

**City of Carson City
Agenda Report**

Date Submitted: February 20, 2015

Agenda Date Requested: March 5, 2015
Time Requested: 5 Minutes

To: Mayor and Supervisors

From: Public Works Department

Subject Title: For possible action: To approve Contract No. 1415-142, pursuant to NRS 332.115(1)(b) and NRS 625.530, with Terracon, to provide professional services for Special Building Inspections for the Multi-use Athletic Center (MAC) Facility, in an amount not to exceed \$72,465.00, to be funded from the Quality of Life Fund - New Gymnasium Account, as provided FY 2014/15 and FY 2015/2016. (Kim Belt and Darren Schulz)

Staff Summary: This contract is to provide Special Building Inspections during the construction of the MAC Facility.

Type of Action Requested: (check one)

- Resolution Ordinance
 Formal Action/Motion Other (Specify)

Does This Action Require A Business Impact Statement: Yes No

Recommended Board Action: I move to approve Contract No. 1415-142, pursuant to NRS 332.115(1)(b) and NRS 625.530, with Terracon, to provide professional services for Special Building Inspections for the Multi-use Athletic Center (MAC) Facility, in an amount not to exceed \$72,465.00, to be funded from the Quality of Life Fund - New Gymnasium Account, as provided FY 2014/15 and FY 2015/2016.

Explanation for Recommended Board Action: Pursuant to NRS 332.115(1)(b): (1) Contracts which by their nature are not adapted to award by competitive bidding, including contracts for (b) Professional Services and NRS 625.530, contracts for the services of a professional engineer, professional land surveyor or registered architect; that the selection was made on the basis of the competence and qualifications of the engineer, land surveyor or architect for the type of service to be performed and not on the basis of competitive fees; and therefore not suitable for public bidding.

The firm Terracon was selected via RFP #1314-129 – Request for Proposals for Public Works Services.

Applicable Statute, Code, Policy, Rule or Regulation: NRS 332.115(1)(b) and NRS 625.530.

Fiscal Impact: \$72,465.00.

Explanation of Impact: Funding provided for in FY 2014/2015 and FY 2015/2016.

Funding Source: Quality of Life Fund – New Gymnasium Account - 254-5046-452-70-10 to 70-70 with a total budgeted amount of \$5,943,534.00 (with \$355,751 unencumbered and available as of 02/20/2015).

Alternatives: Not award contract and provide other direction.

Supporting Material:

1. Contract No. 1415-142
2. Terracon, scope of services (Exhibit A).

Prepared By: Kim Belt, Purchasing and Contract Manager

Reviewed By:



(Public Works Director)

Date: 2/24/15



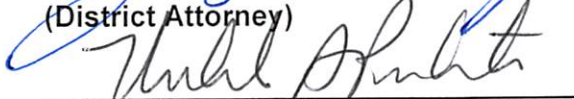
(City Manager)

Date: 2/24/15



(District Attorney)

Date: 2/24/15



(Finance Director)

Date: 2/24/15

Board Action Taken:

Motion: _____

1: _____ Aye/Nay

2: _____

(Vote Recorded By)

PROFESSIONAL SERVICES CONSULTANT AGREEMENT
Contract No.1415-142
Title: MAC Building Special Inspections

THIS CONTRACT made and entered into this 5th day of March, 2015, by and between Carson City, a consolidated municipality, a political subdivision of the State of Nevada, hereinafter referred to as "CITY", and Terracon. hereinafter referred to as "CONSULTANT".

WITNESSETH:

WHEREAS, the Purchasing and Contracts Manager for CITY is authorized pursuant to Nevada Revised Statutes (hereinafter referred to as "NRS") 332 and 338 and Carson City Purchasing Resolution #1990-R71, to approve and accept this Contract as set forth in and by the following provisions; and

WHEREAS, this Contract is for consulting services from one or more licensed architects, engineers and/or land surveyors; and

WHEREAS, this Contract (does involve X) (does not involve) a "public work" construction project, which pursuant to NRS 338.010(17) means any project for the new construction, repair or reconstruction of an applicable project financed in whole or in part from public money; and

WHEREAS, CONSULTANT'S compensation under this agreement (does) (does not X) utilize in whole or in part money derived from one or more federal grant funding source(s); and

WHEREAS, it is deemed necessary that the services of CONSULTANT for **CONTRACT No. 1415-142** (hereinafter referred to as "Contract") are both necessary and in the best interest of CITY; and

NOW, THEREFORE, in consideration of the aforesaid premises, and the following terms, conditions and other valuable consideration, the parties mutually agree as follows:

1. REQUIRED APPROVAL:

This Contract shall not become effective until and unless approved by the Carson City Board of Supervisors.

2. SCOPE OF WORK (Incorporated Contract Documents):

2.1 **CONSULTANT** shall provide and perform the following services set forth in Exhibit A, which shall all be attached hereto and incorporated herein by reference for and on behalf of CITY and hereinafter referred to as the "SERVICES".

2.2 **CONSULTANT** represents that it is duly licensed by CITY for the purposes of performing the SERVICES.

2.3 **CONSULTANT** represents that it is duly qualified and licensed in the State of Nevada for the purposes of performing the SERVICES.

| |
|--------------------|
| For P&C Use Only |
| CCBL expires _____ |
| NVCL expires _____ |
| GL expires _____ |
| AL expires _____ |
| WC expires _____ |

PROFESSIONAL SERVICES CONSULTANT AGREEMENT
Contract No.1415-142
Title: MAC Building Special Inspections

2.4 **CONSULTANT** represents that it and/or the persons it may employ possess all skills and training necessary to perform the SERVICES described herein and required hereunder. **CONSULTANT** shall perform the SERVICES faithfully, diligently, in a timely and professional manner, to the best of its ability, and in such a manner as is customarily performed by a person who is in the business of providing such services in similar circumstances. **CONSULTANT** shall be responsible for the professional quality and technical accuracy of all SERVICES furnished by **CONSULTANT** to **CITY**.

2.5 **CONSULTANT** represents that neither the execution of this Contract nor the rendering of services by **CONSULTANT** hereunder will violate the provisions of or constitute a default under any other contract or agreement to which **CONSULTANT** is a party or by which **CONSULTANT** is bound, or which would preclude **CONSULTANT** from performing the SERVICES required of **CONSULTANT** hereunder, or which would impose any liability or obligation upon **CITY** for accepting such SERVICES.

2.6 Before commencing with the performance of any work under this Contract, **CONSULTANT** shall obtain all necessary permits and licenses as may be necessary. Before and during the progress of work under this Contract, **CONSULTANT** shall give all notice and comply with all the laws, ordinances, rules and regulations of every kind and nature now or hereafter in effect promulgated by any Federal, State, County, or other Governmental Authority, relating to the performance of work under this Contract. If **CONSULTANT** performs any work that is contrary to any such law, ordinance, rule or regulation, it shall bear all the costs arising therefrom.

2.7 Special Terms and Conditions for Engineers, Architects, and Land Surveying/Testing:

2.7.1 *Use of **CONSULTANT'S** Drawings, Specifications and Other Documents:*

2.7.1.1 The drawings, specifications and other documents prepared by **CONSULTANT** for this Contract are instruments of **CONSULTANT'S** service for use solely with respect to this Contract and, unless otherwise provided, **CONSULTANT** shall be deemed the author of these documents and shall retain all common law statutory and other reserved rights, including the copyright.

2.7.2 *Cost Accounting and Audits:*

2.7.2.1 If required by **CITY**, **CONSULTANT** agrees to make available to **CITY** for two (2) years after the completion of the SERVICES under this Contract, such books, records, receipts, vouchers, or other data as may be deemed necessary by **CITY** to enable it to arrive at appropriate cost figures for the purpose of establishing depreciation rates for the various materials and other elements which may have been incorporated into the SERVICES performed under this Contract.

2.7.3 *If Land Surveying or Testing SERVICES are provided to a Public Work Project involving actual Construction (not solely design work):*

2.7.3.1 DAVIS-BACON & RELATED ACTS 29 CFR PARTS 1.3.5.6.&7 AND NRS 338.070(5): **CONSULTANT** shall comply with Davis-Bacon Act and NRS 338.070(5). **CONSULTANT** and each covered contractor or subcontractor must provide a weekly statement of wages paid to each of its employees engaged in covered SERVICES. The statement shall be executed by **CONSULTANT** or subcontractor or by an authorized officer or employee of **CONSULTANT** or subcontractor who supervised the payment of

PROFESSIONAL SERVICES CONSULTANT AGREEMENT

Contract No.1415-142

Title: MAC Building Special Inspections

wages and shall be on the "Statement of Compliance" form. **CONSULTANT** shall submit a Statement of Compliance that is prescribed by the Nevada Labor Commissioner or contains identical wording. Per NRS 338.070(6) the records maintained pursuant to subsection 5 must be open at all reasonable hours to the inspection of the public body (the **CITY'S** representative) awarding the contract. The **CONSULTANT** engaged on the public work or subcontractor engaged on the public work shall ensure that a copy of each record for each calendar month is received by the public body awarding the contract (the **City**) no later than 15 days after the end of the month.

2.7.3.2 **FEDERAL FUNDING:** In the event federal funds are used for payment of all or part of this Contract, **CONSULTANT** shall submit a Statement of Compliance form WH347 or a form with identical wording and a Statement of Compliance prescribed by the Nevada Labor Commissioner **within 7 days after the regular pay date for the pay period**. The original Statements shall be delivered to Carson City Public Works, 3505 Butti Way, Carson City, Nevada 89703, attention Davis-Bacon/Federal Funding Compliance.

2.7.3.3 **CERTIFIED PAYROLLS FOR DAVIS-BACON AND PREVAILING WAGE PROJECTS:** The higher of the Federal or local prevailing wage rates for **CITY**, as established by the Nevada Labor Commission and the Davis-Bacon Act, shall be paid for all classifications of labor on this project **SERVICES**. Should a classification be missing from the Davis-Bacon rates the **CONSULTANT** shall complete a request of authorization for additional classification or rate form SF1444 in its entirety and submit it to the **CITY** for approval and submission to the U.S. Department of Labor. Also, in accordance with NRS 338, the hourly and daily wage rates for the State and Davis-Bacon must be posted at the work site by **CONSULTANT**. **CONSULTANT** shall ensure that a copy of **CONSULTANT'S** and subcontractor's certified payrolls for each calendar week are received by **CITY**.

2.7.3.3.1 Per NRS 338.070(5) a **CONSULTANT** engaged on a public work and each subcontractor engaged on the public work shall keep or cause to be kept:

(a) An accurate record showing, for each worker employed by the contractor or subcontractor in connection with the public work:

- (1) The name of the worker;
- (2) The occupation of the worker;
- (3) The gender of the worker, if the worker voluntarily agreed to specify that information pursuant to subsection 4, or an entry indicating that the worker declined to specify such information;
- (4) The ethnicity of the worker, if the worker voluntarily agreed to specify that information pursuant to subsection 4, or an entry indicating that the worker declined to specify such information;
- (5) If the worker has a driver's license or identification card, an indication of the state or other jurisdiction that issued the license or card; and
- (6) The actual per diem, wages and benefits paid to the worker; and

PROFESSIONAL SERVICES CONSULTANT AGREEMENT

Contract No.1415-142

Title: MAC Building Special Inspections

(b) An additional accurate record showing, for each worker employed by the contractor or subcontractor in connection with the public work who has a driver's license or identification card:

- (1) The name of the worker;
- (2) The driver's license number or identification card number of the worker; and
- (3) The state or other jurisdiction that issued the license or card.

2.7.3.3.2 The original payroll records shall be certified and shall be submitted weekly to Carson City Public Works, 3505 Butti Way, Carson City, Nevada 89703, attention Davis-Bacon/Federal Funding Compliance. Submission of such certified payrolls shall be a condition precedent for processing the monthly progress payment. **CONSULTANT**, as General Contractor, shall collect the wage reports from the subcontractors and ensure the receipt of a certified copy of each weekly payroll for submission to **CITY** as one complete package.

2.7.3.3.3 Pursuant to NRS 338.060 and 338.070, **CONSULTANT** hereby agrees to forfeit, as a penalty to **CITY**, not less than Twenty Dollars (\$20) nor more than Fifty Dollars (\$50) for each calendar day or portion thereof that each worker employed on the Contract is paid less than the designated rate for any WORK done under the Contract, by **CONSULTANT** or any subcontractor under him/her, or is not reported to **CITY** as required by NRS 338.070.

2.7.3.4 **FAIR EMPLOYMENT PRACTICES:** Pursuant to NRS 338.125, Fair Employment Practices, the following provisions must be included in any contract between **CONSULTANT** and a public body such as **CITY**:

2.7.3.4.1 *In connection with the performance of work or SERVICES under this Contract, CONSULTANT agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation, gender identity, or age, including, without limitation, with regard to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including without limitation, apprenticeship.*

2.7.3.4.2 **CONSULTANT** further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

2.7.3.5 **PREFERENTIAL EMPLOYMENT:** Unless, and except if, this Contract is funded in whole or in part by federal grant funding (*see* 40 C.F.R. § 31.36(c) *Competition*), pursuant to NRS 338.130, in all cases where persons are employed in the construction of public works, preference must be given, the qualifications of the applicants being equal: (1) First: To persons who have been honorably discharged from the Army, Navy, Air Force, Marine Corps or Coast Guard of the United States, a reserve component thereof or the National Guard; and are citizens of the State of Nevada. (2) Second: To other citizens of the State of Nevada.

PROFESSIONAL SERVICES CONSULTANT AGREEMENT
Contract No.1415-142
Title: MAC Building Special Inspections

2.7.3.5.1 In connection with the performance of SERVICES under this Contract, CONSULTANT agrees to comply with the provisions of NRS 338.130 requiring certain preferences to be given to which persons are employed in the construction of a public work. If CONSULTANT fails to comply with the provisions of NRS 338.130, pursuant to the terms of NRS 338.130(3), this Contract is void, and any failure or refusal to comply with any of the provisions of this section renders this Contract void.

2.8 CITY Responsibilities:

2.8.1 CITY shall make available to CONSULTANT all technical data that is in CITY'S possession, reasonably required by CONSULTANT relating to the SERVICES.

2.8.2 CITY shall provide access to and make all provisions for CONSULTANT to enter upon public and private lands, to the fullest extent permitted by law, as reasonably required for CONSULTANT to perform the SERVICES.

2.8.3 CITY shall examine all reports, correspondence, and other documents presented by CONSULTANT upon request of CITY, and render, in writing, decisions pertaining thereto within a reasonable time so as not to delay the work of CONSULTANT.

2.8.4 It is expressly understood and agreed that all work done by CONSULTANT shall be subject to inspection and acceptance by CITY and approval of SERVICES shall not forfeit the right of CITY to require correction, and nothing contained herein shall relieve CONSULTANT of the responsibility of the SERVICES required under the terms of this Contract until all SERVICES have been completed and accepted by CITY.

3. CONTRACT TERM:

3.1 This Contract shall be effective from March 5, 2015, subject to Carson City Board of Supervisors' approval (anticipated to be March 5, 2015) to December 31, 2015, unless sooner terminated by either party as specified in Section 7 (CONTRACT TERMINATION).

4. NOTICE:

4.1 Except any applicable bid and award process where notices may be limited to postings by CITY on its Finance Department/Bid Opportunities website (www.carson.org), 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 e-mail, by regular mail, by telephonic facsimile with simultaneous regular mail, or by certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified below.

4.2 Notice to CONSULTANT shall be addressed to:

Fintan L. Gaffney
Terracon
5301 Longley lane, Suite 157
Reno, Nevada 89511
(775) 332-6857/FAX No. 775-351-2423
email: flgaffney@terracon.com

PROFESSIONAL SERVICES CONSULTANT AGREEMENT
Contract No.1415-142
Title: MAC Building Special Inspections

4.3 Notice to CITY shall be addressed to:

Carson City Purchasing and Contracts
Kim Belt, Purchasing and Contracts Manager
201 North Carson Street, Suite 3
Carson City, NV 89701
775-283-7137 / FAX 775-887-2107
KBelt@carson.org

5. COMPENSATION:

5.1 The parties agree that **CONSULTANT** will provide the **SERVICES** specified in **Section 2** (**SCOPE OF WORK**) and **CITY** agrees to pay **CONSULTANT** the Contract's compensation based upon Time and Materials and the Scope of Work Fee Schedule for a not to exceed maximum amount of Seventy Two Thousand Four Hundred Sixty Five Dollars and 00/100 (\$72,465.00), and hereinafter referred to as "Contract Sum".

5.2 Contract Sum represents full and adequate compensation for the completed **SERVICES**, and includes the furnishing of all materials; all labor, equipment, tools, and appliances; and all expenses, direct or indirect, connected with the proper execution of the **SERVICES**.

5.3 **CONSULTANT** shall provide **CITY** with a scope of work for each task to be completed and if approved by the Public Works Director, **CONSULTANT** will be provided a "Task Order" authorizing the work.

5.4 **CITY** has provided a sample invoice and **CONSULTANT** shall submit its request for payment using said sample invoice.

5.5 Payment by **CITY** for the **SERVICES** rendered by **CONSULTANT** shall be due within thirty (30) calendar days from the date **CITY** acknowledges that the performance meets the requirements of this Contract or from the date the correct, complete, and descriptive invoice is received by **CITY** employee designated on the sample invoice, whichever is the later date.

5.6 **CITY** does not agree to reimburse **CONSULTANT** for expenses unless otherwise specified.

6. TIMELINESS OF BILLING SUBMISSION:

6.1 The parties agree that timeliness of billing is of the essence to this Contract and recognize that **CITY** is on a fiscal year which is defined as the period beginning July 1 and ending June 30 of the following year. All billings for dates of service prior to July 1 must be submitted to **CITY** no later than the first Friday in August of the same year. A billing submitted after the first Friday in August will subject **CONSULTANT** to an administrative fee not to exceed \$100.00. The parties hereby agree this is a reasonable estimate of the additional costs to **CITY** of processing the billing as a stale claim and that this amount will be deducted from the stale claim payment due to **CONSULTANT**.

7. CONTRACT TERMINATION:

7.1 Termination Without Cause:

PROFESSIONAL SERVICES CONSULTANT AGREEMENT
Contract No.1415-142
Title: MAC Building Special Inspections

7.1.1 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.

7.1.2 CITY reserves the right to terminate this Contract for convenience whenever it considers termination, in its sole and unfettered discretion, to be in the public interest. In the event that the Contract is terminated in this manner, payment will be made for SERVICES actually completed. If termination occurs under this provision, in no event shall CONSULTANT be entitled to anticipated profits on items of SERVICES not performed as of the effective date of the termination or compensation for any other item, including but not limited to, unabsorbed overhead. CONSULTANT shall require that all subcontracts which it enters related to this Contract likewise contain a termination for convenience clause which precludes the ability of any subconsultant to make claims against CONSULTANT for damages due to breach of contract, of lost profit on items of SERVICES not performed or of unabsorbed overhead, in the event of a convenience termination.

7.2 Termination for Nonappropriation:

7.2.1 All payments and SERVICES provided under this Contract are contingent upon the availability of the necessary public funding, which may include various internal and external sources. In the event that Carson City does not acquire and appropriate the funding necessary to perform in accordance with the terms of the Contract, the Contract shall automatically terminate upon CITY'S notice to CONSULTANT of such nonappropriation, and no claim or cause of action may be based upon any such nonappropriation.

7.3 Cause Termination for Default or Breach:

7.3.1 A default or breach may be declared with or without termination.

7.3.2 This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:

7.3.2.1 If CONSULTANT fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or any SERVICES called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or

7.3.2.2 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 CONSULTANT to provide the goods or SERVICES or any services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or

7.3.2.3 If CONSULTANT becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or

7.3.2.4 If CITY materially breaches any material duty under this Contract and any such breach impairs CONSULTANT'S ability to perform; or

7.3.2.5 If it is found by CITY that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by CONSULTANT, or any agent or representative of CONSULTANT, to any officer or employee of CITY with a view toward securing a contract or securing favorable treatment with respect to awarding,

PROFESSIONAL SERVICES CONSULTANT AGREEMENT
Contract No.1415-142
Title: MAC Building Special Inspections

extending, amending, or making any determination with respect to the performing of such contract; or

7.3.2.6 If it is found by CITY that CONSULTANT has failed to disclose any material conflict of interest relative to the performance of this Contract.

7.4 Time to Correct (Declared Default or Breach):

7.4.1 Termination upon a declared default or breach may be exercised only after providing 7 (seven) calendar days written notice of default or breach, and the subsequent failure of the defaulting or breaching party, within five (5) calendar days of providing that default or breach notice, to provide evidence satisfactory to the aggrieved party demonstrating that the declared default or breach has been corrected. Time to correct shall run concurrently with any notice of default or breach and such time to correct is not subject to any stay with respect to the nonexistence of any Notice of Termination. Untimely correction shall not void the right to termination otherwise properly noticed unless waiver of the noticed default or breach is expressly provided in writing by the aggrieved party. There shall be no time to correct with respect to any notice of termination without cause or termination for nonappropriation.

7.5 Winding Up Affairs Upon Termination:

7.5.1 In the event of termination of this Contract for any reason, the parties agree that the provisions of this **Subsection 7.5** (Winding Up Affairs Upon Termination) survive termination:

7.5.1.1 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; and

7.5.1.2 **CONSULTANT** shall satisfactorily complete SERVICES in progress at the agreed rate (or a pro rata basis if necessary) if so requested by CITY; and

7.5.1.3 **CONSULTANT** shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by CITY; and

7.5.1.4 **CONSULTANT** shall preserve, protect, and promptly deliver into CITY possession all proprietary information in accordance **Section 19** (CITY OWNERSHIP OF PROPRIETARY INFORMATION).

7.6 Notice of Termination:

7.6.1 Unless otherwise specified in this Contract, termination shall not be effective until seven (7) calendar days after a party has provided written notice of default or breach, or notice of without cause termination. Notice of Termination may be given at the time of notice of default or breach, or notice of without cause termination. Notice of Termination may be provided separately at any time after the running of the 7-day notice period, and such termination shall be effective on the date the Notice of Termination is provided to the party unless a specific effective date is otherwise set forth therein. Any delay in providing a Notice of Termination after the 7-day notice period has run without a timely correction by the defaulting or breaching party shall not constitute any waiver of the right to terminate under the existing notice(s).

8. REMEDIES:

Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be

PROFESSIONAL SERVICES CONSULTANT AGREEMENT
Contract No.1415-142
Title: MAC Building Special Inspections

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 attorney's fees and costs. The parties agree that, in the event a lawsuit is filed and a party is awarded attorney's fees by the court, for any reason, the amount of recoverable attorney's fees shall not exceed the rate of \$125 per hour. CITY may set off consideration against any unpaid obligation of CONSULTANT to CITY.

9. LIMITED LIABILITY:

CITY 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 expressly provided for elsewhere in this Contract. Damages for any CITY breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to CONSULTANT, for the fiscal year budget in existence at the time of the breach. CONSULTANT'S tort liability shall not be limited.

10. 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 this Contract after the intervening cause ceases.

11. INDEMNIFICATION:

11.1 To the extent permitted by law, including, but not limited to, the provisions of NRS Chapter 41, each party shall indemnify, hold harmless and defend, not excluding the other's right to participate, the other party from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorney's fees and costs, arising out of any alleged negligent or willful acts or omissions of the indemnifying party, its officers, employees and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of the indemnity which would otherwise exist as to any party or person described in this Section.

11.2 As required by NRS 338.155, if this Contract involves a "public work" construction project as defined above, CONSULTANT shall defend, indemnify and hold harmless the CITY, and the employees, officers and agents of the public body from any liabilities, damages, losses, claims, actions or proceedings, including without limitation, reasonable attorney's fees, to the extent that such liabilities, damages, losses, claims, actions or proceedings are caused by the negligence, errors, omissions, recklessness or intentional misconduct of the CONSULTANT or the employees or agents of the CONSULTANT in the performance of the Contract. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of the indemnity which would otherwise exist as to any party or person described in this section. However, with respect to any anticipated benefits to CITY resulting from the Scope of Work, CONSULTANT shall not be responsible or liable to CITY for any warranties, guarantees, fitness for a particular purpose or loss of anticipated profits resulting from any termination of this Contract. Additionally, CONSULTANT shall not be responsible for acts and decisions of third parties, including governmental agencies, other than CONSULTANT'S subcontractors, that impact project completion and/or success.

11.3 Except as otherwise provided in Subsection 11.5 below, the indemnifying party shall not be obligated to provide a legal defense to the indemnified party, nor reimburse the indemnified party for the same, for any period occurring before the indemnified party provides written notice of the pending claim(s) or cause(s) of action to the indemnifying party, along with:

11.3.1 a written request for a legal defense for such pending claim(s) or cause(s) of action; and

11.3.2 a detailed explanation of the basis upon which the indemnified party believes that the claim or cause of action asserted against the indemnified party implicates the culpable conduct of

PROFESSIONAL SERVICES CONSULTANT AGREEMENT
Contract No.1415-142
Title: MAC Building Special Inspections

the indemnifying party, its officers, employees, and/or agents.

11.4 After the indemnifying party has begun to provide a legal defense for the indemnified party, the indemnifying party shall not be obligated to fund or reimburse any fees or costs provided by any additional counsel for the indemnified party, including counsel through which the indemnified party might voluntarily choose to participate in its defense of the same matter.

11.5 After the indemnifying party has begun to provide a legal defense for the indemnified party, the indemnifying party shall be obligated to reimburse the reasonable attorney's fees and costs incurred by the indemnified party during the initial thirty (30) day period of the claim or cause of action, if any, incurred by separate counsel.

12. INDEPENDENT CONTRACTOR:

12.1 **CONSULTANT**, as an independent contractor, is a natural person, firm or corporation who agrees to perform SERVICES for a fixed price according to his or its own methods and without subjection to the supervision or control of the CITY, except as to the results of the SERVICES, and not as to the means by which the SERVICES are accomplished.

12.2 It is mutually agreed that **CONSULTANT** is associated with CITY 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. **CONSULTANT** 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.

12.3 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 CITY whatsoever with respect to the indebtedness, liabilities, and obligations of **CONSULTANT** or any other party.

12.4 **CONSULTANT**, in addition to **Section 11** (INDEMNIFICATION), shall indemnify and hold CITY harmless from, and defend CITY against, any and all losses, damages, claims, costs, penalties, liabilities, expenses arising out of or incurred in any way because of, but not limited to, **CONSULTANT'S** obligations or legal duties regarding any taxes, fees, assessments, benefits, entitlements, notice of benefits, employee's eligibility to work, to any third party, subcontractor, employee, state, local or federal governmental entity.

12.5 Neither **CONSULTANT** nor its employees, agents, or representatives shall be considered employees, agents, or representatives of CITY.

13. INSURANCE REQUIREMENTS (GENERAL):

13.1 NOTICE: The following general insurance requirements shall apply unless these general requirements are altered by any specific requirements set forth in CITY'S solicitation for bid document, the adopted bid or other document incorporated into this Contract by the parties.

13.2 **CONSULTANT**, as an independent contractor and not an employee of CITY, must carry policies of insurance in amounts specified and pay all taxes and fees incident hereunto. CITY shall have no liability except as specifically provided in this Contract.

13.3 **CONSULTANT** shall not commence work before: (1) **CONSULTANT** has provided the required evidence of insurance to CITY Purchasing and Contracts, and (2) CITY has approved the insurance policies provided by **CONSULTANT**.

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

13.5 *Insurance Coverage (13.6 through 13.23):*

PROFESSIONAL SERVICES CONSULTANT AGREEMENT
Contract No.1415-142
Title: MAC Building Special Inspections

13.6 **CONSULTANT** shall, at **CONSULTANT'S** sole expense, procure, maintain and keep in force for the duration of this Contract the following insurance conforming to the minimum requirements specified below. Unless specifically specified herein or otherwise agreed to by **CITY**, the required insurance shall be in effect prior to the commencement of work by **CONSULTANT** and shall continue in force as appropriate until the later of:

13.6.1 Final acceptance by **CITY** of the completion of this Contract; or

13.6.2 Such time as the insurance is no longer required by **CITY** under the terms of this Contract.

13.6.3 Any insurance or self-insurance available to **CITY** under its coverage(s) shall be in excess of and non-contributing with any insurance required from **CONSULTANT**. **CONSULTANT'S** insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by **CITY**, **CONSULTANT** shall provide **CITY** with renewal or replacement evidence of insurance no less than thirty (30) calendar days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by this Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as **CONSULTANT** has knowledge of any such failure, **CONSULTANT** shall immediately notify **CITY** and immediately replace such insurance or bond with an insurer meeting the requirements.

13.7 *General Insurance Requirements (13.8 through 13.23):*

13.8 **Certificate Holder:** Each liability insurance policy shall list Carson City c/o Carson City Purchasing and Contracts, 201 N. Carson Street, Suite 3, Carson City, NV 89701 as a certificate holder.

13.9 **Additional Insured:** By endorsement to the general liability insurance policy evidenced by **CONSULTANT**, The City and County of Carson City, Nevada, its officers, employees and immune contractors shall be named as additional insureds for all liability arising from this Contract.

13.10 **Waiver of Subrogation:** Each liability insurance policy shall provide for a waiver of subrogation as to additional insured, unless:

13.10.1 **CONSULTANT** maintains an additional \$5,000,000.00 umbrella policy in lieu of the Waiver of Subrogation Clause.

13.11 **Cross-Liability:** All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.

13.12 **Deductibles and Self-Insured Retentions:** Insurance maintained by **CONSULTANT** shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by **CITY**. Such approval shall not relieve **CONSULTANT** from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$50,000.00 per occurrence, unless otherwise approved by **CITY**.

13.13 **Policy Cancellation:** Except for ten (10) calendar days notice for non-payment of premium, each insurance policy shall be endorsed to state that; without thirty (30) calendar days prior written notice to Carson City Purchasing and Contracts, 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 mail to Carson City Purchasing and Contracts, 201 N. Carson Street, Suite 3, Carson City, NV 89701.

13.14 **Approved Insurer:** Each insurance policy shall be issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made, and currently rated by A.M. Best as "A-VII" or better.

PROFESSIONAL SERVICES CONSULTANT AGREEMENT

Contract No.1415-142

Title: MAC Building Special Inspections

13.15 Evidence of Insurance: Prior to commencement of work, **CONSULTANT** must provide the following documents to Carson City Purchasing and Contracts, 201 North Carson Street, Suite 3, Carson City, NV 89701:

13.16 Certificate of Insurance: The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to Carson City Purchasing and Contracts to evidence the insurance policies and coverages required of **CONSULTANT**.

13.17 Additional Insured Endorsement: An Additional Insured Endorsement (CG20 10 or C20 26), signed by an authorized insurance company representative, must be submitted to Carson City Purchasing and Contracts to evidence the endorsement of **CITY** as an additional insured per **Subsection 13.9** (Additional Insured).

13.18 Schedule of Underlying Insurance Policies: If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlier Schedule from the Umbrella or Excess insurance policy may be required.

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

13.20 COMMERCIAL GENERAL LIABILITY INSURANCE:

13.20.1 *Minimum Limits required:*

13.20.2 Two Million Dollars (\$2,000,000.00) - General Aggregate.

13.20.3 Two Million Dollars (\$2,000,000.00) - Products & Completed Operations Aggregate.

13.20.4 One Million Dollars (\$1,000,000.00) - Each Occurrence.

13.20.5 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).

13.21 BUSINESS AUTOMOBILE LIABILITY INSURANCE:

13.21.1 *Minimum Limit required:*

13.21.2 One Million Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.

13.21.3 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.

13.22 PROFESSIONAL LIABILITY INSURANCE (Architects, Engineers and Land Surveyors)

13.22.1 *Minimum Limit required:*

PROFESSIONAL SERVICES CONSULTANT AGREEMENT

Contract No.1415-142

Title: MAC Building Special Inspections

- 13.22.2 One Million Dollars (\$1,000,000.00).
- 13.22.3 Retroactive date: Prior to commencement of the performance of this Contract.
- 13.22.4 Discovery period: Three (3) years after termination date of this Contract.
- 13.22.5 A certified copy of this policy may be required.

13.23 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:

13.23.1 **CONSULTANT** shall provide workers' compensation insurance as required by NRS Chapters 616A through 616D inclusive and Employer's Liability insurance with a minimum limit of \$500,000.00 each employee per accident for bodily injury by accident or disease.

13.23.2 **CONSULTANT** may, in lieu of furnishing a certificate of an insurer, provide an affidavit indicating that **CONSULTANT** is a sole proprietor; that **CONSULTANT** will not use the services of any employees in the performance of this Contract; that **CONSULTANT** has elected to not be included in the terms, conditions, and provisions of NRS Chapters 616A-616D, inclusive; and that **CONSULTANT** is otherwise in compliance with the terms, conditions, and provisions of NRS Chapters 616A-616D, inclusive.

14. BUSINESS LICENSE:

14.1 **CONSULTANT** shall not commence work before **CONSULTANT** has provided a copy of his Carson City business license to Carson City Purchasing and Contracts.

14.2 The Carson City business license shall continue in force until the later of: (1) final acceptance by **CITY** of the completion of this Contract; or (2) such time as the Carson City business license is no longer required by **CITY** under the terms of this Contract.

15. COMPLIANCE WITH LEGAL OBLIGATIONS:

CONSULTANT 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 **CONSULTANT** to provide the goods or SERVICES or any services of this Contract. **CONSULTANT** will be responsible to pay all government obligations, including, but not limited to, all taxes, assessments, fees, fines, judgments, premiums, permits, and licenses required or imposed by law or a court. Real property and personal property taxes are the responsibility of **CONSULTANT** in accordance with NRS Chapter 361 generally and NRS 361.157 and 361.159, specifically regarding for profit activity. **CONSULTANT** agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. **CITY** may set-off against consideration due any delinquent government obligation.

16. WAIVER OF BREACH:

Failure to declare a breach or the actual waiver of any particular breach of this 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.

17. 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.

18. 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 **CITY**, such offending portion of the assignment shall be void, and shall be a breach of this Contract. **CONSULTANT** shall neither assign, transfer nor delegate any rights, obligations or duties under this Contract without the prior written approval of **CITY**. The

PROFESSIONAL SERVICES CONSULTANT AGREEMENT
Contract No.1415-142
Title: MAC Building Special Inspections

parties do not intend to benefit any third party beneficiary regarding their respective performance under this Contract.

19. CITY OWNERSHIP OF PROPRIETARY INFORMATION:

19.1 Any files, reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer programs, computer codes, and computer records (which are intended to be consideration under this Contract), or any other documents or drawings, prepared or in the course of preparation by **CONSULTANT** (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of **CITY** and all such materials shall be delivered into **CITY** possession by **CONSULTANT** upon completion, termination, or cancellation of this Contract. **CONSULTANT** shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of **CONSULTANT'S** obligations under this Contract without the prior written consent of **CITY**. Notwithstanding the foregoing, **CITY** shall have no proprietary interest in any materials licensed for use by **CITY** that are subject to patent, trademark or copyright protection.

19.2 **CITY** shall be permitted to retain copies, including reproducible copies, of **CONSULTANT'S** drawings, specifications, and other documents for information and reference in connection with this Contract.

19.3 **CONSULTANT'S** drawings, specifications and other documents shall not be used by **CITY** or others without expressed permission of **CONSULTANT**.

20. PUBLIC RECORDS:

Pursuant to NRS 239.010, information or documents received from **CONSULTANT** may be open to public inspection and copying. **CITY** will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests. **CONSULTANT** may clearly label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 332.061, provided that **CONSULTANT** thereby agrees to indemnify and defend **CITY** for honoring such a designation. The failure to so label any document that is released by **CITY** shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

21. CONFIDENTIALITY:

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

22. FEDERAL FUNDING:

22.1 *In the event federal funds are used for payment of all or part of this Contract:*

22.1.1 **CONSULTANT** 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.

22.1.2 **CONSULTANT** 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.

22.1.3 **CONSULTANT** 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 Executive Order 11478 (July 21, 2014) and shall

PROFESSIONAL SERVICES CONSULTANT AGREEMENT
Contract No.1415-142
Title: MAC Building Special Inspections

not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, sexual orientation, gender identity, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions).

22.1.4 If and when applicable to the particular federal funding and the Scope of Work under this Contract, **CONSULTANT** and its subcontractors shall comply with: American Recovery and Reinvestment Act of 2009, Section 1605 – Buy American (100% Domestic Content of iron, steel and manufactured goods); Federal Highway Administration (FHWA) 23 U.S.C. § 313 – Buy America, 23 C.F.R. § 635.410 (100% Domestic Content of steel, iron and manufactured products); Federal Transit Administration (FTA) 49 U.S.C. § 5323(j), 49 C.F.R. Part 661 – Buy America Requirements (See 60% Domestic Content for buses and other Rolling Stock).

23. LOBBYING:

23.1 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:

23.1.1 Any federal, state, county or local agency, legislature, commission, council or board;

23.1.2 Any federal, state, county or local legislator, commission member, council member, board member, or other elected official; or

23.1.3 Any officer or employee of any federal, state, county or local agency; legislature, commission, council or board.

24. GENERAL WARRANTY:

CONSULTANT warrants that it will perform all SERVICES required hereunder in accordance with the prevailing standard of care by exercising the skill and care normally required of individuals performing the same or similar SERVICES, under the same or similar circumstances, in the State of Nevada.

25. 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. **CONSULTANT** acknowledges that this Contract is effective only after approval by the Carson City Board of Supervisors and only for the period of time specified in this Contract. Any SERVICES performed by **CONSULTANT** before this Contract is effective or after it ceases to be effective is performed at the sole risk of **CONSULTANT**.

26. ALTERNATIVE DISPUTE RESOLUTION (Public Work):

If the SERVICES under this Contract involve a “public work” as defined under NRS 338.010(17), then pursuant to NRS 338.150, a public body charged with the drafting of specifications for a public work shall include in the specifications a clause requiring the use of a method of alternative dispute resolution (“ADR”) before initiation of a judicial action if a dispute arising between the public body and the **CONSULTANT** engaged on the public work cannot otherwise be settled. Therefore, unless ADR is otherwise provided for by the parties in any other incorporated attachment to this Contract, in the event that a dispute arising between **CITY** and **CONSULTANT** regarding that public work cannot otherwise be settled, **CITY** and **CONSULTANT** agree that, before judicial action may be initiated, **CITY** and **CONSULTANT** will submit the dispute to non-binding mediation. **CITY** shall present **CONSULTANT** with a list of three potential mediators. **CONSULTANT** shall select one person to serve as the mediator from the list of potential mediators presented by **CITY**. The person selected as mediator shall determine the rules governing the mediation.

27. 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. **CONSULTANT** consents and agrees to the jurisdiction of the courts of the State of Nevada located in Carson City, Nevada for enforcement of this Contract.

PROFESSIONAL SERVICES CONSULTANT AGREEMENT
Contract No.1415-142
Title: MAC Building Special Inspections

28. ENTIRE CONTRACT AND MODIFICATION:

This Contract and its integrated attachment(s) constitute the entire Contract of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other Contracts 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 Carson City Board of Supervisors. The parties agree that each has had their respective counsel review this Contract which shall be construed as if it was jointly drafted.

29. ACKNOWLEDGMENT AND EXECUTION:

This Contract may be executed in counterparts. The parties hereto have caused this Contract to be signed and intend to be legally bound thereby as follows:

PROFESSIONAL SERVICES CONSULTANT AGREEMENT
Contract No.1415-142
Title: MAC Building Special Inspections

CITY

Finance Director
Attn: Kim Belt, Purchasing and
Contracts Manager
201 North Carson Street, Suite 3
Carson City, Nevada 89701
Telephone: 775-283-7137
Fax: 775-887-2107
KBelt@carson.org


By: 
Kim Belt

Dated 2/24/15

CITY'S LEGAL COUNSEL

Carson City District Attorney

I have reviewed this Contract and approve
as to its legal form.

By: 
Deputy District Attorney
Dated 2/24/15

CITY'S ORIGINATING DEPARTMENT

I certify that funds are available and that
CONSULTANT will not be given authorization
to begin work until this Contract has been
signed by Purchasing and Contracts

BY: Darren Schulz, Director of Public Works
3505 Butti Way
Carson City, NV 89701
Telephone: 775-887-2355
Fax: 775-887-2112
dschulz@carson.org

By: 

Dated 2/24/15

PROJECT CONTACT PERSON:

Jim Morris, Project Manager
Telephone: 775-887-2355

2012/12/25

PROFESSIONAL SERVICES CONSULTANT AGREEMENT
Contract No.1415-142
Title: MAC Building Special Inspections

Undersigned deposes and says under penalty of perjury: That he/she is **CONSULTANT** or authorized agent of **CONSULTANT**; that he/she has read the foregoing Contract; and that he/she understands the terms, conditions and requirements thereof.

CONSULTANT

BY: Fintan L. Gaffney

TITLE:

FIRM: Terracon

CARSON CITY BUSINESS LICENSE #: 15-

Address: 5301 Longley Lane, Suite 157

City: Reno **State:** Nevada **Zip Code:** 89511

Telephone: (775) 332-6857/**FAX No.** 775-351-2423

E-mail Address: flgaffney@terracon.com

(Signature of Contractor)

DATED _____

STATE OF _____)

)**ss**

County of _____)

Signed and sworn (or affirmed before me on this _____ day of _____, 20__.

(Signature of Notary)

(Notary Stamp)

PROFESSIONAL SERVICES CONSULTANT AGREEMENT
Contract No.1415-142
Title: MAC Building Special Inspections

CONTRACT ACCEPTANCE AND EXECUTION:

The Board of Supervisors for Carson City, Nevada at their publicly noticed meeting of March 5, 2015 approved the acceptance of the attached Contract hereinbefore identified as **CONTRACT No. 1415-142**. Further, the Board of Supervisors authorizes the Mayor of Carson City, Nevada to set his hand to this document and record his signature for the execution of this Contract in accordance with the action taken.

CARSON CITY, NEVADA

ROBERT L. CROWELL, MAYOR

DATED this 5th day of March, 2015.

ATTEST:

SUSAN MERRIWETHER, CLERK-RECORDER

DATED this 5th day of March, 2015.

PROFESSIONAL SERVICES CONSULTANT AGREEMENT
Contract No.1415-142
Title: MAC Building Special Inspections

SAMPLE INVOICE

Invoice Number: _____
Invoice Date: _____
Invoice Period: _____

Vendor Number: _____

Invoice shall be submitted to:

Carson City Public Works
Attn: Karen White
3505 Butti Way
Carson City NV 89701

| Line Item # | Description | Unit Cost | Units Completed | Total \$\$ |
|-------------------------------|-------------|-----------|-----------------|------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| Total for this invoice | | | | |

| | | |
|--------------------------------------|----|-------|
| Original Contract Sum | \$ | _____ |
| Less amount previously billed | \$ | _____ |
| = contract sum prior to this invoice | \$ | _____ |
| Less this invoice | \$ | _____ |
| =Dollars remaining on Contract | \$ | _____ |

ENCLOSE COPIES OF RECEIPTS & INVOICES FOR EXPENSES & OUTSIDE SERVICES



October 6, 2014 (Revised November 4, 2014)

Carson City Parks and Recreation Department
3303 Butti Way, #9
Carson City, Nevada

Attention: Mr. James Morris
Email: jmorris@carson.org.
Phone: (775) 887-2355 ext.7578

**Re: Cost Estimate for Inspection and Testing Services
Carson City M.A.C. Gymnasium
Northridge Drive @ Russell Way
Carson City, Nevada
Terracon Proposal Number P67140016**

Dear Mr. Morris:

Terracon Consultants, Inc. (Terracon) appreciates the opportunity to submit this revised proposal and cost estimate to provide Testing services during the construction of the Carson City M.A.C. Gymnasium project. This proposal outlines our understanding of the revised scope of services to be performed by Terracon on this project and provides a revised Cost Estimate for our services, including the addition of prevailing wage requirements for soils and concrete testing activities, as well as, the addition of structural steel fabrication shop inspections services as verbally requested on October 30, 2014.

A. PROJECT INFORMATION

It is our understanding that the proposed project will consist of construction of Carson City M.A.C. Gymnasium. Special inspections will include special grading, reinforced concrete for the foundations and slab-on-grade, structural steel, welding, structural masonry inspection, post installed anchors. The structure will total two stories in height. The structure will be bearing on conventional concrete foundations, and consist primarily of concrete masonry walls with slab on grade at the finished floor elevation totaling approximately 33,500 ft². A structural steel mezzanine running track totaling approximately 8,200 ft² will compose the second story of the proposed structure. The project will be subject to the Carson City Building Department jurisdiction. General site improvement, structural fill, and foundations observations and testing services are included in this proposal; however the civil drawings for the referenced project were not available for review when developing this proposal. Our preparation of this proposal is based on the following items:

- Review of project structural plans prepared VCBO Architecture, dated August 1, 2014.

- Geotechnical Investigation report prepared by Lumos and Associates, dated January, 2005 and updated April 24, 2008.
- Estimated construction duration of 365 calendar day.

B. SCOPE OF SERVICES

Field Services - Terracon's approach to providing materials testing and observation services is to assign qualified engineering technicians, directed by Professional Engineers registered in the State of Nevada to perform the required testing and observations for your project. The technicians assigned to the project will be qualified and equipped to perform the following field services:

- **Special Grading - Division 31** – A Carson City approved inspector will be assigned to the project on a as needed basis to observe grading operations, obtain appropriate samples for laboratory tests and perform in-place field density testing. The inspector will observe the Contractors compliance to geotechnical recommendations.
- **Liquefaction mitigation system – Division 31** – A Carson City approved inspector will observe the installation of the liquefaction mitigation system for compliance with the Geotechnical Report recommendations and the requirements outlined in the structural plans.
- **Concrete Reinforcing Steel – Division 3** – A special inspector approved by Carson City and certified by International Code Council (ICC) will provide inspection of the placement of reinforcing steel in accordance with the requirements of approved drawings and specification.
- **Cast In Place Concrete – Division 3** – A special inspector approved by Carson City and certified by International Code Council (ICC) will provide inspection and testing of Portland Cement Concrete during placement in accordance with the required specials inspections outlined in this section. Representative test specimens will be cast at the specified frequency and tested for compressive strength. Floor Flatness testing will be performed in accordance with ASTM E1155 and requirements presented in this section.
- **Post-Installed Anchors – Division 3 and 4** – An approved inspector will observe and document the installation of bolts, rebar, threaded rod, etc., including verification of materials, hole depth and diameter, cleanout, epoxy mixing and procedures and embedment depth in accordance with contract drawings and the manufacturer's specifications and recommendations.
- **Structural Masonry Inspection – Division 4** – A special inspector approved by Carson City and certified by International Code Council (ICC) will observe the placement of

masonry units and reinforcing steel, observe grout spaces and provide continuous inspection during grouting. Masonry prisms and grout specimens will be cast at the frequencies required by code and the project plans, and tested for compressive strength

- **Structural Steel Inspection – Division 5** – A structural steel inspector approved Carson City and certified by International Code Council (ICC) and American Welding Society (AWS) will provide field inspections and/or non-destructive testing as required for welded connections. Continuous inspection will be provided during complete joint penetration (CJP) welding for steel moment frame. We assumed that structural steel is fabricated by an approved fabricator and inspection of shop fabricated items will not be required. Fabrication shop inspection can be provided by special request and will be quoted on project specific basis. We understand that if the fabrication plant is ASIC approved plant inspections are not required. Non-destructive testing capabilities include ultrasonic, magnetic particle, dye penetrant and radiography techniques. **Spray-Applied Fireproofing Inspection** – A ICC certified inspector will provide inspection of spray-applied fireproofing placement including adhesion testing, and collection of representative test specimens for thickness and density testing.
- **Exterior Improvements Division 32** – Terracon will provide acceptance testing as required by the following specification:
 - Section 321216 – Hot-Mix Paving
 - Section 321313 – Cement Concrete Paving
- **Project Management** – Fintan Gaffney, Project Manager, will be assigned to the project to review the daily activity and assist in scheduling the work. All field and laboratory tests will be reviewed prior to submittal. Mr. Gaffney will be responsible for maintaining the project budget and will oversee the preparation of the final report.
- **Daily Reports** – A draft copy of special inspection and field test reports will be left onsite with you or your Representative prior to our technician leaving the site. All reports are electronically prepared using CMELMS (in house developed proprietary laboratory management system). See below for report distribution policy.
- **Additional Services** - If additional work, beyond the scope and fees of this proposal is required, a short Supplement to the Agreement for Services form will be issued to identify the additional work to be performed and the associated fees.

Scheduling of Work - Field testing services will be provided on a "call-out" basis when scheduled by your representative. **The contractor has the responsibility to be familiar with the project requirements and to contact Terracon with a minimum 24-hour notice to schedule our services**, although we will attempt to meet requests in a short time frame. Terracon will only provide testing when called by your onsite representative.

Report Distribution – Upon commencement of the project, Terracon utilizes proprietary software called CMELMS for scheduling, reporting, distribution, invoicing, and budget tracking. CMELMS allows us to achieve better communication, more consistency, and faster report turnaround. The program automatically tracks all reports, including deviations, and provides immediate retrieval ability of test results. Reports can be distributed via traditional mail, email, and by Terracon's client document website. The program will also track our project budget and produce budget reports and invoices for services provided.

Final signed reports are typically distributed via e-mail, but can be made available via Terracon's Client Document Website (CDW) at <https://client.terracon.com>. If you would like access to the reports as soon as they become available, we will need your designated e-mail address to create an account. If you would like to grant access of reports for this project to third parties of certain or all reports; please inform the project manager with the parties' full contact information and receipt preferences (recommend CDW, but e-mail or fax is available). Please note that our special report distribution features are only available if a fully executed agreement is in place.

Our policy is to provide you with a copy of our inspection, laboratory and field test results per the following guidelines:

- Laboratory test result reports within 48 hours of the test completion,
- Inspection reports within 2 days of inspection completion. Generally, we have been able to distribute reports to our clients within a day of inspection service.
- Inspection reports with non-compliance items delivered within 24 hours of inspection completion.

Final Special Inspection Reports:

Final special inspection reports will be prepared weekly and at the conclusion of the project and submitted to the Carson City Building Department. Terracon will follow up with the building department until the report is approved. An electronic copy will be made available to you

C. PROJECT FEE

Based on the project information available for our review, our estimated budget to perform the proposed scope of services is **\$72,465**. A breakdown of our Cost Estimate is attached of Exhibit C. Fees for services provided will be based on the unit rates included in the Cost Estimate.

The above estimate does not include overtime or any plant fabrication inspections. We recommend at a 25% contingency allowance for overtime be included in our authorized budget. Plant fabrication fees should be made on a case by case basis.

Proposal for Inspection and Testing Services
Carson City M.A.C. Gymnasium □ Carson City, Nevada
October 6, 2014 □ Terracon Proposal No. P67140016

EXHIBIT A
Terracon

Many factors, including those out of our control, such as weather and the contractor's schedule, and how often we are called to the site to test, will dictate the final fee for our services.

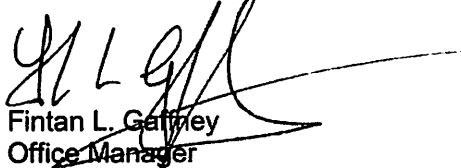
D. AUTHORIZATION

This proposal may be accepted by our execution of Carson City's Professional Services Agreement Related to Construction Projects for Services along with this proposal to Terracon Consultants, Inc. You may expedite by emailing it to flgaffney@terracon.com. Also note that Nevada's Administrative Code Chapter 625 requires a written contract before providing professional services. Terracon's total fee is due within thirty days following receipt of invoice (NET 30). This proposal is valid only if authorized within sixty days from the listed proposal date.

Terracon provides environmental, geotechnical, construction materials testing, and facilities services on a wide variety of projects; locally, regionally and nationally. Increased involvement by Terracon will provide value added to your project; by saving you time and money on our other services, for more detailed information on our services visit our website at www.terracon.com. Please contact me if you would like a separate proposal for additional services.

We appreciate the opportunity to provide this proposal and look forward to working with you. Please give us a call if you have any questions or comments regarding this proposal.

Sincerely,
Terracon Consultants, Inc.


Fintan L. Gaffney
Office Manager

Enclosures: Exhibit C – Compensation



**Cost Estimate
Reno Office**

**EXHIBIT C
(Revised October 31, 2014)
Compensation**

Inspection and Testing Services
Carson City M.A.C. Gymnasium
Carson City Parks and Recreations
Terracon Proposal No. P67140016

| SERVICES | RATES | TRIPS | MINIMUM UNITS | TOTAL |
|---|-----------------|-------|------------------|------------------|
| Special Grading and Liquefaction Mitigation System | | | | |
| Assumptions: 15 days full time observation | | | | |
| Soils Technician | \$ 85 Per Hour | | 96 | \$ 8,160 |
| Moisture / Density Relationship (Proctor) | \$ 240 Each | | 3 | \$ 720 |
| Expansion Index | \$ 75 Each | | 3 | \$ 225 |
| Atterberg Limits | \$ 88 Each | | 3 | \$ 264 |
| Sieve Analysis | \$ 92 Each | | 3 | \$ 276 |
| Soils Technician (While testing prevailing wage) | \$ 115 Per Hour | | 24 | \$ 2,760 |
| | | | Sub-Total | \$ 12,405 |
| On-Call Testing Division 32 - Exterior Improvements | | | | |
| Assumptions: 30 days - on site 25% of duration | | | | |
| Soils Technician | \$ 85 Per Hour | | 45 | \$ 3,825 |
| Theoretical Maximum Density (RICE) | \$ 98 Test | | 2 | \$ 196 |
| Extraction and Sieve Analysis | \$ 108 Each | | 2 | \$ 216 |
| In-Place Pavement Quality Report (Coring, lab tests and report) | \$ 750 Report | | 2 | \$ 1,500 |
| | | | Sub-Total | \$ 5,737 |
| Concrete and Reinforcing Steel - Division 3 | | | | |
| Assumptions: Two months of concrete work - on site 50% of duration | | | | |
| Concrete Inspector | \$ 85 Per Hour | | 128 | \$ 10,880 |
| Concrete Inspector (While testing prevailing wage) | \$ 115 Per Hour | | 32 | \$ 3,680 |
| Floor Flatness Operator and Equipment | \$ 135 Per Hour | | 20 | \$ 2,700 |
| Compressive Strength of Concrete | \$ 85 Per Set | | 30 | \$ 2,550 |
| Concrete Cylinder Pick-up | \$ 65 Per Hour | | 20 | \$ 1,300 |
| | | | Sub-Total | \$ 21,110 |
| Structural Masonry - Division 4 | | | | |
| Assumptions: Two months of masonry work - on site 50% of duration | | | | |
| Masonry Inspector | \$ 85 Per Hour | | 160 | \$ 13,600 |
| Compressive Strength-Masonry Prism | \$ 117 Each | | 9 | \$ 1,053 |
| Compressive Strength-Grout | \$ 65 Per Set | | 7 | \$ 455 |
| Compressive Strength-Mortar | \$ 65 Per Set | | 3 | \$ 195 |
| | | | Sub-Total | \$ 15,303 |

EXHIBIT A

Structural Steel (Welding & Bolting) - Division 5

Assumptions: One month of structural steel work - on site 25% of duration

| | | | | |
|--|----------------|----|----|-------|
| Structural Steel Inspector | \$ 85 Per Hour | 45 | \$ | 3,825 |
| Structural Steel Inspector (Fab. shop insp.) | \$ 95 Per Hour | 20 | \$ | 1,900 |
| Ultrasonic Inspector | \$ 85 Per Hour | 45 | \$ | 3,825 |
| Spray-Applied Fireproofing (Density) | \$ 65 Each | 2 | \$ | 130 |
| Compressive Strength of Non-shrink Grout | \$ 65 Per Set | 2 | \$ | 130 |

Sub-Total \$ 9,810

Project Management Review & Report Preparation

| | | | | |
|--|-----------------|----|----|-------|
| Project Manager (2 hours per week avg) | \$ 125 Per Hour | 36 | \$ | 4,500 |
| Principle Engineer | \$ 160 Per Hour | 10 | \$ | 1,600 |
| Final Grading Report | \$ 1,000 Each | 1 | \$ | 1,000 |
| Special Inspections Final Report | \$ 1,000 Each | 1 | \$ | 1,000 |

Sub-Total \$ 8,100

Total Cost Estimate \$ 72,465

Overtime is defined as all hours in excess of eight per day, outside of the normal hours of 7:00 a.m. to 6:00 p.m. Monday through Friday and all hours worked on weekends and holidays. Overtime rates will be 1.5 times the hourly rate quoted

A minimum of 24 hours notice is required to schedule our services

Acceptable payment methods include credit cards (MasterCard, VISA and Discover) and checks.

REV. 2/11