



C

2010-000036

Exp 12-31-11

EUREKA COUNTY DISTRICT ATTORNEY

KELLY C. BROWN, DEPUTY DISTRICT ATTORNEY

South Main Street - P.O. Box 190

Eureka, Nevada 89316

(775) 237-5315 - Fax (775) 237-6005

TBeutel.ecda@eurekanv.org

Adriane Tibbitts, Senior Department Assistant

Toni M. Wright, Senior Department Assistant

Juvenile Probation Office (775) 237-5450

Child Support 1-800-229-4188

July 8, 2010

Jackie Berg
Eureka County Clerk and Treasurer
P.O. Box 677
Eureka, NV 89316

RE: NRHA contract for services

Dear Jackie:

Enclosed find the signed original contract for services with NRHA signed July 6, 2010. The MOU is incorporated into the contract as part of Attachment C to the contract.

Truly,

Theodore Beutel, Esq.
Eureka County District Attorney

Enc.

cc w/enc: Ron Damele (via hand delivery)
Abby Johnson (via email)
David Craig (via hand delivery)
Mike Rebaleati (via hand delivery)

TB/tw

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

A Contract Between Eureka County, Nevada
Acting By and Through Its

(Contracting Agency)
Board of County Commissioners
P.O. Box 677, Eureka, NV 89316
Phone: (775) 237-5262 Fax: (775) 237-6015

And

(Contractor)
Nevada Rural Housing Authority
3695 Desatoya Drive, Carson City, NV 89701
Phone: (775) 887-1178 Fax: (775) 887-1838

WHEREAS, NRS 333.700 authorizes elective officers, heads of departments, boards, commissions or institutions to engage services of persons as independent contractors; and

WHEREAS, it is deemed that the service of Contractor is both necessary and in the best interests of Eureka County;
NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. REQUIRED APPROVAL. This Contract shall not become effective until and unless approved by the Board of County Commissioners.
2. DEFINITIONS. "County" means the County of Eureka, a political subdivision of the State of Nevada. "State" means the State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307. "Independent Contractor" means the Nevada Rural Housing Authority, an entity that performs services and/or provides goods for the County under the terms and conditions set forth in this Contract. "Fiscal Year" is defined as the period beginning July 1 and ending June 30 of the following year. "The project" is the "Eureka Canyon Development" which consists of approximately 164± acres of undeveloped land located on the northern perimeter of the town of Eureka.
3. CONTRACT TERM. This Contract shall be effective from July 6, 2010 to December 31, 2011, unless sooner terminated by either party as specified in paragraph ten (10).
4. NOTICE. Unless otherwise specified, termination shall not be effective until 30 calendar days after a party has served written notice of default, or without cause upon the other party. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above.
5. INCORPORATED DOCUMENTS. The parties agree that the scope of work shall be specifically described. This Contract incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT A: COUNTY SOLICITATION;
ATTACHMENT B: INSURANCE SCHEDULE; AND
ATTACHMENT C: CONTRACTOR'S RESPONSE

A Contractor's Attachment shall not contradict or supersede any of the specifications, terms or conditions of this agreement without both parties have first mutually consented to such change(s) as evidenced by a written modification to this agreement executed by both parties.

6. CONSIDERATION. The parties agree that Contractor will provide the services specified in paragraph five (5) INCORPORATED DOCUMENTS at a cost to be invoiced monthly, with the total Contract or installments payable: not to exceed \$250,000.00. The monthly invoice shall be submitted to the Public Works Office no later than the 1st of the month and will be paid on the next available County Commission meeting.

The Contractor's initial request for payment shall include the reimbursement for those actual costs incurred by Contractor from the period covering May 1, 2010 thru July 5, 2010 that are directly related to the project, and that reflect work that is to be performed under this agreement. This amount will not exceed \$20,000.00

7. ASSENT. The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations specified unless such attachments are otherwise modified and agreed to by both parties.

8. TIMELINESS OF BILLING SUBMISSION. The parties agree that timeliness of billing is of the essence to the contract and recognize that the County is on a fiscal year. All billings for dates of service prior to July 1 must be submitted to the County no later than the first Friday in August of the same year.

9. INSPECTION & AUDIT.

a. Books and Records. Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the County, the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

b. Inspection & Audit. Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the County Auditor, State Auditor, the relevant state agency or its contracted examiners, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect requirements of this paragraph.

c. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained a minimum three (3) years, and for five (5) years if any federal funds are used pursuant to the Contract. The retention period runs from the date of payment for the relevant goods or services by the County, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

10. CONTRACT TERMINATION.

a. Termination Without Cause. Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated upon written notice by mutual consent of both parties, or unilaterally by either party without cause.

b. Termination for Non-appropriation. The continuation of this Contract beyond the current fiscal year is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the Board of County Commissioners, state and/or federal sources. The County may terminate this Contract, and Contractor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein)

if for any reason the Contracting Agency's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.

c. Cause Termination for Default or Breach. A default or breach may be declared with or without termination. This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:

- i. If Contractor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or
- ii. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
- iii. If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or
- iv. If the County materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or
- v. If it is found by the County that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the County with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or
- vi. If it is found by the County that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.

d. Time to Correct. Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in paragraph four (4), and the subsequent failure of the defaulting party within fifteen (15) calendar days of receipt of that notice, or any extended period afforded by the aggrieved party that is necessary to allow the defaulting party to adequately correct the noted deficiency, to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.

e. Winding Up Affairs Upon Termination. In the event of termination of this Contract for any reason, the parties agree that the provisions of this paragraph survive termination:

- i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;
- ii. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency;
- iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the Contracting Agency;
- iv. Contractor shall preserve, protect and promptly deliver into County possession all proprietary information in accordance with paragraph twenty-one (21).

11. REMEDIES. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation one hundred and twenty-five dollars (\$125.00) per hour for County-employed attorneys.

12. LIMITED LIABILITY. The County will not waive and intends to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any County breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach. Damages for any Contractor breach shall not exceed one hundred and fifty percent (150%) of the contract maximum "not to exceed" value. Contractor's tort liability shall not be limited, except to the extent NRS Chapter 41 liability limitations apply to Contractor.

13. FORCE MAJEURE. Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, 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 the Contract after the intervening cause ceases.

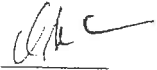

14. INDEMNIFICATION. To the fullest extent permitted by law Contractor shall indemnify, hold harmless and defend, not excluding the County's right to participate, the County from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents.

To the fullest extent permitted by law the County shall indemnify, hold harmless and defend, including the County's right to participate, the Contractor 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 County, its officers, employees and agents.

15. INDEPENDENT CONTRACTOR. Contractor is associated with the County only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the County whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and the County shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the County; (4) participation or contributions by either Contractor or the County to the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the County. Contractor shall indemnify and hold County harmless from, and defend County against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees. Neither the Contractor nor its employees, agents, or its representatives shall be considered employees, agents, or representatives of the County. The County and Contractor shall evaluate the nature of services and the term of the Contract negotiated in order to determine "independent contractor" status, and shall monitor the work relationship throughout the term of the Contract to ensure that the independent contractor relationship remains as such. To assist in determining the appropriate status (employee or independent contractor), Contractor represents as follows:

		<u>Contractor's Initials</u>	
		YES	NO
1.	Does the Contracting Agency have the right to require control of when, where and how the independent contractor is to work?	_____	_____ <i>AS</i>
2.	Will the Contracting Agency be providing training to the independent contractor?	_____	_____ <i>AS</i>
3.	Will the Contracting Agency be furnishing the independent contractor with worker's space, equipment, tools, supplies or travel expenses?	_____	_____ <i>AS</i>
4.	Are any of the workers who assist the independent contractor in performance of his/her duties employees of the County?	_____	_____ <i>AS</i>
5.	Does the arrangement with the independent contractor contemplate continuing or recurring work (even if the services are seasonal, part-time, or of short duration)?	_____	_____ <i>AS</i>

6. Will the County incur an employment liability if the independent contractor is terminated for failure to perform?
7. Is the independent contractor restricted from offering his/her services to the general public while engaged in this work relationship with the County?

_____ 
_____ 

16. **INSURANCE SCHEDULE.** Unless expressly waived in writing by the County, Contractor, as an independent contractor and not an employee of the County, must carry policies of insurance and pay all taxes and fees incident hereunto. Policies shall meet the terms and conditions as specified within this Contract along with the additional limits and provisions as described in Attachment B, incorporated hereto by attachment. The County shall have no liability except as specifically provided in the Contract.

The Contractor shall not commence work before:

- 1) Contractor has provided the required evidence of insurance to the Contracting Agency of the County, and
- 2) The State has approved the insurance policies provided by the Contractor.

Prior approval of the insurance policies by the County shall be a condition precedent to any payment of consideration under this Contract and the County's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of the County to timely approve shall not constitute a waiver of the condition.

Insurance Coverage: The Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract insurance conforming to the minimum limits as specified in Attachment B, incorporated hereto by attachment. Unless specifically stated herein or otherwise agreed to by the County, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until:

1. Final acceptance by the County of the completion of this Contract; or
 2. Such time as the insurance is no longer required by the County under the terms of this Contract;
- whichever occurs later. Any insurance or self-insurance available to the County shall be in excess of, and non-contributing with, any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the County, Contractor shall provide the County with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the County and immediately replace such insurance or bond with an insurer meeting the requirements.

County and Contractor mutually acknowledge that both are Members of the Nevada Public Agency Insurance Pool which coverage satisfies the requirements of Section 16 and Attachment B.

General Requirements:

- a. **Additional Insured:** By endorsement to the general liability insurance policy evidenced by Contractor, the County, its officers, employees and immune contractors as defined in NRS 41.0307 shall be named as additional insureds for all liability arising from the Contract.
- b. **Waiver of Subrogation:** Each insurance policy shall provide for a waiver of subrogation against the County, its officers, employees and immune contractors as defined in NRS 41.0307 for losses arising from work/materials/equipment performed or provided by or on behalf of the Contractor.
- c. **Cross-Liability:** All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
- d. **Deductibles and Self-Insured Retentions:** Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the County. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed fifty thousand dollars (\$50,000.00) per occurrence, unless otherwise approved by the County.

- e. Policy Cancellation: Except for ten (10) days notice for non-payment of premium, each insurance policy shall be endorsed to state that without thirty (30) days prior written notice to the County, c/o Contracting Agency, the policy shall not be canceled, non-renewed or coverage and /or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mailed to the address shown on page one (1) of this contract.

Evidence of Insurance:

Prior to the start of any Work, Contractor must provide the following documents to the contracting agency:

1) Certificate of Insurance: The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the County to evidence the insurance policies and coverages required of Contractor. The certificate must name the County, its officers, employees and immune contractors as defined in NRS 41.0307 as the certificate holder. The certificate should be signed by a person authorized insurer to bind coverage on its behalf. The County project/contract number; description and contract effective dates shall be noted on the certificate, and upon renewal of the policies listed Contractor shall furnish the County with replacement certificates as described within Insurance Coverage, section noted above.

Mail all required insurance documents to the Contracting Agency identified on page one of the contract.

- 2) Additional Insured Endorsement: An Additional Insured Endorsement, signed by an authorized insurance company representative, must be submitted to the County to evidence the endorsement of the County as an additional insured per General Requirements, subsection a above.
- 3) Schedule of Underlying Insurance Policies: If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlyer Schedule from the Umbrella or Excess insurance policy may be required.

Review and Approval: Documents specified above must be submitted for review and approval by the County prior to the commencement of work by Contractor. Neither approval by the County nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its sub-contractors, employees or agents to the County or others, and shall be in addition to and not in lieu of any other remedy available to the County under this Contract or otherwise. The County reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

17. COMPLIANCE WITH LEGAL OBLIGATIONS. Contractor shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract.

Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and NRS 361.159.

18. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

19. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract 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 this Contract unenforceable.

20. ASSIGNMENT/DELEGATION. To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by the County, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Contractor shall neither assign, transfer nor delegate any rights, obligations nor duties under this Contract without the prior written consent of the County.

21. OWNERSHIP OF PROPRIETARY INFORMATION. Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under the Contract), or any other documents or drawings, prepared or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the County and all such materials shall be delivered into County possession by Contractor upon completion, termination, or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without the prior written consent of the County. Notwithstanding the foregoing, the County shall have no proprietary interest in any materials licensed for use by the County that are subject to patent, trademark or copyright protection or that have been identified and declared in their contract as the sole property of the Contractor and its representatives or agents.

22. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The County has a legal obligation to disclose such information unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that Contractor thereby agrees to indemnify and defend the County for honoring such a designation. The failure to so label any document that is released by the County shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

23. CONFIDENTIALITY. Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is confidential by law or otherwise required by this Contract.

24. FEDERAL FUNDING. In the event federal funds are used for payment of all or part of this Contract:

a. Contractor certifies, by signing this Contract, 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. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

b. Contractor and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

c. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)

25. LOBBYING. The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:

- a. Any federal, state, county or local agency, legislature, commission, counsel or board;
- b. Any federal, state, county or local legislator, commission member, counsel member, board member, or other elected official; or
- c. Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.

26. WARRANTIES.

a. General Warranty. Contractor warrants that all services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.


b. System Compliance. Contractor warrants that any information system application(s) shall not experience abnormally ending and/or invalid and/or incorrect results from the application(s) in the operating and testing of the business of the County. This warranty includes, without limitation, century recognition, calculations that accommodate same century and multi-century formulas and data values and date data interface values that reflect the century.

27. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that as required by statute or regulation this Contract is effective only after approval by the Board of County Commissioners and only for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

28. GOVERNING LAW; JURISDICTION. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of the Seventh Judicial District Court, Eureka, Nevada for enforcement of this Contract.

29. ENTIRE CONTRACT AND MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and as such are intended to be the complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Board of County Commissioners.

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



Gary Longaker Date 7-7-10

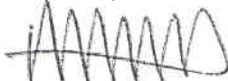
Executive Director, Nevada Rural Housing Authority
Independent's Contractor's Title



Signature - County Commission Chairman

APPROVED BY BOARD OF EUREKA COUNTY COMMISSIONERS
On 6 JULY 2010
(Date)

Approved as to form by:



Eureka County District Attorney

On 6 JULY 2010
(Date)

ATTEST: 

Clerk of the Board

On 7/6/2010
(Date)

ATTACHMENT A
SOLICITATION OR RFP #

Solicitation of the Nevada Rural Housing Authority was conducted by County officials seeking help to plan and execute the development of real property to satisfy an immediate need for temporary construction worker housing sites, affordable residential housing sites, and commercial sites.

ATTACHMENT B
INSURANCE SCHEDULE

(Insert appropriate contract insurance schedules)

PROOF OF INSURANCE IS WAIVED BY THE COUNTY

ATTACHMENT C
CONTRACTOR'S RESPONSE

Nevada Rural Housing Authority (NRHA) agrees to carry out the steps outlined in the Memorandum of Understanding entered into with the County effective July 6, 2010. A copy of that MOU is included here as part of Attachment C.

NRHA shall perform the steps in the MOU no later than December 31, 2010, at a cost not to exceed \$250,000.00.

Payment by the County shall only be made once a detailed invoice is received and processed by the County and all such payments shall be made in strict accordance with Contract.

County payments shall be reimbursed for all payments made under this Contract with future proceeds from the development and/or other funding sources. However, both parties further understand and agree that the requirement to repay any payments made by the County under the terms and conditions of this agreement shall not be required in such a way as to interfere with, or otherwise adversely affect, the overall economic viability of the project.

NRHA shall provide their organizational charter, most recent financial report, and budget for expenditure of the funds provided by the contract prior to any initial draw being made on the funds under this contract.

The budget for expenditure shall include a list of deliverables, with a date certain for their delivery to the County, and will include:

1. A comprehensive development plan of the site referenced in the MOU; and
2. A revised subdivision map application and accompanying stamped engineer's drawings; and
3. Documentation and studies customarily required for grant funding or financing of developments of this type.

MEMORANDUM OF UNDERSTANDING

BY AND BETWEEN EUREKA COUNTY, a political subdivision of the State of Nevada (County), and NEVADA RURAL HOUSING AUTHORITY, a political subdivision of the State of Nevada pursuant to N.R.S. Chapter 315 (NRHA) to work together on development of real property owned by the County in the unincorporated town of Eureka, Nevada for temporary construction worker housing sites, residential housing sites, and commercial development sites.

The County and NRHA enter into this Memorandum of Understanding based upon the following facts:

1. The County is in immediate need of affordable housing, temporary housing for construction and other workers who do not reside in Eureka, and sites for commercial enterprises which serve the community. Further, the County has voiced a willingness to provide reasonable financial support for the project in the form of construction loan guarantees, recoverable grants and/or repayable service contracts, in order to ensure that development opportunities are maximized, and that development timelines are met with respect to the proposed development project. NRHA will use its best efforts to secure grants and other funding sources.
2. NRHA has the expertise to develop real property, to include affordable housing and the needs of the County, and both parties recognize that NRHA has already spent some time and expended resources in anticipation of this agreement.
3. The County has identified a site owned by Eureka County near the County Fairgrounds in the unincorporated town of Eureka, Nevada suitable and desirable for development. The project under consideration is identified herein as the "Eureka Canyon Development" which consists of approximately 164± acres of undeveloped land located on the northern perimeter of the town of Eureka.
4. The County and Eureka Moly, LLC, a contemplated local mine project, have been working since 2008 to develop this site, and there has already been considerable study and preparation of the site for development.
5. Both the County and NRHA acknowledge time is of the essence to prepare the County for the increasing demand for housing. For this reason, this MOU lists

anticipated dates for completion of each task described below, and the parties agree that all agreements between them, or between NRHA and third parties, will require timeframes for completion of tasks and make time of the essence for all agreements.

6. Both the County and NRHA acknowledge unanticipated circumstances may lead the County or NRHA to wish to terminate this MOU, and both reserve the right to do so with or without cause at any time. Agreements contemplated by this MOU will also allow for termination and describe the process for doing so.

TASKS TO BE COMPLETED BY THIS MOU

July 6, 2010

- A. The County and NRHA will sign this MOU, and enter into an agreement for interim funding by the County for NRHA to prepare plans and specifications for development of the site. The interim funding in its entirety shall be reimbursed to the County once other funding sources are secured or future revenues from the development of the site is generated.

July 21, 2010 - 7PM Opera House Eureka, NV

- B. The governing body of the County and representatives of NRHA will meet publicly to receive input from all persons, including but not limited to current and future residents, employers, commercial interests, and County board members, to understand and quantify the demand for housing, price considerations, and all other pertinent community concerns.

August 6, 2010

- C. NRHA will deliver a draft development plan to the County for comment. The County will consider the draft in a public meeting and comment, and the public is invited to review the plan and comment as well.

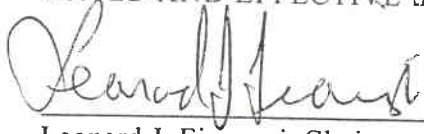
August 20, 2010

- D. NRHA will revise and submit a final development plan to the County for acceptance by the County.

September 6, 2010

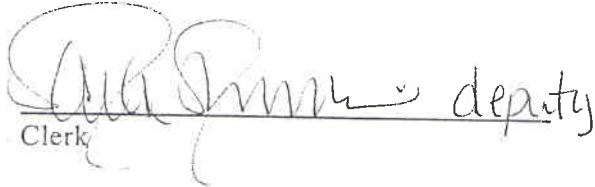
- E. The County and NRHA will enter into an agreement to carry out the final development plan. NRHA is authorized to contract with qualified third parties and apply for public funding from all available sources in order to develop and carry out the plan for affordable housing.

DATED AND EFFECTIVE this 6th day of July, 2010.

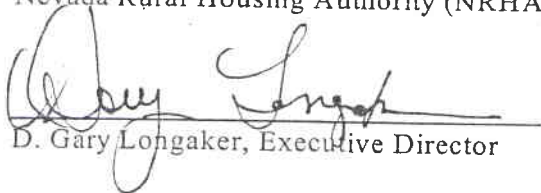


Leonard J. Fiorenzi, Chairman
Board of Eureka County Commissioners

Attest:

 deputy
Clerk

Nevada Rural Housing Authority (NRHA)


D. Gary Longaker, Executive Director