



0213724

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

A Contract Between Eureka County (County)
Acting By and Through Its

Board of Eureka County Commissioners (Board)
P.O. Box 677, Eureka, NV 89316
(775) 237-5262

and

Day Engineering (Contractor)
P.O. Box 151178, Ely, NV 89315
(775) 289-5353

WHEREAS, NRS 244.320 authorizes the Board of Eureka County Commissioners (“Board”) to engage the services of persons as independent contractors; and

WHEREAS, it is deemed that the service of Day Engineering (“Contractor”) is both necessary and in the best interests of the County of Eureka;

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.
2. DEFINITIONS. “County” means the County of Eureka and its officers, employees and immune contractors as defined in NRS §41.0307. “Independent Contractor” means a person or entity that performs services and/or provides goods for the County under the terms and conditions set forth in this Contract.
3. CONTRACT TERM. This Contract shall be effective from August 6, 2009 to December 31, 2010, unless sooner terminated by either party as specified in paragraph (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; a Contractor's Attachment shall not contradict or supersede any County specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract:

ATTACHMENT A: SCOPE OF SERVICES

ATTACHMENT B: FEE SCHEDULE

6. CONSIDERATION. The parties agree that Contractor will provide the services specified in paragraph (5) at a cost not to exceed \$380,000.00 with installments payable by invoice each month. The County does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments.

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.

8. TIMELINESS OF BILLING SUBMISSION. The parties agree that timeliness of billing is of the essence to the contract.

9. INSPECTION & AUDIT.

a. Books and Records. Contractor agrees to keep and maintain under general accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the County, State of Nevada 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, the 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 years and for five years if any federal funds are used in 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. County Termination for Nonappropriation. The continuation of this Contract beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the County 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 (on any date specified therein) if for any reason the Contracting Agency's funding from County 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 (4), and the subsequent failure of the

defaulting party within 15 calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.

c. 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 County;
- iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the County;
- iv. Contractor shall preserve, protect and promptly deliver into County possession all proprietary information in accordance with paragraph (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 \$125 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. Damages for any Contractor breach shall not exceed 150% of the contract maximum "not to exceed" value. Contractor's tort liability shall not be limited.

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.

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 Contractor nor its employees, agents, or representatives shall be considered employees, agents, or representatives of the County. The County and Contractor shall evaluate the nature of services and term 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:

This space blank intentionally

Contractor's Initials

YES NO

- | | | |
|--|-------|------------|
| 1. Does the County have the right to require control of when, where and how the independent contractor is to work? | _____ | <u>DDD</u> |
| 2. Will the County be providing training to the independent contractor? | _____ | <u>DDD</u> |
| 3. Will the County be furnishing the independent contractor with worker's space, equipment, tools, supplies or travel expenses? | _____ | <u>DDD</u> |
| 4. Are any of the workers who assist the independent contractor in performance of his/her duties employees of the County? | _____ | <u>DDD</u> |
| 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)? | _____ | <u>DDD</u> |
| 6. Will the County incur an employment liability if the independent contractor is terminated for failure to perform? | _____ | <u>DDD</u> |
| 7. Is the independent contractor restricted from offering his/her services to the general public while engaged in this work relationship with the County? | _____ | <u>DDD</u> |

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 in amounts specified in this Insurance Schedule and pay all taxes and fees incident hereunto. 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 County 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.

PROOF OF INSURANCE IS HEREBY WAIVED BY COUNTY

Insurance Coverage: The Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract the following insurance conforming to the minimum requirements specified below. Unless specifically specified 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 the latter of:

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.

Any insurance or self-insurance available to the County shall be 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.

Workers' Compensation and Employer's Liability Insurance

- 1) Contractor shall provide proof of worker's compensation insurance as required of Nevada Revised Statutes Chapters 616A through 616D inclusive.
- 2) Employer's Liability insurance with a minimum limit of \$500,000 each employee per accident for bodily injury by accident or disease.

If this contract is for temporary or leased employees, an *Alternate Employer* endorsement must be attached to the Contractor's workers' compensation insurance policy.

- 3) If the Contractor qualifies as a sole proprietor as defined in NRS Chapter 616A.310, and has elected to not purchase industrial insurance for himself/herself, the sole proprietor must submit to the County a fully executed "Affidavit of Rejection of Coverage Under NRS 616B.627 and NRS 617.210" form.

Commercial General Liability Insurance

- 1) Minimum Limits required:

\$ _____ General Aggregate
\$ _____ Products & Completed Operations Aggregate
\$ _____ Personal and Advertising Injury



\$ _____ Each Occurrence

- 2) Coverage shall be on an occurrence basis and shall be at least as broad as ISO 1996 form CG 00 01 (or a substitute form providing equivalent coverage); and shall cover liability arising from premises, operations, independent contractors, completed operations, personal injury, products, civil lawsuits, Title VII actions and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

Business Automobile Liability Insurance

- 1) Minimum Limit required: \$ _____ Each Occurrence for bodily injury and property damage.
- 2) Coverage shall be for "any auto" (including owned, non-owned and hired vehicles). The policy shall be written on ISO form CA 00 01 or a substitute providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

Professional Liability Insurance

- 1) Minimum Limit required: \$ _____ Each Claim
- 2) Retroactive date: Prior to commencement of the performance of the contract.
- 3) Discovery period: Three (3) years after termination date of contract.
- 4) A certified copy of this policy may be required.

Umbrella or Excess Liability Insurance

- 1) May be used to achieve the above minimum liability limits.
- 2) Shall be endorsed to state it is "As Broad as Primary Policy"

Commercial Crime Insurance

Minimum Limit required: \$ _____ Per Loss for Employee Dishonesty

This insurance shall be underwritten on a blanket form amending the definition of "employee" to include all employees of the Vendor regardless of position or category.

Performance Security

Amount required: \$ _____

- 1) Security may be in the form of surety bond, Certificate of Deposit or Treasury Note payable to the County, only.
- 2) The security shall be deposited with the County no later than ten (10) working days following award of the Contract to Contractor.
- 3) Upon successful Contract completion, the security and all interest earned, if any, shall be returned to the Contractor.

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 liability insurance policy shall provide for a waiver of subrogation as to additional insureds.
- 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 \$5,000 per occurrence, unless otherwise approved by the Risk Management Division.
- e. Policy Cancellation: Except for ten 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, 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 below.
- f. Approved Insurer: Each insurance policy shall be:
 - 1) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the County and the State and having agents in Nevada upon whom service of process may be made, and
 - 2) Currently rated by A.M. Best as "A- VII" or better.

Evidence of Insurance:

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

- 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.
- 2) Additional Insured Endorsement: An Additional Insured Endorsement (CG20 10 or C20 26) , 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.

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

PROOF OF INSURANCE IS HEREBY WAIVED BY COUNTY

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 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract.

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 nonenforceability 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 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 or duties under this Contract without the prior written consent of the County.

21. COUNTY 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.

22. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The County will have the duty to disclose 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, State or local 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.

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 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. Contractor consents to the jurisdiction of the Nevada district courts 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 such are intended as a 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.

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

[Signature] 7/29/09 Owner
Independent Contractor's Signature Date Independent's Contractor's Title

[Signature]
Signature - Chairman of the Board

APPROVED BY BOARD

Approved as to form by:

On Aug. 20, 2009
(Date)

[Signature]
Eureka County District Attorney
Attorney for the Board

On 20 Aug 2009
(Date)

ATTEST: [Signature]
Clerk of the Board

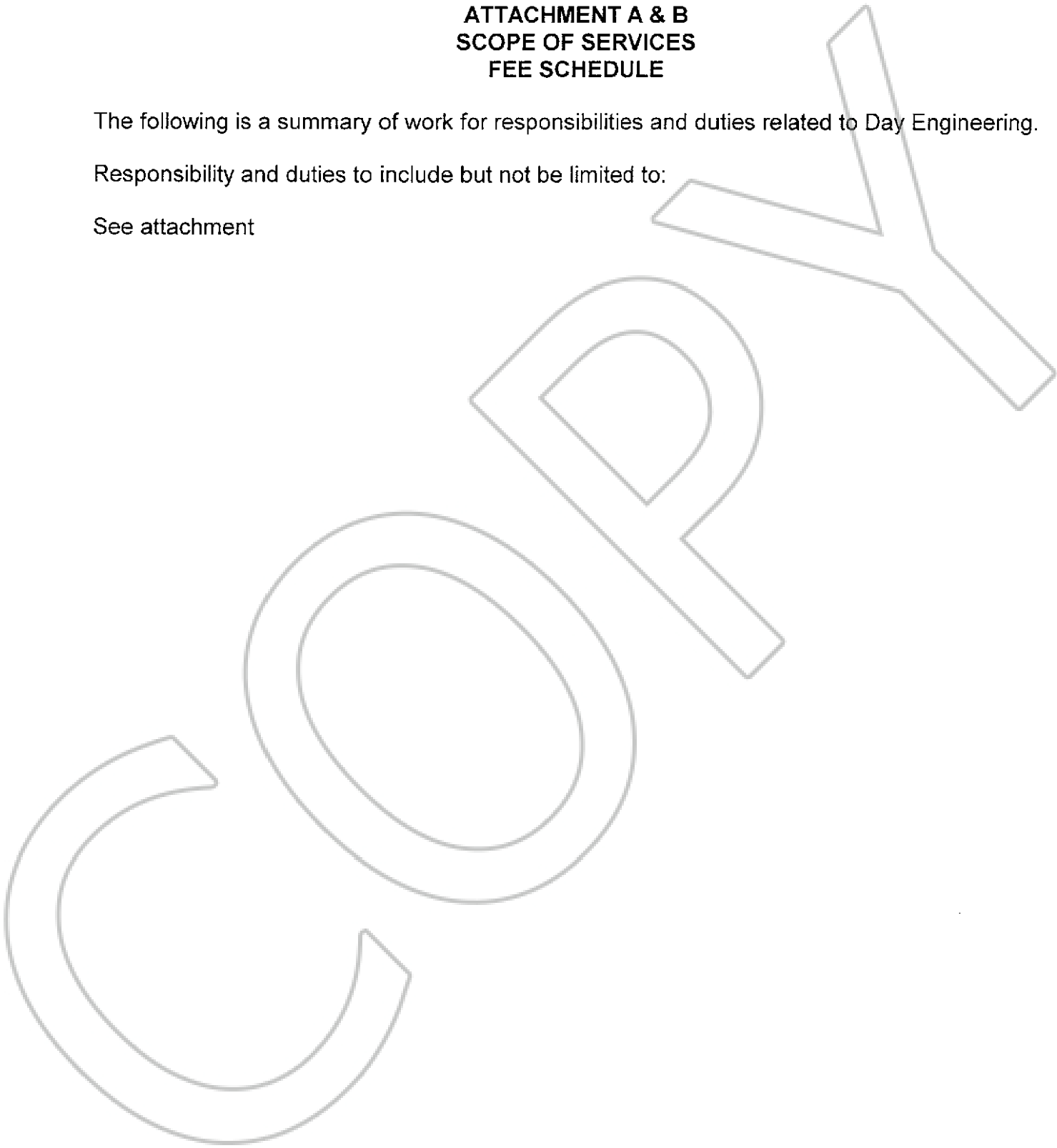
On Aug 20, 2009
(Date)

**ATTACHMENT A & B
SCOPE OF SERVICES
FEE SCHEDULE**

The following is a summary of work for responsibilities and duties related to Day Engineering.

Responsibility and duties to include but not be limited to:

See attachment





DAY ENGINEERING

PO BOX 151178 • ELY, NEVADA 89315 • (775) 289-5353
63 KEYSTONE AVENUE #206 • RENO, NEVADA 89503 • (775) 348-8624

July 9, 2009
DAY ENGINEERING PROPOSAL 09-06

Ron Damele – Public Works Director
EUREKA COUNTY PUBLIC WORKS
P.O. BOX 714
Eureka, Nevada 89316

**RE: PROFESSIONAL ENGINEERING SERVICES PROPOSAL FOR
PILOT TESTING AND WATER TREATMENT PLANT
CRESCENT VALLEY, EUREKA COUNTY, NEVADA**

Mr. Damele;

Pursuant with the request of Eureka County, Day Engineering is pleased to submit the following professional engineering services proposal to assist Eureka County in determining the best available treatment method for mitigating arsenic in the drinking groundwater supply for Crescent Valley by pilot testing different treatment methods and implementing a design and construction administration for a finished water treatment plant. We are also offering 12 month technical support upon completion of the treatment plant construction.

You have requested that we assist Eureka County in the design and contract administration of a radio read metering system in Crescent Valley. We suggest that this system be identical to what will be in Eureka Town and Diamond Valley. We also suggest that you carefully research, select and specify a metering system that is simple to work on and compatible to your (or Mt. Wheeler Power's) billing. This way you get what you want, and what best fits your situation. Low price is only one factor. Service after the sale is very important to this decision as meters take maintenance. A vendor that can help you on-site in short notice is very important and must be considered in the selection of the metering system. The vendor is just as important as the system.

The tasks delineated below represent the anticipated Scope of Work in four phases to complete the referenced project:

- Phase 1 – Treatment Pilot Testing
- Phase 2 – Treatment plant and pipeline design and construction
- Phase 3 – Treatment plant technical support
- Phase 4 – Radio read metering design and construction

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PHASE 1 – TREATMENT PILOT TESTING

TASK 1 – PILOT TESTING

Day Engineering oversight	\$ 7,000.00
Setting up and plumbing a site to conduct the tests	\$ 5,000.00
4 vendors at \$ 7,000 each	\$ 28,000.00
	<u>\$ 40,000.00</u>

Day Engineering will select and recommend treatment methods for pilot testing on location at Crescent Valley for a period of not more than one month. If there is only one preferred method, at least two individual vendors will be required to perform pilot testing. Day Engineering will assist Eureka County in selection of treatment methods and vendors, scheduling, coordinating connections and installation of the pilot plant and testing requirements. All water quality test results will be provided to the Bureau of Safe Drinking Water for review. Currently, we have four vendors that have expressed an interest in pilot testing adsorptive media. The average cost for each vendor to set up a pilot test has been about \$ 7,000 for a month. Normally, the pilot testing is credited toward the purchase of a treatment system, so 3 of the 4 systems pilot tests would be a cost that would not be recovered.

TASK 2 – SPECIFICATION

50% design	\$ 5,000.00
90% design	\$ 5,000.00
90% review & approvals	\$ 5,000.00
100% design	\$ 5,000.00
	<u>\$ 20,000.00</u>

Day Engineering will develop Technical Specifications and bidding documentation for Eureka County to pre-purchase a water treatment plant from a vendor based on the Bureau of Safe Drinking Water approval of the treatment method and the ability of the treatment method to achieve adequate removal of arsenic.

TASK 3 – BIDDING ASSISTANCE/CONTRACT AWARD

Bid process	\$ 6,000.00
Award bids	\$ 3,000.00
Assist in execution of contract and bonding	\$ 1,000.00
	<u>\$ 10,000.00</u>

Day Engineering will assist Eureka County in advertisement of the project for bidding. Day Engineering will address vendor questions in the form of an addendum if necessary, conduct the bid opening and review bids. Pending review of the bids, a recommendation for award will be provided. Day Engineering will also assist the County in execution of the Contract and bonding. This task includes document reproduction costs.

TASK 4 – SUBMITTAL REVIEW

Submittal review	\$ 3,000.00
Schedule review & coordination	\$ 2,000.00
	<u>\$ 5,000.00</u>

Day Engineering will review the manufacturer equipment submittals for conformance to specifications and provide a written formal approval or denial of the submittal(s). Day Engineering will also review the proposed schedule for assembly and delivery of the pre-manufactured treatment plant to coordinate with the design and construction of the water treatment plant amenities.

SUBTOTAL PHASE 1 (Tasks 1 – 4) \$ 75,000.00

PHASE 2 – TREATMENT PLANT & PIPELINE DESIGN & CONSTRUCTION

TASK 5 – GEOTECHNICAL INVESTIGATION

Test pits	\$ 5,000.00
Geotechnical subcontractor	<u>\$ 10,000.00</u>
	\$ 15,000.00

Day Engineering will incorporate the services of a geotechnical firm to perform a subsurface investigation at a proposed site and provide a report of findings. This report will be utilized in the design of the water treatment plant structures including buried utilities, compaction requirements and mix designs.

TASK 6 – SURVEYING

Land surveying & aerial mapping	\$ 25,000.00
Site plan	\$ 5,000.00
BLM coordination	<u>\$ 5,000.00</u>
	\$ 35,000.00

Day Engineering will incorporate the services of a land surveying firm to provide a title search, locate property lines, boundaries, rights-of-way and easements, topography, surface features (planimetrics), existing utilities, drainage features, etc. This information will be utilized to provide a site plan layout of the water treatment plant structures including buried utilities and system connections as well as development of grading plans for site drainage. This includes coordinating with the BLM for additional land, permits, and easements if needed.

TASK 7 – 50 PERCENT IMPROVEMENT PLANS AND SPECIFICATIONS

10% total plan and specifications	\$ 15,000.00
50% total plans and specifications	<u>\$ 15,000.00</u>
	\$ 30,000.00

Day Engineering will develop Preliminary Civil Improvement Plans and Specifications including bidding and contract documents to solicit bidding for the construction of a water treatment plant. Progress prints will be developed for County review and comment midway into design to confirm progress and direction. Plans and Specifications will also be provided to the Bureau of Safe Drinking Water for agency review and approval. This task will include one progress meeting to be conducted at Eureka County Public Works and also includes the Bureau of Safe Drinking Water Plan Review Fee.

TASK 8 – FINAL IMPROVEMENT PLANS AND SPECIFICATIONS

90% total plan and specifications	\$ 15,000.00
100% total plan and specifications	\$ 15,000.00
	<u>\$ 30,000.00</u>

Day Engineering will incorporate the comments of Eureka County Public Works and the Bureau of Safe Drinking Water in the development of final Improvement Plans and Specifications for bidding purposes.

TASK 9 – BIDDING ASSISTANCE

Advertisement period, publish bid documents	\$ 6,000.00
Pre-bid and addendum	\$ 1,000.00
Bid opening	\$ 1,000.00
Award	\$ 1,000.00
Assist in execution of contract and bonding	\$ 1,000.00
	<u>\$ 10,000.00</u>

Day Engineering will assist Eureka County in advertisement of the project for bidding. Day Engineering will address Contractor questions in the form of an addendum if necessary, conduct a pre-bid meeting, attend the bid opening and review bids. Pending review of the bids, a recommendation for award will be provided. Day Engineering will also assist the County in execution of the Contract and bonding. This task includes document reproduction costs.

TASK 10 – CONSTRUCTION ADMINISTRATION

Contract administration	\$ 15,000.00
Full-time inspection	\$ 65,000.00
	<u>\$ 80,000.00</u>

Day Engineering will provide construction administrative services including conducting a pre-construction meeting, review material and equipment submittals for conformance to specifications, process pay request, address Contractor questions and provide full-time inspection services. Weekly progress meetings will be conducted on-site to maintain schedule milestones and address Contractor questions. This task also includes an anticipated 2-week start-up process.

TASK 11 – RECORD DRAWINGS AND O&M MANUAL

Record drawings	\$ 7,000.00
O&M manual	\$ 3,000.00
	<u>\$ 10,000.00</u>

Day Engineering will develop record drawings based on actual construction and develop an Operations and Maintenance Manual for water treatment plant operation. Manufacturer operations and maintenance manuals will also be provided including spare parts list and warranties.

SUBTOTAL PHASE 2 (Tasks 5 – 11)	\$ 210,000.00
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PHASE 3– TREATMENT PLANT TECHNICAL SUPPORT

TASK 12 – 12 MONTH TECHNICAL SUPPORT

Engineer for 12 hours per month – 1 visit per month - \$ 1,200 / month	\$ 14,400.00
Travel / per diem at \$ 300 per month – 1 trip per month	\$ 3,600.00
	<u>\$ 18,000.00</u>

Day Engineering will assist the operator in treatment plant operation and troubleshoot problems in coordination with the treatment vendor. The 12 month period will begin after the treatment plant substantial completion date.

PHASE 4 – RADIO READ METER DESIGN & CONSTRUCTION

TASK 13 – ASSIST IN METERING SYSTEM SELECTION

Assist and coordinate with Town Engineer and Public Works	\$ 1,000.00
Coordinate selected metering system for Crescent Valley applications	\$ 1,000.00
	\$ 2,000.00

TASK 14 – LOCATION OF METER LOCATIONS ON TOWN MAP

Develop Crescent Valley Town map noting relevant features	\$ 3,000.00
Physically visit each meter and locate existing meters on map	\$ 5,000.00
	\$ 8,000.00

Day Engineering will develop a rough Town map showing street right-of ways, street names, and lot / house numbers. Then we will physically visit the meters and locate the existing meters on the map. This information will be utilized to provide a site plan layout of the metering construction plans.

TASK 15 – 50% IMPROVEMENT PLANS AND SPECIFICATIONS

10% total plan and specifications	\$ 7,500.00
50% total plans and specifications	\$ 7,500.00
	\$ 15,000.00

Day Engineering will develop Preliminary Plans and Specifications including bidding and contract documents to solicit bidding for the meter / meter pit / connections and valve installations. Progress prints will be developed for County review and comment midway into design to confirm progress and direction. Plans and Specifications will also be provided to the Bureau of Safe Drinking Water for agency review and approval. This task will include one progress meeting to be conducted at Eureka County Public Works and also includes the Bureau of Safe Drinking Water Plan Review Fee. According to Vicki there's one 4" meter, one 3" meter, two 2" meters, nineteen 1-1/2" meters, and 245 residential meters. We are assuming that the meters and meter boxes will be replaced, and the existing plumbing is PVC (not rotten galvanized steel) so we are not replacing the service piping. There will be special vaults and details needed for the 3" and 4" meters.

TASK 16 - FINAL IMPROVEMENT PLANS AND SPECIFICATIONS

90% total plan and specifications	\$ 7,500.00
100% total plan and specifications	\$ 7,500.00
	<u>\$ 15,000.00</u>

Day Engineering will incorporate the comments of Eureka County Public Works and the Bureau of Safe Drinking Water in the development of final Improvement Plans and Specifications for bidding purposes.

TASK 17 - BIDDING ASSISTANCE

Advertisement period, publish bid documents	\$ 4,000.00
Pre-bid and addendum	\$ 500.00
Bid opening	\$ 500.00
Award	\$ 500.00
Assist in execution of contract and bonding	\$ 500.00
	<u>\$ 6,000.00</u>

Day Engineering will assist Eureka County in advertisement of the project for bidding. Day Engineering will address Contractor questions in the form of an addendum if necessary, conduct a pre-bid meeting, attend the bid opening and review bids. Pending review of the bids, a recommendation for award will be provided. Day Engineering will also assist the County in execution of the Contract and bonding. This task includes document reproduction costs.

TASK 18 - CONSTRUCTION ADMINISTRATION

Contract administration	\$ 4,000.00
Full-time inspection	\$ 20,000.00
	<u>\$ 24,000.00</u>

Day Engineering will provide construction administrative services including conducting a pre-construction meeting, review material and equipment submittals for conformance to specifications, process pay request, address Contractor questions and provide full-time inspection services. Weekly progress meetings will be conducted on-site to maintain schedule milestones and address Contractor questions. This task will also include assistance through the first meter reading and billing process.

TASK 19 – RECORD DRAWINGS AND O&M MANUAL

Record drawings	\$ 5,000.00
O&M manual	\$ 2,000.00
	\$ 7,000.00

Day Engineering will develop record drawings based on actual construction and develop an Operations and Maintenance Manual for water treatment plant operation. Manufacturer operations and maintenance manuals will also be provided including spare parts list and warranties.

SUBTOTAL PHASE 4 (Tasks 13 – 19) \$ 77,000.00

The total Professional Engineering Services fee (Tasks 1 – 19) is \$ 380,000.00. The engineering and inspection fees for the project (minus the pilot testing & the 12 month technical support items) are roughly 15% of the anticipated 1.6 million dollar treatment plant and express pipeline construction estimate. The metering engineering fee is also approximately 15% of the anticipated construction cost.

The fee is based on a lump sum and is a not-to-exceed amount. Payment of services is due upon receipt of invoices.

An estimated timeline to complete the project from beginning the pilot testing to the conclusion of the water treatment plant construction including start-up is approximately 12 months excluding winter shut downs and possible BLM right-of-way hang-ups. The metering project was considered separate from the treatment plant since the project timelines may not work together. The treatment plant and the metering are driven by different coordination and timing.

We appreciate the opportunity to provide professional engineering services and look forward to a successful project. If you have any questions, please do not hesitate to call the undersigned at (775) 289-5353.

Sincerely,
DAY ENGINEERING

Dean Day, P.E.