



**NEVADA COMMISSION FOR THE RECONSTRUCTION OF THE V&T RAILWAY
("V&T Railway Commission")
Agenda Report**

Date Submitted: 8/4/2023

Meeting Date Requested: 8/23/2023

Time Requested: 10 Minutes

To: NEVADA COMMISSION for the RECONSTRUCTION of the V&T RAILWAY Commissioners

From: Stephanie Hicks, Secretary

Subject Title: Discussion and possible action regarding a proposed Agreement for On-Call Engineering Services between the V&T Commission and KL Dorr Consulting, LLC, for a not to exceed amount of \$15,000 at a rate of \$150.00 per hour for engineering services and \$90 per hour for drafting services, for Fiscal Year 2023-2024.

Staff Summary: KL Dorr Consulting, LLC has proposed to assist the V&T Commission with on-call general engineering services including: 1) for the Eastgate Station Parking Area Resurfacing Project, construction management, contractor coordination, construction monitoring, pay request review, certified payroll review and preparation of necessary Notice of Award and Notice of Completion documentation, for an amount not to exceed \$5,000; and 2) other general engineering and track maintenance of way coordination as the V&T Commission may require, including the annual US 50 bridge inspection, the annual structure inspection of tunnel #2, culverts, slopes, crossings, signs and drainages, for an amount not to exceed \$10,000. KL Dorr Consulting, LLC has proposed certain revisions to the V&T Commission's standard contract, which are attached and will be discussed on the record.

Type of Action Requested:

Resolution

Ordinance

Formal Action/Motion

Other (Specify) Presentation Only

Recommended Board Action:

I move to approve the Agreement as proposed/as discussed on the record.

Applicable Statute, Code, Policy, Rule or Regulation: NRS 332.115 (1)(b)

Fiscal Impact: \$15,000

Explanation of Impact:

Funding Source: Professional Services

Supporting Material/Attachments: 20230823_VT_Item 8_Engineering

Prepared By: Stephanie Hicks, Secretary

A Contract Between

“Commission”:	Nevada Commission for the Reconstruction of the V&T Railway, a political subdivision of the State of Nevada
Address:	P.O. Box 1711
City, State, Zip Code:	Carson City, NV 89702
Contact:	David Peterson, Chairman
Phone:	775-686-9037
Fax:	
Email:	dpeterson@visitcarsoncity.com

and

“Contractor”:	K.L. Dorr Consulting, LLC
Address:	2720 Gold Mine Ct.
City, State, Zip Code:	Reno, NV 89521
Contact:	Ken Dorr
Phone:	775-721-2020
Fax:	
Email:	Ken.Dorr@gmail.com

WHEREAS, no contract or agreement concerning the duties, responsibilities and/or Scope of Work by or between the Engineer and the Commission presently exists; and

WHEREAS, the Commission desires to employ the services of the Engineer for the intended work of Eastgate Station Parking Area resurfacing construction management and general engineering and track maintenance-of-way coordination; and

WHEREAS, the Commission and Engineer agree that Engineer shall be compensated for all services rendered as herein below set forth; and

WHEREAS, it is deemed that the service of Contractor is both necessary and in the best interests of the Commission.

NOW THEREFORE, in consideration of the aforesaid premises, mutual promises, covenants and undertakings hereinafter set forth, the parties agree as follows:

- CONTRACT TERM.** This Contract shall be effective as noted below, unless sooner terminated by either party as specified in *Section 7, Contract Termination*.

Effective from:	Upon approval of the Commission, expected to be August 23, 2023	To:	June 30, 2024
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- NOTICE.** All communications, including notices, required or permitted to be given under this Contract shall be in writing and directed to the parties at the addresses stated above. Notices may be given: (a) by delivery in person; (b) by a nationally recognized next day courier service, return receipt requested; or (c) by certified mail, return receipt requested. If specifically requested by the party to be notified, valid notice may be given by facsimile transmission or email to the address(es) such party has specified in writing.

3. **SCOPE OF WORK.** The Scope of Work is described below, which is incorporated herein by reference:

DESCRIPTION OF SCOPE OF WORK:
See Exhibit A “Scope of Work” and Exhibit B “Proposal for On-Call Engineering Service”

An Attachment must be limited to the Scope of Work to be performed by Contractor. Any provision, term or condition of an Attachment that contradicts the terms of this Contract, or that would change the obligations of the Commission under this Contract, shall be void and unenforceable.

4. **CONSIDERATION.** The parties agree that Contractor will provide the services specified in *Section 3, Scope of Work* at a cost as noted in the “Fee” Section of the Proposal for On-Call Engineering Services.

Total Contract Not to Exceed:	\$15,000
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The Commission does not agree to reimburse Contractor for expenses unless otherwise specified in the Scope of Work or incorporated Attachments (if any).

5. **BILLING SUBMISSION AND PAYMENTS: TIMELINESS.**

A. The parties agree that timeliness of billing is of the essence to the Contract and recognize that the Commission is on a Fiscal Year. All billings for dates of service prior to July 1 must be submitted to the Commission no later than the first Friday in August of the same calendar year. A billing submitted after the first Friday in August, will subject Contractor to an administrative fee not to exceed one hundred dollars (\$100.00). The parties hereby agree this is a reasonable estimate of the additional costs to the Commission of processing the billing as a stale claim and that this amount will be deducted from the stale claim payment due to Contractor.

B. The Commission agrees to make payments to Engineer within thirty (30) days after Engineer submits an invoice reflecting the principal engineering services, drafting services and reimbursable expenses devoted to the project by Engineer.

6. **INSPECTION & AUDIT.** Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP) and as required by State and federal law, complete and accurate records as are necessary to fully disclose to the Commission sufficient information to determine compliance with all State and federal regulations and statutes, and compliance with the terms of this contract, and agrees that such documents will be made available for inspection upon reasonable notice from authorized representatives of the Commission.

7. **CONTRACT TERMINATION.**

A. Termination Without Cause. Regardless of any terms to the contrary, this Contract may be terminated upon written notice by mutual consent of both parties. The Commission unilaterally may terminate this contract without cause by giving not less than thirty (30) days’ notice in the manner specified in *Section 2, Notice*. If this Contract is unilaterally terminated by the Commission, Contractor shall use its best efforts to minimize cost to the Commission and Contractor will not be paid for any cost that Contractor could have avoided.

B. Commission Termination for Non-Appropriation. The continuation of this Contract is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available. The Commission may terminate this Contract, and Contractor waives any and all claims(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Commission’s funding from State, local government and/or federal sources is not appropriated or is withdrawn, limited, or impaired.

C. Termination with Cause for Breach. A breach may be declared with or without termination. A notice of breach and termination shall specify the date of termination of the Contract, which shall not be sooner than the expiration of the Time to Correct, if applicable, allowed under *Subsection 7D*. This Contract may be terminated by either party upon written notice of breach to the other party on the following grounds:

- 1) 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
- 2) 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
- 3) If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the Bankruptcy Court; or
- 4) If the Commission materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or
- 5) If it is found by the Commission 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 Commission 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
- 6) If it is found by the Commission that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.

D. **Time to Correct.** Unless the breach is not curable, or unless circumstances do not permit an opportunity to cure, termination upon declared breach may be exercised only after service of formal written notice as specified in **Section 2, Notice**, and the subsequent failure of the breaching party within fifteen (15) calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared breach has been corrected. Upon a notice of breach, the time to correct and the time for termination of the contract upon breach under **Subsection 7C**, above, shall run concurrently, unless the notice expressly states otherwise.

8. **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. For purposes of an award of attorneys' fees to either party, the parties stipulate and agree that a reasonable hourly rate of attorneys' fees shall be one hundred and fifty dollars (\$150.00) per hour.
9. **LIMITED LIABILITY.** The Commission 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. Damages for any Commission 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. Contractor's tort liability shall not be limited.
10. **INDEMNIFICATION AND DEFENSE.** To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend, not excluding the Commission's right to participate, the Commission from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any breach of the obligations of Contractor under this Contract, or any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents. Contractor's obligation to indemnify the Commission shall apply in all cases except for claims arising solely from the Commission's own negligence or willful misconduct. Contractor waives any rights of subrogation against the Commission. Contractor's duty to defend begins when the Commission requests defense of any claim arising from this Contract.
11. **REPRESENTATIONS REGARDING INDEPENDENT CONTRACTOR STATUS.** Contractor represents that it is an independent contractor, as defined in 616A.255, warrants that it will perform all work under this contract as an independent contractor, and warrants that the Commission will not incur any employment liability by reason of this Contract or the work to be performed under this Contract. To the extent the Commission incurs any employment liability for the work under this Contract; Contractor will reimburse the Commission for that liability.
12. **INSURANCE SCHEDULE.** The Contractor must procure, maintain and keep in force for the duration of the Contract insurance conforming to the minimum requirements specified below. Each insurance policy shall provide for a waiver of subrogation against the Commission, 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 Contractor. By endorsement to

Contractor's automobile and general liability policies, the Commission shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of Contractor. Contractor shall not commence work before Contractor has provided evidence of the required insurance in the form of a certificate of insurance and endorsement to the Commission.

A. Commercial General Liability – Occurrence Form. The Policy shall include bodily injury, property damage and broad form contractual liability coverage.

1) General Aggregate	\$2,000,000
2) Products – Completed Operations Aggregate	\$1,000,000
3) Personal and Advertising Injury	\$1,000,000
4) Each Occurrence	\$1,000,000

13. **PERMITS AND REGULATIONS.** Before commencing with the performance of any work under this Contract, the Contractor shall obtain all necessary permits and licenses as may be necessary. Before and during the progress of work under this Contract, the Engineer shall give all notices and comply with all the laws, ordinances, rules and regulations of every kind and nature now or hereinafter in effect promulgated by any federal, state, county, or other governmental authority with jurisdiction over the Commission's railroad operation, track and appurtenances. If required, Engineer agrees to obtain a Carson City, Storey County and/or Lyon County business license and provide a copy of same to the Commission upon its request.

14. **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.

15. **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.

16. **OWNERSHIP OF PROPRIETARY INFORMATION.**

A. Any data or information provided by the Commission to Contractor and any documents or materials provided by the Commission to Contractor in the course of this Contract ("Commission Materials") shall be and remain the exclusive property of the Commission and all such Commission Materials shall be delivered into Commission possession by Contractor upon completion, termination, or cancellation of this Contract.

B. The drawings, specifications and other documents prepared by Engineer for the Commission ("Engineer Materials") are instruments of the Engineer's service for use solely with respect to the Commission's railroad track and operation, and, unless otherwise provided, the Engineer shall be deemed to be the author of these documents and shall retain all common law and statutory and other reserved rights, including the copyright. The Commission shall be permitted to retain copies, including reproducible copies of the Engineer Materials for information and reference in connection with the Commission's railroad operation and track. The Engineer Materials shall not be used by the Commission or others without the express permission of the engineer.

17. **PUBLIC RECORDS.** Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The Commission may have the duty to disclose unless a particular record is made confidential by law or a common law balance of interests.

18. **GENERAL WARRANTY.** Contractor warrants that all services, deliverables, and/or work products 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.

19. **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 and venue in the First Judicial District Court, Carson City, Nevada for enforcement of this Contract, and consent to personal jurisdiction in such court for any action or proceeding arising out of this Contract.

Deleted: ~~Workers' Compensation and Employer's Liability Insurance.~~

~~Contractor shall provide proof of worker's compensation insurance as required per Nevada Revised Statutes Chapters 616A through 616D inclusive.~~

~~If 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 Commission a fully executed "Affidavit of Rejection of Coverage" form under NRS 616B.627 and NRS 617.210.~~

Deleted: ~~C. Professional Liability/Errors and Omissions Liability.~~ The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

~~Each Claim → → → \$1,000,000~~

~~Annual Aggregate → → → \$1,000,000~~

Deleted: ~~Mail all required insurance documents to the Commission at the address identified on page one of the Contract.~~

- 20. ASSIGNMENT AND SUBCONTRACTING.** This Agreement shall not be assigned by either the Commission or the Engineer without the prior written consent of the other party to this Agreement.
- 21. ENTIRE CONTRACT AND MODIFICATION.** This Contract and its Scope of Work 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 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. This Contract, and any amendments, may be executed in counterparts.

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Deleted: . The Engineer shall not subcontract any substantial portion of this Agreement without the Commission's prior written consent.

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EXHIBIT "A"

SCOPE OF WORK

COMMISSION'S RESPONSIBILITIES

The Commission shall provide all requested information to the Contractor in a timely manner.

The Commission shall designate one or more representatives who are authorized to act on the Commission's behalf with respect to the on-call engineering services described in Exhibit B. The authorized representative(s) shall render decisions on documents and requests submitted by the Contractor in a timely manner in order to avoid unreasonable delay and the orderly and sequential progress of the Contractor's services.

The Commission has designated:

- Commissioners Stephanie Hicks and Michelle Schmitter as its representatives for Task1) – Eastgate Station Parking Area Resurfacing Construction Management at the address at the top of the Contract; and
- Chairperson David Peterson as its representative for Task 2) – General Engineering and Track Maintenance-of-Way Coordination.

CONTRACTOR'S RESPONSIBILITIES

The Contractor shall obtain pre-authorization from the Chairperson before providing the services included in Task 2).

The Contractor's responsibilities are outlined in the proposal for on-call engineering services attached as Exhibit B.

August 03, 2023

David Peterson - Chairman
Nevada Commission for the Reconstruction of the V&T Railway (VTRW)
P.O. Box 1711
Carson City, NV 89702

RE: Proposal for On-Call Engineering Service

Dear David:

KL Dorr Consulting LLC is pleased to present this proposal for ON-Call Engineering Services to the Nevada Commission for the Reconstruction of the V&T Railway (VTRW). This proposal provides for General Engineering Services and Maintenance-of-Way Supervision Services on an On-Call Basis for the VTRW for Fiscal Year 2023-2024.

On-Call General Engineering Services:

Work under this proposal will include Construction Management Services and General Engineering Services as the Commission may require on an On-Call Basis.

TASK 1 – EASTGATE STATION PARKING AREA RESURFACING CONSTRUCTION MANAGEMENT

Work under this Task involves Construction Management, Contractor Coordination, Construction Monitoring, Pay Request Review, Certified Payroll Review and preparation of necessary Notice of-Award and Notice of Completion documentation for this Prevailing Wage Public Works Project.

TASK 2 – GENERAL ENGINEERING AND TRACK MAINTENANCE OF WAY COORDINATION

Work under this task will involve General Engineering and Track Maintenance of Way Coordination and also includes conducting the Annual US 50 Bridge Inspection. This work will also include the Annual Structure Inspection of Tunnel #2, Culverts, Slopes, Crossings, Signs and Drainages subject to available hi-rail or motor car transport.

Errors and Omissions Insurance:

KL Dorr Consulting does not carry Professional Errors and Omissions Insurance.

Fee:

We are proposing that the engineering services under this contract be paid on a Time & Material Basis for On-Call work as requested by the VTRW at a rate of \$150.00 per hour for Engineering Services and \$90.00 per hour for Drafting Services. **Task 1 Work** under this Contract will not exceed Five Thousand Dollars (\$5000) and **Task 2 Work** under this contract will not exceed Ten Thousand Dollars (\$10,000) unless otherwise authorized by VTRW. Invoices are due within thirty days of rendering. Direct Expenses and Sub-Consultant fees will be charged at a rate of cost plus ten percent (10%).

Thank you again for the opportunity to work with the VTRW and to provide Engineering Services for the V&T Railway Project. Should you have any questions or require additional information, please don't hesitate to call me at (775) 721-2020 or by email at ken.dorr@gmail.com.

Sincerely,

KL DORR CONSULTING LLC



Kenneth L. Dorr, P.E.
Owner

ACCEPTED: VTRW

By: _____
(Authorized Representative)

Title: _____

Date: _____

**AFFIDAVIT OF REJECTION OF COVERAGE
FOR WORKER'S COMPENSATION UNDER NRS 616B.627**

STATE OF NEVADA)

_____ COUNTY) ss.

I, _____, do solemnly swear and attest to the following, pursuant to NRS 616B.627:

1. I am a sole proprietor who will not use the services of any employees in the performance of this Contract with the Nevada Commission for the Reconstruction of the V&T Railway.
2. In accordance with the provisions of NRS 616B.659, I have not elected to be included within the terms, conditions and provisions of Chapters 616A to 616D, inclusive, of NRS relating thereto.
3. I am otherwise in compliance with the terms, conditions and provisions of chapters 616A to 616D of NRS.
4. I acknowledge that the Nevada Commission for the Reconstruction of the V&T Railway will not be considered my employer or the employer of my employees, if any; and that the Nevada Commission for the Reconstruction of the V&T Railway is not liable as a principal contractor to me or my employees, if any, for any compensation or other damages as a result of an industrial injury or occupational disease incurred in the performance of this Contract.

I do hereby voluntarily affirm under the penalty of perjury that the assertions of this affidavit are true and correct.

NAME

SIGNED and SWORN to before me this day of _____

By:

NOTARY PUBLIC