



## COMMUNITY DEVELOPMENT

ENGINEERING DEPARTMENT  
1594 Esmeralda Avenue, Minden, Nevada 89423

Jeremy Hutchings, P.E.  
County Engineer  
jhutchings@douglasnv.us  
775.782.9063  
[www.douglascountynv.gov](http://www.douglascountynv.gov)

## Notice of Request for Qualifications (RFQ)

### 22F29.10 Buckeye Creek Flood Mitigation Feasibility Study

### Douglas County, NV

**Issue Date:** August 5, 2023

**Due Date and Time:** September 15, 2023, at 5:00 pm local

**Submittal Location:** Electronic (Preferred):  
Email: [jhutchings@douglasnv.us](mailto:jhutchings@douglasnv.us)

Physical (If necessary):  
Douglas County Community Development  
Attn: Jeremy J. Hutchings, PE County Engineer  
1594 Esmeralda Avenue  
PO Box 218  
Minden, NV 89423

**Questions:** Jeremy J. Hutchings, PE County Engineer  
Ph: 775.782.9063  
Email (preferred): [jhutchings@douglasnv.us](mailto:jhutchings@douglasnv.us)

#### 1. Introduction.

Notice is hereby given that the Douglas County Community Development Department, hereinafter referred to as the "County" is issuing this RFQ to solicit Statement of Qualifications (SOQs) from firms qualified to prepare a feasibility study for the Buckeye Creek Flood Mitigation project in Douglas County, NV. A preliminary Scope of Work (SOW) is attached as Exhibit A for review by interested firms.

The County invites interested firms to reply to this RFQ by submitting a responsive SOQ documenting the qualifications and experience of the firm with similar projects relevant to the SOW. All SOQs must be received by the due date and time at the submittal location specified herein. Any SOQ received after the due date and time assigned will not be considered. All information regarding the content of the specific submittals will remain confidential until a contract is finalized, or all submittals are rejected.

#### 2. Selection Process.

A selection panel will evaluate all responsive SOQs received. The County will identify the most qualified firm based on scoring of the SOQs by the selection panel. While the award will most likely be determined based on the scoring of the SOQs submitted; the top firms may be asked to present

their qualifications to the selection panel to aid in the process. The County reserves the right to make such additional investigations as it deems necessary to establish the competency and financial stability of any party submitting a SOQ.

The firm determined to be best qualified will be invited to enter into negotiations with the County to develop a refined scope of services, budget and schedule to perform the professional services outlined herein. Once the negotiations are successfully completed the firm will be required to enter into a Contract for Professional Services (PSC) with the County. A sample PSC is attached as Exhibit B for review.

**3. Instructions.**

**a. Submittal Format.**

Firms interested in responding to the RFQ may do so by submitting a SOQ in electronic format as a pdf to the email address listed under the Submittal Location. In the event that the pdf file is too large to email it may be submitted on a flash drive to the physical address listed under the Submittal Location. The County will not provide any reimbursement for the cost of developing or presenting the Statement of Qualifications (SOQ).

**b. Preparation of SOQ and Scoring.**

SOQs shall be limited to the items listed below. Firms are advised to follow these instructions and submit only the requested information. For the purposes of this RFQ a page will be defined as one side of an 8.5" x 11" sheet with a minimum font size of 11. Prior to submitting a SOQ, it is the responsibility of the firm to examine the entire RFQ and seek clarification of any part that may not be clear and to satisfy themselves as to the accuracy of all information and responses.

The SOQs will be scored based on a maximum of 100 points total. Points will be awarded based on the responsive of the consultant to each of the categories, overall experience, and qualifications to perform the work. A summary of the scoring categories is provided as follows:

<b><u>Category</u></b>	<b><u>Maximum Points</u></b>
Cover Letter.....	5
Project Understanding and Approach.....	30
Firm’s Project Experience.....	30
Personnel Experience and Availability.....	30
Grant Experience.....	5
<b>Total</b> .....	<b>100</b>

**i) Cover Letter (5 Points).**

A cover letter shall be attached to the SOQ expressing the firm’s interest in the project. The letter shall be limited to a maximum of two pages (not counting toward the maximum page count of the SOQ) and provide a brief overview of the firm’s history and experience; identify a single point of contact for all future correspondence; identify any potential conflicts of interest either real or perceived, if none then state accordingly; and be signed by a member of the firm capable of negotiating and entering into contracts for professional services. A maximum score of 5 points is available for the cover letter.

**ii) Statement of Qualifications (95 Total Points).**

The SOQ shall be limited to a maximum of twenty (20) pages and organized into the four categories listed below. The page count includes all pages submitted including cover sheet, table of contents, appendices etc. but does not include the cover letter.

**(1) Project Understanding and Approach (30 Points).**

Demonstrate an understanding of the project scope, the intended approach to accomplishing the work within the required timeframe and an overview of the firm's total capabilities and services by providing the following:

- (i) An overview of the firm including its history, office location(s), principals, major clients, and total capabilities of the services offered that may include the services required to accomplish this project but may also extend to other services not specific to the project.
  - 1. If you are teaming with a sub-consultant, touch on similar information for that firm as well.
- (ii) Re-statement of the scope of work as you understand it based upon the material provided herein.
- (iii) Description of the approach your firm will take to accomplishing the project.
- (iv) Discussion on the major issues your firm has identified with the project and how you may address those issues.
- (v) Description of the firm's approach to overall project management including keeping to project schedules, quality control and quality assurance of deliverables and tracking invoices.
- (vi) A project schedule (Gantt style format) demonstrating completion of the deliverables within three months of authorization to proceed.

**(2) Firm's Project Experience (30 Points).**

Firm experience shall be demonstrated by providing examples of two types of projects: successful and unsuccessful. Typically, firms like to present projects that were successfully completed and that is important. However, not all projects go as planned and how a firm handles a project that goes awry provides significant insight for the selection panel. Accordingly, provide the firm's project experience with both successful and unsuccessful projects as follows:

- (i) Successful projects. Identify at least two discreet projects the firm has successfully completed (or been involved with) within the past five years that are similar in scope to the SOW described in Exhibit A. For each project identified, provide the following information:
  - 1. Description of project.
  - 2. Role of the firm in the project. Identify if the firm was the prime consultant or a sub-consultant.
  - 3. The project's original contract budget and schedule.
- (ii) Unsuccessful projects. Identify at least one project the firm was involved with that did not go exactly as planned. The identified project does not necessarily have to be related to the SOW for this project; however, it should demonstrate a conflict between the firm and another party and how the firm resolved the issue. A specific project name is not needed in order to keep from disclosing possibly sensitive information. This item is intended to give the selection panel an idea of how the firm solves problems when things go awry. Provide the following general information:

1. Describe the circumstances that caused the project to go awry in general terms. Most importantly, describe what the firm did to resolve the issue. Avoid the use of specific names of people, companies, lawsuits, settlement amounts etc. or other sensitive information.

**(3) Personnel Experience and Availability (30 Points).**

Demonstrate the experience and availability of the personnel that will be assigned to work on and manager the project by providing the following information:

- (ii) Organizational chart showing the firm’s key personnel and sub-consultants as may be appropriate and the respective roles of the team members.
- (iii) Resumé of key personnel and sub-consultants that will work on or manage the project.
  1. Registrations, certificates and other formal qualifications. To be considered for award of this project, each firm needs to have at least one key personnel to hold a current registration as a Professional Engineer in the State of Nevada.
- (iv) Capacity/availability of key personnel and sub-consultants to perform the work.

**(4) Grant Experience (5 Points)**

Demonstrate experience with identifying grant funding programs that the County might be eligible for that would help offset direct costs for planning, design and construction of the project.

**4. Inquiries.**

Any question related to this RFQ shall be directed to Jeremy J. Hutchings whose contact information appears at the top of this RFQ. Official questions regarding this Notice must be submitted in writing no later than 5:00 PM on September 12, 2023. Questions may then be responded by written amendment only. Oral statements or instructions shall not constitute an amendment to the RFQ.

**5. Award of Contract.**

Notwithstanding any other provision of the solicitation, the County reserves the right to:

- a. Waive any immaterial defect or informality; or
- b. Reject any or all SOQs, or portions thereof; or
- c. Reissue the RFQ.

**6. Late Submittals.**

Late submittals will not be considered.

**7. Exhibits**

The following exhibits are attached and made a part of this RFQ

- a. Exhibit A – Scope of Work
- b. Exhibit B – Contract for Professional Services (Sample)

# Exhibit A – Preliminary Scope of Work

## 22F29.10 Buckeye Creek Flood Mitigation Feasibility Study

### Douglas County, NV

#### Introduction:

The following is a preliminary Scope of Work (SOW) for the Buckeye Creek Flood Mitigation Feasibility Report. The intent of the study is to determine the feasibility of installing a new diversion structure on the Buckeye Creek and re-establishing a ditch within an existing easement to route flood flows north to what is commonly called the Dangberg #3 and #4 irrigation reservoirs (See Figure 1). The project is located in Minden, Nevada.

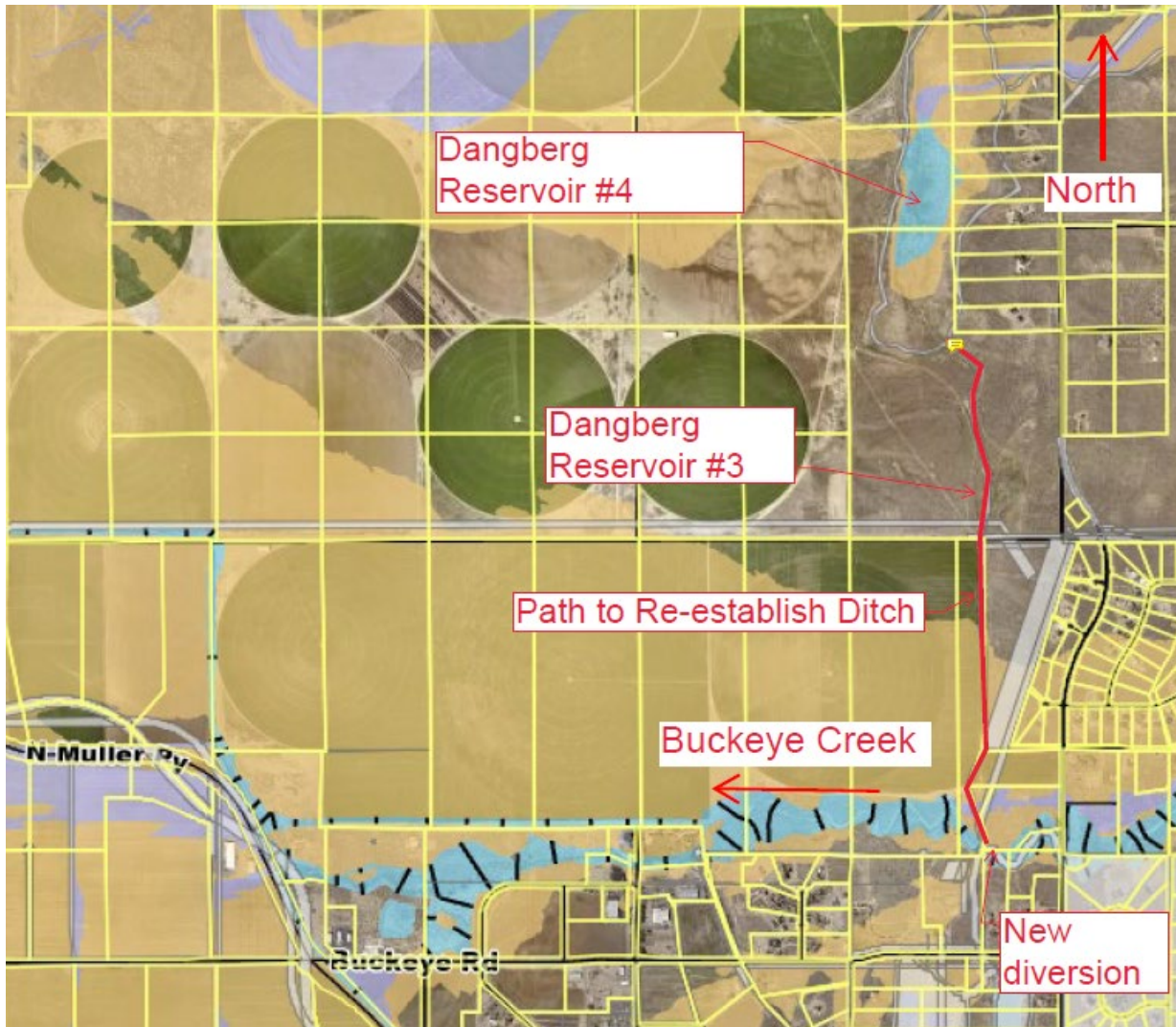


Figure 1

**Objective:**

Douglas County is seeking to seeking to lessen the impact from flooding on the Buckeye Creek by diverting flood flows to the north to the existing Dangberg #3 and #4 Irrigation Reservoirs that are not currently being used. This would require a new diversion structure at the Buckeye Creek and improvements to grade a ditch to the north to the reservoir. The intent would be to better be able to control flood flows from the Buckeye Creek thereby lessening the impacts to downstream infrastructure.

**Background:**

The Buckeye Creek watershed produces a 100-year flow of approximately 3,940 CFS. This flow crosses two main roads, East Valley Road and Buckeye Road both of which are designated as collector roads on the County’s transportation plan. Buckeye Road is also designated as an emergency access route and was most recently flooded out and impassable during the March 2023 flooding. The flooding also causes problems with both residential and agricultural land before entering Minden where it is impacting the future Muller Parkway alignment.

Douglas County has been exploring the feasibility of various plans to lessen the impacts from flooding from the Buckeye Creek. Most recently, the County retained JE Fuller to prepare a study of the impacts of upstream flood storage would have on the flooding. While effective, the costs for installing upstream storage to make a meaningful reduction in flows were quite high and therefore the County would like to explore the feasibility of routing portions of the total flood flow from Buckeye Creek to the Dangberg Reservoir #3 and #4.

The Allerman Upper-Virginia Irrigation Company, Inc. has an existing irrigation easement under Document No. 1979-029636 (width varies 50-Ft to 100-Ft) extending from Dangberg #3 and #4 south past the Buckeye Ditch (see Figure 2). This easement does not appear to be actively used for irrigation but could potentially be used to help manage stormwater run-off during flood events.

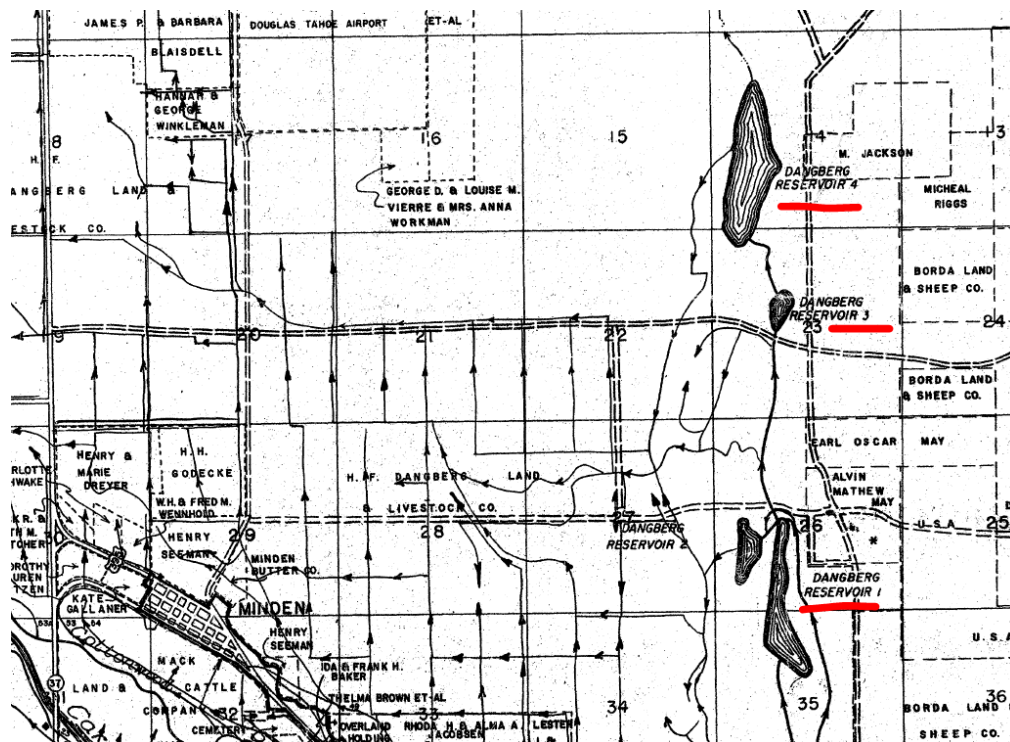


Figure 2

### **Preliminary Scope:**

The scope of this project generally involves completing a feasibility study for installing a diversion structure in Buckeye Creek and a ditch from the creek approximately 1.3 miles north of the creek to Dangberg Reservoir #3 and #4.

- Feasibility study. A narrative of the feasibility for installing a diversion structure and ditch to route a portion of the flood flows from Buckeye Creek to the north to Dangberg Reservoir #3 and #4.
  - Hydraulic analysis of diverting approximately 900 Cubic Feet per Second (CFS) from the Buckeye Creek north to Dangberg #3 and #4. Update of the two-dimensional model prepared by JE Fuller on the impact on the downstream floodplain.
    - The existing two-dimensional model files will be made available and used as the basis for analyzing the results of the diversion.
  - Constraints/challenges with the project.
  - Narrative of cost estimate.
  - Additional technical reports or analysis that might be required if the project were to move forward.
  - Permitting requirements.
  - Possible grant funding sources.
  - Overall opinion on the feasibility of the project based on constraints, costs, and constructability.
- Preliminary Engineering Plans (15%). A preliminary design will be prepared that is expected to be conceptual in nature but should cover the following main design elements:
  - Location of diversion in the Buckeye Creek.
  - Horizontal alignment of diversion ditch from Buckeye Creek to Dangberg #3 and #4.
    - Typical trapezoidal ditch cross-section.
  - Vertical alignment. If budget allows, the scope may be adjusted to collect new topography. Otherwise, consultant may rely upon publicly available topography.
    - Assumption of 0.5% slope is acceptable to determine/confirm ditch capacity.
- Preliminary Engineer's Estimate of Construction Cost based on Preliminary Design.
  - Itemized per main element of work.
- If budget allows, the scope of work may be extended to include extending the ditch south under Buckeye Road to connect to the outfall from Dangberg Reservoir #01. This would be a secondary objective and only considered if there is budget available after the primary objective is completed.

**Schedule:**

The project schedule is anticipated to follow the milestone dates listed below.

- August 2023: Request for Qualifications Issued
- September 2023: Statement of Qualifications Due
- October 2023: Most qualified consultant identified  
Negotiation of scope, budget and schedule completed
- November 2023: Contract issued to begin work
- April 2024: Deliverables complete

**Budget:**

The project budget is approximately \$25,000 and is from American Recovery Plan Act funding that the County has received.



**CONTRACT FOR PROFESSIONAL SERVICES  
FUNDED FROM FEDERAL FUNDS  
22F29.10 Buckeye Creek Flood Mitigation Feasibility Study**

AN AGREEMENT BETWEEN

**DOUGLAS COUNTY, NEVADA**

AND

**(NAME OF CONTRACTOR)**

This Agreement (“Agreement”) is entered into by and between Douglas County, 1594 Esmeralda Avenue, Minden, Nevada, 89423, a political subdivision of the State of Nevada (the “County”), and **(Contractor Name, Address)** (the “Contractor”). The County and Contractor are at times collectively referred to hereinafter as the “Parties” or individually as the “Party.”

**WHEREAS**, the County is permitted to use Federal funding the County has received to contract with the Contractor to provide the professional services referenced herein; and

**WHEREAS**, the Contractor must comply with all applicable legal and regulatory requirements for the use of Federal funding, including all applicable compliance requirements and all applicable Uniform Administrative Requirements, Cost Principles; and

**WHEREAS**, the Douglas County Board of Commissioners has approved using Federal funding in accordance with the terms of this Agreement.

**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.** This Agreement is effective on the date signed by both parties and shall continue in effect until all services referenced in the Agreement are performed by Contractor, but in no event later than **(Date)**, unless earlier terminated by either party in accordance with the terms of this Agreement.

**2. SERVICES TO BE PERFORMED.** The Parties agree that the services to be performed by Contractor are as follows: **(Description of project)** as further detailed in the Contractor’s Proposal attached hereto as **Exhibit A**.

**3. PAYMENT FOR SERVICES.** Contractor agrees to provide the services set forth in Paragraph 2 for a total cost not to exceed **(Contract Amount in Words), (Contract Amount in Numbers)** payable by County to Contractor from Federal funding. Contractor agrees to submit

invoices detailing the work completed within ten days of the end of the prior month for any services rendered. County will pay invoices it receives within 45 days after receipt. County reserves the right to withhold or reduce payment under this Agreement if County determines, in its sole discretion, that Contractor has failed to comply with any applicable laws and regulations regarding the use of Federal funding.

Contractor shall be responsible for all costs and expenses incurred while performing any services under this Contract, including without limitation license 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 all associates and employees shall have the status of 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.

**5. 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:

(Contractor Name), has entered into a contract with Douglas County to perform work from (Date) through (Date), 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 R.O. Anderson Engineering, Inc. 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.

**6. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS.** Contractor shall comply with all applicable federal, state, and local laws, regulations, and ordinances, including, without limitation, all federal requirements regarding the expenditure of Federal funds that are in effect as of the effective date of this Agreement, and that may later be enacted or promulgated, including, without limitation, 31 CFR Part 35 and 2 CFR Part 200. Pursuant to 2 CFR §200.316 any real property, equipment, and intangible property, that are acquired or improved with a Federal

funds must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved.

**7. ADMINISTRATION OF AGREEMENT.** The individuals listed below shall administer this Agreement on behalf of the parties. All communications between Contractor and County and notices required under this Agreement shall be sent to the individuals listed below:

<b>County:</b>	Name:	Douglas County, Nevada
	Attn.:	Jeremy J. Hutchings, PE County Engineer
	Address:	1594 Esmeralda Avenue PO Box 218 Minden, NV 89423
	Contact Number:	775.782.9063
	Email:	jhutchings@douglasnv.us
<b>Contractor:</b>	Name:	(Firm Name)
	Attn:	(Contact Name, Title)
	Address:	(XXXXXXXXXX) (Town, State Zip Code)
	Contact Number:	XXX.XXX.XXXX
	Email:	XXX@XXX

**8. AUDIT AND INSPECTION OF CONTRACTOR RECORDS.** Upon request of the County, Contractor shall make available to the County for examination all of Contractor's records with respect to all matters covered by this Agreement and will permit the County to audit, examine and make excerpts or transcripts from such records, and make audits of all invoices, materials, payrolls, records of personnel and other data relating to all matters covered by this Agreement. Contractor shall maintain such records in an accessible location and condition for a period of not less than six years following the termination of this Agreement, unless County agrees in writing to an earlier disposition.

**9. TERMINATION OF AGREEMENT.** The County may, upon written notice to Contractor, terminate this Agreement in whole or in part, for any reason, upon 30 days advance written notice to Contractor. In the event of termination, Contractor shall be paid for all services rendered to County up to the effective date of termination.

**10. SUSPENSION AND DEBARMENT CERTIFICATION.** In accordance with Federal Executive Order 12549 and 2 CFR Part 1400 regarding Debarment and Suspension, Contractor certifies that neither it, nor its principals, are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency; and, that the Contractor shall not knowingly enter into any lower tier contract, or other covered transaction, with a person who is similarly debarred or suspended from participating in this covered transaction. By signing this Agreement, Contractor certifies that he/she/it has not been suspended or debarred from federal projects, and is fully eligible to receive federal funding.

**11. CIVIL RIGHTS REQUIREMENTS.** The following requirements apply to the underlying Agreement:

- (1) Nondiscrimination -In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements issued.
- (2) Equal Employment Opportunity -The following equal employment opportunity requirements apply to the underlying Agreement:
  - a) Race, Color, Creed, National Origin, Sex, Age -In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future activities undertaken in the course of the work under this Agreement. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements issued.
  - b) Age - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements issued.
  - c) Disabilities - In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements issued.

**12. LOBBYING.** No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an

employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

**13. BUY American (when appropriate).** Products permanently incorporated into the work are subject to the Federal Buy America requirements as set forth in 23 CFR 635.410. Buy America requirements apply to all steel or iron materials for permanent incorporation in the work. The steel or iron material must have all manufacturing process occur in the United States. “Manufacturing” includes all processes that affect the size, shape, and finish of the steel (coating, forming, plating, galvanizing, etc.). A Buy America Waiver must be requested and approved by the funding agency prior to commencement of work.

**14. Davis-Bacon Act (when appropriate).** Davis-Bacon Act as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

**15. CLEAN AIR AND WATER ACTS.** Clean Air Act (42 U.S.C. §§ 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251-1387), as amended—Contracts and subgrants of amounts in excess of One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**16. 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 his/her/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.

**17. INDEMNIFICATION OF COUNTY.** To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend County from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Contractor, its officers, employees, agents, volunteers, or other representatives arising out of or related to Contractor's performance under this Agreement. Notwithstanding the obligation of Contractor to defend County as set forth in this paragraph, County may elect to participate in the defense of any claim brought against County because of the conduct of Contractor, its officers, employees and agents. Such participation shall be at County's own expense and County shall be responsible for the payment of its own attorney's fees it incurs in participating in its own defense.

**18. CONSTRUCTION OF AGREEMENT.** The Agreement 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 Agreement. 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 Agreement 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. The Parties mutually agree to not seek punitive damages against either Party.

**19. FEDERAL CHANGES.** The Contractor shall at all times comply with all applicable Federal regulations, policies, procedures and directives, including without limitation those listed directly or by reference in any funding documentation, as they may be amended or promulgated from time to time during the term of this Agreement. The Contractor's failure to so comply shall constitute a material breach of this Agreement.

**20. MODIFICATION OF CONTRACT.** This Agreement constitutes the entire agreement and understanding between the Parties. All other representations, oral or written, are superseded by this Agreement. This Agreement may only be modified by a written amendment signed by both of the Parties.

**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 County or Contractor.

**22. ASSIGNMENT.** Contractor will neither assign, transfer nor delegate any rights, obligations or duties under this Agreement without the prior written consent of the County.

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

**24. COUNTERPARTS.** This Agreement may be executed in counterparts, and each counterpart shall constitute one agreement binding on all parties hereto.

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

**(Contractor Name)**

By:

\_\_\_\_\_  
**(Name of Person Authorized to enter into contracts)**

\_\_\_\_\_  
Date

**Douglas County, Nevada**

By:

\_\_\_\_\_  
**(Name of County Manager),** County Manager

\_\_\_\_\_  
Date



**Exhibit A**

**Project Scope**