

Recorder's Office Cover Sheet

Recording Requested By:

Name: Jeremy Hatchings

Department: Community Development

Item ID/Agreement #: DC-12810-2023



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SHAWNYNE GARREN, RECORDER

Type of Document: (please select one)

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

specify: \_\_\_\_\_

**CONTRACT FOR PROFESSIONAL SERVICES**  
**PINE NUT CREEK FLOOD CONTROL FACILITIES**

FILED

A CONTRACT BETWEEN

NO. DC-1280-2023

DOUGLAS COUNTY, NEVADA

2/20/24  
DATE

AND

DOUGLAS COUNTY CLERK  
MINDEN, NV

KIMLEY-HORN AND ASSOCIATES, INC. BY AL DEPUTY

THIS CONTRACT FOR PROFESSIONAL SERVICES (THE "CONTRACT") IS ENTERED INTO BY AND BETWEEN DOUGLAS COUNTY, NEVADA, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA ("COUNTY"), AND KIMLEY-HORN AND ASSOCIATES, INC. ("CONTRACTOR"). THE COUNTY AND CONTRACTOR ARE AT TIMES COLLECTIVELY REFERRED TO HEREINAFTER AS THE "PARTIES" OR INDIVIDUALLY AS THE "PARTY."

**WHEREAS**, the County, from time to time, requires the services of independent contractors;

**WHEREAS**, the County believes that the services of Contractor are necessary, desirable, and in the best interests of Douglas County; and

**WHEREAS**, Contractor represents that Contractor is duly qualified, equipped, competent, ready, willing and able to perform the services required by County as hereinafter described.

**WHEREAS**, Contractor represents that Contractor possess all required licenses and permits to perform the services required by County;

**NOW, THEREFORE**, in consideration of the agreements herein made, the parties mutually agree as follows:

1. **EFFECTIVE DATE OF CONTRACT.** Upon execution by all parties, this Contract shall be effective February 21, 2024, and will terminate on December 31, 2024, unless the Contract is terminated earlier in accordance with Paragraph 7.
2. **SERVICES TO BE PERFORMED.** The Parties agree that the services to be performed by Contractor are as follows:
  - a. Services as described in the attached Exhibit A.
3. **PAYMENT FOR SERVICES.** Contractor agrees to provide the services described set out in Section 2 above on a lump basis for One hundred Four Thousand Eight Hundred Thirty Eight Dollars and Three Cents (\$104,838.03). County will pay invoices it receives within a reasonable time.

Contractor shall be responsible for all costs and expenses incurred while performing any services under this Contract, including without limitation licenses fees, memberships and dues; automobile and other travel expenses; and all salary, expenses and other compensation paid to Contractor's employees or contract personnel Contractor hires to perform the services described by this Agreement.

4. **INDEPENDENT CONTRACTOR STATUS.** The Parties agree that Contractor, and its

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:

- a. Withholding of income taxes by the County;
- b. Industrial insurance coverage provided by the County;
- c. Participation in group insurance plans which may be available to employees of the County;
- d. Participation or contributions by either the independent contractor or the County to the public employees' retirement system;
- e. Accumulation of vacation leave or sick leave;
- f. 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, provided, however, times for performance shall be extended as necessary and Contractor shall not be liable or be deemed in breach due to any delay caused by factors outside the Contractor's reasonable control; 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.

**5. INSURANCE REQUIREMENTS.**

- a. **INDUSTRIAL INSURANCE.** Contractor shall, as a precondition to the performance of any work under this Contract and as a precondition to any obligation of the County to make any payment under this Contract, provide the County with a work certificate and/or a certificate issued by a qualified insurer in accordance with NRS 616B.627. Contractor also shall, prior to commencing any work under the contract, complete and provide the following written request to a qualified insurer:

Kimley-Horn and Associates has entered into a contract with Douglas County to perform work from February 21, 2024, to December 31, 2024, and requests that the 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 Manager  
Post Office Box 218  
Minden, Nevada 89423

Contractor agrees to maintain required workers compensation coverage throughout the entire term of the Contract. If Contractor does not maintain coverage throughout the entire term of the Contract, Contractor agrees that 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. 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 a qualified insurer for the provision of a certificate and notice of lapse in or nonpayment of 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 County may order the Contractor to stop work, suspend the Contract, or terminate the Contract.

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

1. 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
  2. Is otherwise in compliance with those terms, conditions and provisions
- b. **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.
- c. **AUTOMOBILE INSURANCE.** Contractor shall provide proof of commercial Automobile Liability. Insurance shall be written on a per accident/occurrence basis with a single limit of liability of at least \$1,000,000 for bodily injury and property damage. Said policy shall include coverage for any auto, owned, non-owned, leased and hired cars.
- d. **PROFESSIONAL LIABILITY / ERRORS AND OMISSION INSURANCE.** Contractor shall provide proof of Professional Liability insurance in the amount of at least one million dollars (\$1,000,000) that covers negligent errors and omissions by the Contractor for the professional services offered.
6. **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.

**7. TERMINATION OF CONTRACT.** This Contract may be revoked without cause by either Party prior to the date set forth in Paragraph 1, provided that a revocation shall not be effective until 30 days after a party has served written notice upon the other party. The Contractor shall submit billings for work performed up to the effective date of termination.

**8. CONSTRUCTION OF CONTRACT.** This Contract shall be construed and interpreted according to the laws of the State of Nevada. Any dispute regarding this Contract shall be resolved by binding arbitration, with an arbiter jointly selected from a list maintained by the Nevada Supreme Court of senior/retired judges, with both parties to pay their own attorney fees. There shall be no presumption for or against the drafter in interpreting or enforcing this Contract.

**9. COMPLIANCE WITH APPLICABLE LAWS.** Contractor shall 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 this contract, including, but not limited to, all federal, state, and local accounting procedures and requirements and all immigration and naturalization laws.

**10. ASSIGNMENT.** Contractor shall neither assign, transfer nor delegate any rights, obligations or duties under this 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 this contract shall be subject to inspection, examination and audit by the County.

**12. DISPOSITION OF CONTRACT MATERIALS.** Any books, reports, studies, photographs, negatives or other documents, data, or other materials prepared by or supplied to Contractor in the performance of its obligations under this Contract shall be the exclusive property of the County and all such materials shall be remitted and delivered, at Contractor's expense, by Contractor to the County upon completion of the project, or termination or cancellation of this Contract. Any modifications or reuse of the materials prepared by the Contractor without the written verification or adaptation by the Contractor for the specific intended purpose shall be without liability to the Contractor.

**13. PUBLIC RECORDS LAW.** Contractor expressly 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 or a court of competent jurisdiction, shall 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.

**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.** This Contract constitutes the entire agreement between the Parties and may only be modified by a written amendment signed by the Parties.

**16. AUTHORITY.** The Parties represent and warrant that they have the authority to enter into this Contract.

**17. INCORPORATED DOCUMENTS.** The Parties agree that this Contract references or incorporates no other documents or exhibits.

**18. SEVERABILITY.** The illegality or invalidity of any provision or portion of this Agreement shall not affect the validity of the remainder of the Agreement and this Agreement shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of the Agreement unenforceable.

**19. NO APPROPRIATION OF FUNDS.** All payments and services provided under this agreement are contingent upon the availability of the necessary public funding. In the event that Douglas County does not receive the funding necessary to perform in accordance with the terms of this Agreement, this Agreement shall automatically terminate and all fees due and owing shall be paid.

**20. NOTICES.** All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given three business days after mailing by United States, postage prepaid, first class mail addressed to the other party at the addresses set forth below:

**FOR DOUGLAS COUNTY:**

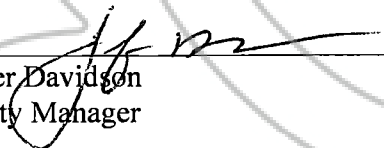
Community Development  
Attn: Jeremy J. Hutchings, PE  
P.O. Box 218  
Minden, Nevada 89423  
Ph: (775) 782-9063  
Email: [jhutchings@douglasnv.us](mailto:jhutchings@douglasnv.us)

**FOR CONTRACTOR:**

Kimley-Horn and Associates, Inc.  
Attn: Nagasekhar (Shaker) R. Gorla, PE  
7900 Rancharrah Parkway, Suite 100  
Reno, NV 89511  
Ph: (775) 453-6972  
Email: [shaker.gorla@kimley-horn.com](mailto:shaker.gorla@kimley-horn.com)

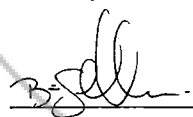
**IN WITNESS WHEREOF**, the parties hereto have caused this contract for professional services to be signed and intend to be legally bound thereby.

**Douglas County**

  
\_\_\_\_\_  
Jenifer Davidson  
County Manager

Feb. 21, 2024  
\_\_\_\_\_  
Date

**Kimley-Horn and Associates, Inc.**

  
\_\_\_\_\_  
Brian Smalkoski, PE AICP, PTP, PTOE  
Vice President

2/16/2024  
\_\_\_\_\_  
Date

# Kimley»Horn

February 16, 2024

Via Email (jhutchings@douglasnv.us)

Mr. Jeremy Hutchings, P.E. - County Engineer  
Douglas County Community Development  
1594 Esmeralda Avenue  
Minden, Nevada 89423

**Subject: Exhibit A - Scope of Services  
Pine Nut Creek Flood Control Facilities  
Douglas County, Nevada**

Dear Mr. Hutchings:

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") is pleased to submit the following scope of services to prepare the design and permitting applications for Pine Nut Creek Flood Control Facilities for Douglas County Community Development ("County/Client"). The following scope of services and fees are based on the preliminary scope of work included in the Request for Qualifications (RFQ) issued by the County and Kimley-Horn's understanding of the project requirements as outlined in our response to the County's RFQ. Kimley-Horn understands that the County will provide required topographic survey data covering the three proposed control basin sites.

## **SCOPE OF SERVICES**

Kimley-Horn will provide the services specifically set forth below.

### **Task 1: Kickoff Meeting and Site Visit**

Following the execution of the contract, Kimley-Horn will schedule an in-person project kickoff meeting. This meeting is expected to be attended by both Douglas County and Kimley-Horn personnel directly involved in the project. The primary objective is to comprehensively understand the project's scope and make any necessary refinements. Subsequently, a reconnaissance field visit led by Kimley-Horn personnel will be conducted to document the existing conditions on-site and identify any significant issues requiring resolution. Kimley-Horn personnel will photograph the existing conditions during the site visit and include them in the prepared reports. After the kickoff meeting, if additional services are deemed necessary beyond the scope included below, Kimley-Horn will provide the additional scope of services and fee estimates for the County's approval.

### **Task 2: Data Collection and Review**

Kimley-Horn understands that the County and Carson Water Subconservancy District (CWSD) recently engaged external engineering firms to prepare feasibility studies and prepare a Letter of Map Revision (LOMR) request with the Federal Emergency Management Agency (FEMA) to revise the floodplain boundaries for Pine Nut Creek and its tributaries.

These earlier efforts resulted in updated hydrologic and hydraulic (H&H) models and technical reports. Kimley-Horn will obtain the H&H models and the reports prepared by the County's engineering consultants. This data will be used for the final design of the flood control basins and in the Conditional Letter of Map Revision (CLOMR) request submittal with FEMA.

### **Task 3: Geotechnical Investigation**

The Geotechnical scope of work will be provided by our subconsultant Lumos & Associates, Inc. (Lumos) and consist of nine (9) subsurface exploration test pits, three (3) at each of the proposed sites. The exploration test pit depths will be 5 to 15 feet below the ground surface or practical refusal, whichever comes first. Samples will be collected from the surface and at each soil layer encountered below the ground surface. The scope of work also includes percolation tests in three (3) of the test pits, one (1) at each site. Lumos will provide the excavation services and the USA dig clearance.

Lumos will collect soil samples from each exploration test pit, classify the encountered soils in accordance with the Unified Soil Classification System (USCS), and conduct laboratory testing on the samples collected. Additionally, Lumos will perform engineering analyses and calculations and develop a Geotechnical Investigation report that will discuss the geologic setting, seismic considerations, exploration and site conditions, field and laboratory test data, and conclusions and recommendations from a Geotechnical perspective. A Registered Nevada Civil Engineer will prepare the Geotechnical Investigation and will specifically include the following services:

Field Investigation will include:

- ◆ USA Dig Clearance
- ◆ Location of Exploration Test Pits
- ◆ Logging of all Soil Profiles Based on USCS
- ◆ Water Table Measurement, if encountered
- ◆ Percolation Tests

Laboratory analysis may include:

- ◆ Atterberg Limits (ASTM D-4318)
- ◆ Grain Size Analysis (including fines content) (ASTM C-136)
- ◆ Moisture Density Curve (ASTM D-1557)
- ◆ Soluble Sulfate
- ◆ Direct Shear (ASTM D-3080)

The Geotechnical Report will consist of following elements along with the recommendations and conclusions:

- ◆ Table of Contents
- ◆ Introduction
- ◆ Exploration Logs and Field Investigations
- ◆ Soil Types and Classification
- ◆ Laboratory Test Results and Summary
- ◆ Seismic Considerations
- ◆ Geotechnical Discussion
- ◆ Shear Strength Parameters of Site Soils
- ◆ Coefficient of Friction of Site Soils
- ◆ Grading Recommendations



- ◆ Portland Cement Concrete Recommendations
- ◆ Groundwater Level, if encountered

Kimley-Horn will share the Geotechnical report prepared by Lumos with the County for their review and comments before proceeding with formal engineering decisions. Kimley-Horn is not liable for variations in the soil condition discovered in the field during construction.

#### **Task 4: Improvement Plans and Probable Construction Cost Estimates**

Kimley-Horn understands that the County will provide recent topographic data covering the three proposed flood control facility sites. Kimley-Horn will obtain this data from the County or its consultant and prepare a base map for each flood control facility site, showing the existing conditions topography overlaid on the recent aerial imagery. Using the conceptual-level flood control facility designs previously prepared by Kimley-Horn as a part of the feasibility studies as the basis and considering the Geotechnical report recommendations, Kimley-Horn will prepare a detailed design of the flood control facilities. The final design drawings will include details of the embankment structure, primary and emergency spillway sections, energy dissipation structures, and access roads for basin maintenance. Using the final design drawings as the basis, Kimley-Horn will prepare probable construction cost estimates for each facility to help Douglas County identify the funding mechanism to construct these facilities. The final design package for each flood control facility will be submitted to Douglas County and other applicable review agencies for review and comments. Kimley-Horn will address any review comments offered by the review agencies, and a final set of construction drawings will be prepared to solicit bids from the prospective contractors. The cost estimate prepared by Kimley-Horn should be considered a preliminary engineering estimate of probable cost at the time of preparation. Kimley-Horn is not liable for fluctuations in construction material cost or other items that may fluctuate during estimating cycles.

#### **Task 5: Bid Document Support**

Douglas County staff will prepare the bid documents utilizing the Engineers Joint Contract Documents Committee (EJCDC) to solicit construction bids from prospective contractors. The bid documents will identify the Redhawk Basin construction project as the base bid, with Mel and Myers flood control facilities as the additional additive alternative bids. Kimley-Horn will provide required support services, including the review of the bid documents, preparation of Bid Item Clarifications, and technical specifications, as needed. Kimley-Horn understands that the County will administer the bidding process, which includes advertising, meetings, selecting the contractor from the responsive bidders, and awarding the bid.

#### **Task 6: Condition Letter of Map Revision (CLOMR)**

Kimley-Horn will prepare a Conditional Letter of Map Revision (CLOMR) application and supporting documentation and submit it to the County for review and signature by the floodplain administrator. Kimley-Horn will package the CLOMR submittal for FEMA review and approval, allowing the construction of the flood control facilities to begin. The CLOMR process typically involves the following specific tasks:

- ◆ Obtain the effective hydrologic and hydraulic models used to establish floodplain boundaries as shown on FEMA's Flood Insurance Rate Maps (FIRMs) or the best available technical data that supersedes the legacy FEMA-approved models.
- ◆ Run the effective or best available models and compare the results against the original model results to ensure that the models replicate previously published results accurately and, therefore, can be relied on to make further changes.

- Make any necessary adjustments (corrections) to the FEMA effective models or the best available technical data to correctly represent the existing site conditions (Corrected Effective Model, or CEM). Specifically, the revised inflow hydrograph data for Pine Nut Creek and its tributaries from the recently completed feasibility study by the County's engineering consultant will be incorporated into the hydraulic model.
- Prepare a Post-Project Conditions Model (PCM) considering the proposed changes to the floodplain, which includes new flood control facilities. The PCM model will reflect the flood attenuation afforded by the proposed flood control facilities and reduced floodplain extents downstream of the flood control structures.
- Prepare annotated FIRMs and work maps to show the proposed floodplain boundaries and include a project narrative for FEMA review.
- Complete appropriate sections of the MT-2 Form and provide other supporting documentation, including certified topographic maps, operation and maintenance plans for each flood control facility, proposed plans, copies of certified property owner notifications, Endangered Species Act (ESA) compliance documentation, etc.

## **Task 7: Project Meetings**

After the substantial completion of the civil improvement plans, Douglas County is expected to conduct at least two meetings – one meeting to solicit input from the stake holders and public and another meeting to present the project to gain support from Douglas County Board of Commissioners. Kimley-Horn will prepare required presentation materials, attend these meetings in person and address any concerns or comments received from the public and Douglas County Board of Commissioners.

## **SERVICES NOT INCLUDED**

Any other services which are not specifically defined herein are not included in this proposal.

## **ADDITIONAL SERVICES**

Any services not specifically provided for in the above scope, and authorized by Client, will be billed as additional services and performed at our then-current hourly rates. Additional services that Kimley-Horn can provide include, but are not limited to, the following:

- Topographic Surveying
- 90% Improvement Plans for the additional flood control facilities, identified as a secondary objective in County issued RFQ.
- Right-of-Way and Easements.
- Environmental Impact Statements.
- Biological Studies / Evaluations.
- Cultural Evaluations.

## **INFORMATION PROVIDED BY CLIENT**

Kimley-Horn shall be entitled to rely on the completeness and accuracy of all information provided by the Client.

## **SCHEDULE**

We will provide our services as expeditiously as practicable with the goal of meeting the mutually agreed upon schedule.

## FEE AND EXPENSES

Kimley-Horn will perform the services in Task 1-5 for the total lump sum fee below. In addition to the lump sum labor fee, direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.15 times cost, and a preliminary estimate of these expenses are shown in the table below. All permitting, application, and similar project fees will be paid directly by the Client.

Task	Description	Fee
1	Kickoff Meeting and Site Visit	\$2,928.03 – Lump Sum
2	Data Collection and Review	\$4,800.00 – Lump Sum
3	Geotechnical Report	\$27,000.00 – Lump Sum
4	Improvement Plans and Probable Construction Cost Estimates	\$47,300.00 – Lump Sum
5	Bid Documents Support	\$2,740.00 – Lump Sum
6	CLOMR	\$16,120.00 – Lump Sum
7	Project Meetings	\$3,950 – Lump Sum

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Reimbursable expenses will be invoiced based upon expenses incurred. Direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.15 times cost. A percentage of labor fee will be added to each invoice to cover certain other expenses as to these tasks such as telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. All permitting, application, and similar project fees will be paid directly by the Client.

## CLOSURE

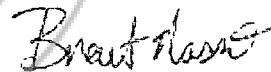
Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter. We appreciate the opportunity to provide these services. Please contact me if you have any questions.

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.



Shaker Gorla, PE, CFM  
Project Manager



Brent Nasset, PE, LEED AP  
Associate

**KHAMT**  
**74**

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

20 day of February, 20 24

By [Signature] Deputy