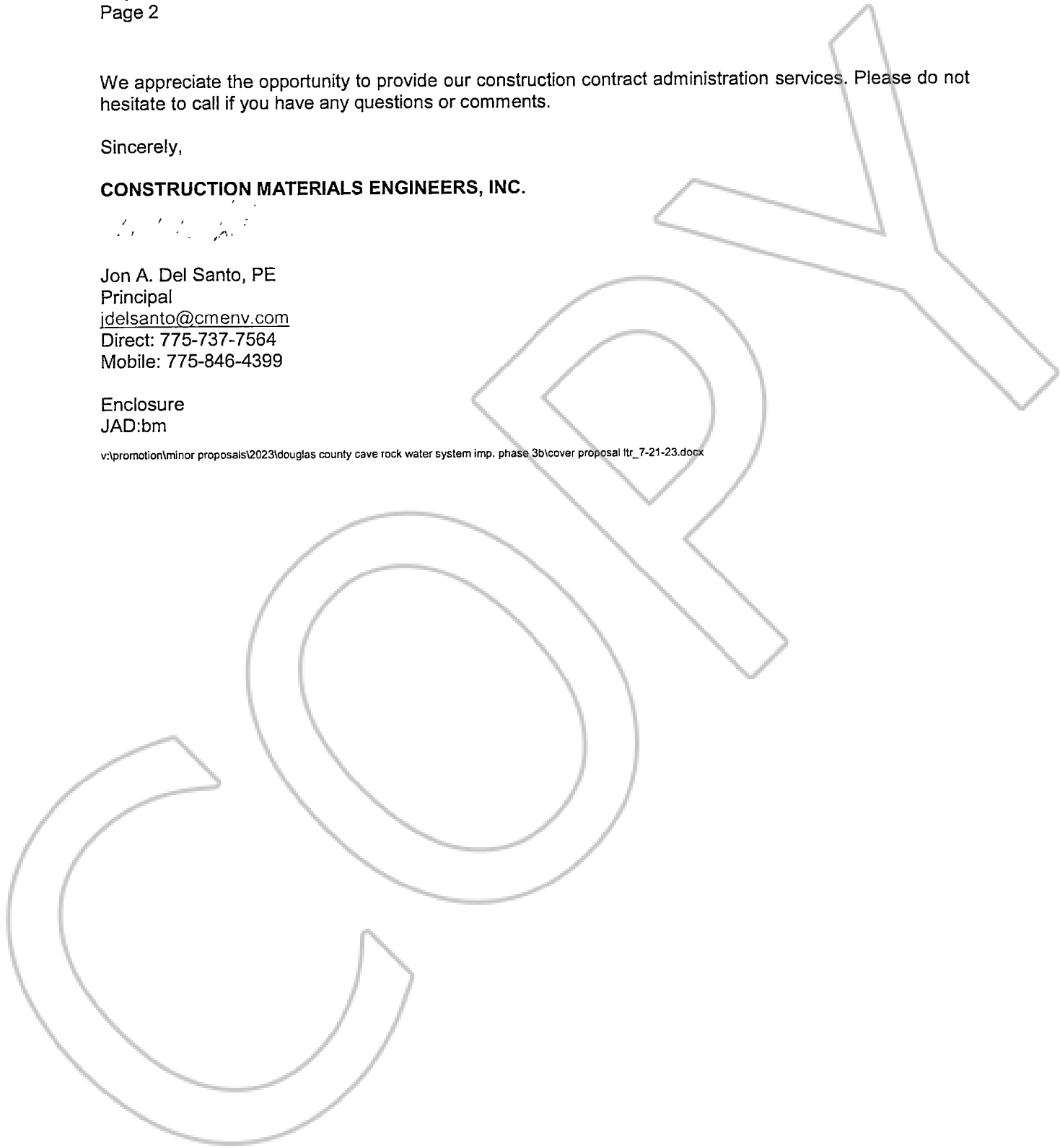
Sincerely,

CONSTRUCTION MATERIALS ENGINEERS, INC.


Jon A. Del Santo, PE
Principal
jdelsanto@cmenv.com
Direct: 775-737-7564
Mobile: 775-846-4399

Enclosure
JAD:bm

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**DOUGLAS COUNTY PUBLIC WORKS
CAVE ROCK WATERLINE REPLACEMENT - PHASE 3B
CONTRACT ADMINISTRATION, CONSTRUCTION OBSERVATION, MATERIALS TESTING**

DATE: 7/21/2023

ACTIVITY	QTY/WEEKS	HRS/WEEK	RATE	TOTAL	COMMENTS
TASK 1 - PROJECT MANAGEMENT					
CONTRACT ADMINISTRATOR	5	2	\$ 180.00	\$ 1,800.00	5 WKS
				\$ 1,800.00	
TASK 2 - CONSTRUCTION OBSERVATION					
ONSITE INSPECTION - REGULAR	5	40	\$ 120.00	\$ 24,000.00	5 WKS CONST - FULL TIME
ONSITE INSPECTION - OVERTIME	5	5	\$ 156.00	\$ 3,900.00	5 WKS CONST - O.T.
VEHICLE	5	45	\$ 10.00	\$ 2,250.00	
				\$ 30,150.00	
TASK 3 - MATERIALS TESTING					
ONSITE INSPECTION/TESTING - REGULAR	1	4	\$ 100.00	\$ 400.00	
VEHICLE & NUCLEAR GAUGE	1	4	\$ 15.00	\$ 60.00	
ASPHALT - MARSHALL SERIES	1		\$ 640.00	\$ 640.00	
ASPHALT - AC CORES	1		\$ 270.00	\$ 270.00	SETS OF 3
				\$ 1,370.00	

1) MATERIAL TESTING TECHNCIAN IS NOT REQUIRED TO BE PAID PREVAILING WAGES

ESTIMATED SUBTOTAL FEE: \$ 33,320.00

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

13 day of September, 2023

By [Signature] Deputy