

**City of Carson City
Agenda Report**

Date Submitted: April 24, 2015

Agenda Date Requested: May 7, 2015

Time Requested: 5 minutes

To: Mayor and Supervisors

From: Purchasing and Contracts

Subject Title: For Possible Action: To approve Contract No. 1415-145A Pursuant to NRS 338.1685 through 338.16995, inclusive, with Q & D Construction, Inc., to provide CMAR Pre-Construction Services for the Downtown Streetscape Project through June 30, 2016 for a no fee contract. *(Danny Rotter and Kim Belt)*

Staff Summary: This contract is to provide Construction Manager at Risk Services for the Downtown Streetscape Project, which includes, but is not limited to: participation in regularly scheduled design progress review meetings; develop strategies for phasing the improvements; assistance in identifying and reconciling differences between Engineers and CMAR's cost estimate; develop constructability and value engineering suggestions at each phase of design; facilitate Long-Lead procurement studies; develop potential bidders lists; develop an open book GMP Proposal based on bids obtained; and develop of final CMAR constructability and value engineering suggestions (based on 100% Construction Documents). Q&D Construction, Inc. was selected via RFP #1415-145 – Request for Proposals for Construction Manager at Risk (CMAR) and subsequent interview process.

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. 1415-145A Pursuant to NRS 338.1685 through 338.16995, inclusive, with Q & D Construction, Inc., to provide CMAR Pre-Construction Services for the Downtown Streetscape Project through June 30, 2016 for a no fee contract.

Explanation for Recommended Board Action: Pursuant to **NRS 338.1685 through 338.16995, inclusive**, contracts for Construction Managers at Risk are specifically outlined and the selection was made on the basis of the competence and qualifications of the contractor for the type of service to be performed as outlined in NRS 338.

Applicable Statute, Code, Rule or Policy: NRS 338.1685 through 338.16995, inclusive.

Fiscal Impact: \$0.00

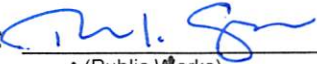

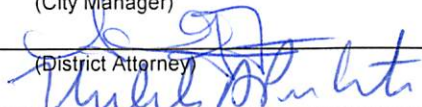
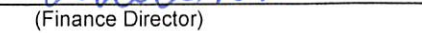
Explanation of Impact: Amount of contract.

Funding Source: None

Alternatives: Not award contract and provide other direction.

Supporting Material: Contract No. 1415-145A and Exhibit A.

Prepared By: Kim Belt, Purchasing and Contracts Manager

Reviewed By:  Date: 4/23/15
(Public Works)
 Date: 4/28/15
(City Manager)
 Date: 4/28/15
(District Attorney)
 Date: 4/28/15
(Finance Director)

Board Action Taken:

Motion: _____ 1) _____ Aye/Nay
2) _____ _____

(Vote Recorded By)

PROFESSIONAL SERVICES CONSULTANT AGREEMENT

Contract No.1415-145A

Title: Carson Street CMAR Preconstruction Agreement

THIS CONTRACT made and entered into this 7th day of May, 2015, by and between Carson City, a consolidated municipality, a political subdivision of the State of Nevada, hereinafter referred to as "CITY", and Q & D Construction, Inc., hereinafter referred to as "CMAR".

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, CMAR'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 CMAR for **CONTRACT No. 1415-145A** (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):

CMAR shall provide and perform the following services and on behalf of CITY hereinafter referred to as the "SERVICES":

2.1 SEE EXHIBIT A

2.2 CMAR's response to the CMAR Request For Proposals dated April 1, 2015.

2.2.1 CMAR represents that it is duly licensed by CITY for the purposes of performing the SERVICES.

2.2.2 CMAR represents that it is duly qualified and licensed in the State of Nevada for the purposes of performing the SERVICES.

2.3 CMAR 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. CMAR 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. CMAR shall be responsible for the professional quality and technical accuracy of all SERVICES furnished by CMAR to CITY.

PROFESSIONAL SERVICES CONSULTANT AGREEMENT
Contract No.1415-145A
Title: Carson Street CMAR Preconstruction Agreement

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

2.5 Before commencing with the performance of any work under this Contract, **CMAR** shall obtain all necessary permits and licenses as may be necessary. Before and during the progress of work under this Contract, **CMAR** 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 **CMAR** performs any work that is contrary to any such law, ordinance, rule or regulation, it shall bear all the costs arising therefrom.

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

2.6.1 *Use of **CMAR'S** Drawings, Specifications and Other Documents:*

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

2.6.2 *Cost Accounting and Audits:*

2.7.2.1 If required by **CITY**, **CMAR** 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.

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

2.6.3.1 DAVIS-BACON & RELATED ACTS 29 CFR PARTS 1,3,5,6,&7 AND NRS 338.070(5): **CMAR** shall comply with Davis-Bacon Act and NRS 338.070(5). **CMAR** 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 **CMAR** or subcontractor or by an authorized officer or employee of **CMAR** or subcontractor who supervised the payment of wages and shall be on the "Statement of Compliance" form. **CMAR** 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 of this statute must be open at all reasonable hours to the inspection of the public body (the **CITY'S** representative) awarding the contract. The **CMAR** 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

PROFESSIONAL SERVICES CONSULTANT AGREEMENT

Contract No.1415-145A

Title: Carson Street CMAR Preconstruction Agreement

received by the public body awarding the contract (the City) no later than 15 days after the end of the month.

2.6.3.2 FEDERAL FUNDING: In the event federal funds are used for payment of all or part of this Contract, **CMAR** 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.

2.6.3.3 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 **CMAR** 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 **CMAR**. **CMAR** shall ensure that a copy of **CMAR'S** and subcontractor's certified payrolls for each calendar week are received by **CITY**.

2.6.3.3.1 Per NRS 338.070(5) a **CMAR** 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

(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

PROFESSIONAL SERVICES CONSULTANT AGREEMENT

Contract No.1415-145A

Title: Carson Street CMAR Preconstruction Agreement

(3) The state or other jurisdiction that issued the license or card.

2.6.3.3.2 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. **CMAR**, 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.

2.6.3.3.3 Pursuant to NRS 338.060 and 338.070, **CMAR** 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 **CMAR** or any subcontractor under him/her, or is not reported to **CITY** as required by NRS 338.070.

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

2.6.3.4.1 *In connection with the performance of work or SERVICES under this Contract, CMAR 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.*

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

2.6.3.5 **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.

2.6.3.5.1 In connection with the performance of SERVICES under this Contract, **CMAR** 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 **CMAR** 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.

2.7 **CITY Responsibilities:**

PROFESSIONAL SERVICES CONSULTANT AGREEMENT

Contract No.1415-145A

Title: Carson Street CMAR Preconstruction Agreement

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

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

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

2.7.4 It is expressly understood and agreed that all work done by CMAR 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 CMAR 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 May 7, 2015, subject to Carson City Board of Supervisors' approval (anticipated to be May 7, 2015) to December 31, 2016, 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 CMAR shall be addressed to:

Jeff Bean, Vice President
Q & D Construction Inc.
P.O. Box 10865
Reno, NV 89510
jbean@qdconstruction.com

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:

PROFESSIONAL SERVICES CONSULTANT AGREEMENT

Contract No.1415-145A

Title: Carson Street CMAR Preconstruction Agreement

5.1 The parties agree that **CMAR** will provide the **SERVICES** specified in **Section 2** (SCOPE OF WORK) and **CITY** agrees to pay **CMAR** the Contract's compensation based upon Time and Materials and the Scope of Work Fee Schedule for a not to exceed maximum amount of Zero Dollars and 00/100 (\$0.00), 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 **CMAR** shall provide **CITY** with a scope of work for each task to be completed and if approved by the Public Works Director, **CMAR** will be provided a "Task Order" authorizing the work.

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

5.5 Payment by **CITY** for the **SERVICES** rendered by **CMAR** 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 **CMAR** 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 **CMAR** 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 **CMAR**.

7. CONTRACT TERMINATION:

7.1 Termination Without Cause:

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 **CMAR** 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. **CMAR** 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 subcontractor to make claims against **CMAR** for damages due to breach of contract, of lost profit on items of **SERVICES** not performed

PROFESSIONAL SERVICES CONSULTANT AGREEMENT

Contract No.1415-145A

Title: Carson Street CMAR Preconstruction Agreement

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 CMAR 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 CMAR 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 CMAR 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 CMAR 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 CMAR'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 CMAR, or any agent or representative of CMAR, to any officer or employee of CITY 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

7.3.2.6 If it is found by CITY that CMAR 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

PROFESSIONAL SERVICES CONSULTANT AGREEMENT

Contract No.1415-145A

Title: Carson Street CMAR Preconstruction Agreement

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 **CMAR** 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 **CMAR** 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 **CMAR** 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 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 **CMAR** 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 **CMAR**, for the fiscal year budget in existence at the time of the breach. **CMAR'S** tort liability shall not be limited.

10. FORCE MAJEURE:

PROFESSIONAL SERVICES CONSULTANT AGREEMENT

Contract No.1415-145A

Title: Carson Street CMAR Preconstruction Agreement

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 In addition to the Indemnification obligations identified in Section 11.1, to the extent that NRS 338.155 applies to this Agreement, CMAR shall defend, indemnify, and hold harmless CITY, and its employees, officers and agents, from any liabilities, damages, losses, claims, actions, or proceedings, including without limitation, reasonable attorneys' 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 CMAR or the employees or agents of CMAR, in the performance of CMAR's work as a design professional. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section. Notwithstanding the foregoing, CMAR shall not be liable or responsible to CITY for the design of the Project, and shall not be liable or responsible to the CITY for any additional warranties, guarantees, or consequential damages, including, but not limited to warranties of merchantability and warranties for fitness for a particular purpose, all of such warranties are expressly disclaimed. It is further agreed that CMAR shall not be responsible or liable for acts or decisions of third parties other than CMAR's subcontractors, including CITY, other governmental agencies, or other parties that affect or 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 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.

PROFESSIONAL SERVICES CONSULTANT AGREEMENT
Contract No.1415-145A
Title: Carson Street CMAR Preconstruction Agreement

12. INDEPENDENT CONTRACTOR:

12.1 **CMAR**, 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 **CMAR** 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. **CMAR** 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 **CMAR** or any other party.

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

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):*

13.6 **CMAR** shall, at **CMAR'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 **CMAR** 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 **CMAR**. **CMAR'S** insurance

PROFESSIONAL SERVICES CONSULTANT AGREEMENT

Contract No.1415-145A

Title: Carson Street CMAR Preconstruction Agreement

policies shall apply on a primary basis. Until such time as the insurance is no longer required by CITY, CMAR 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 CMAR has knowledge of any such failure, CMAR 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 CMAR, 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 CMAR 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 CMAR 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 CMAR 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.

13.15 **Evidence of Insurance:** Prior to commencement of work, CMAR 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 CMAR.

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).

PROFESSIONAL SERVICES CONSULTANT AGREEMENT

Contract No.1415-145A

Title: Carson Street CMAR Preconstruction Agreement

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

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 CMAR. Neither approval by CITY nor failure to disapprove the insurance furnished by CMAR shall relieve CMAR of CMAR'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 CMAR 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:*

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 CMAR 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.

PROFESSIONAL SERVICES CONSULTANT AGREEMENT

Contract No.1415-145A

Title: Carson Street CMAR Preconstruction Agreement

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

14. BUSINESS LICENSE:

14.1 **CMAR** shall not commence work before **CMAR** 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:

CMAR 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 **CMAR** to provide the goods or SERVICES or any services of this Contract. **CMAR** 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 **CMAR** in accordance with NRS Chapter 361 generally and NRS 361.157 and 361.159, specifically regarding for profit activity. **CMAR** 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. **CMAR** shall neither assign, transfer nor delegate any rights, obligations or duties under this Contract without the prior written approval of **CITY**. The parties do not intend to benefit any third party beneficiary regarding their respective performance under this Contract.

19. CITY OWNERSHIP OF PROPRIETARY INFORMATION:

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 **CMAR** (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 **CMAR** upon completion, termination, or cancellation of this Contract. **CMAR** shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of **CMAR'S** obligations under this Contract without the prior written consent of **CITY**. Notwithstanding the foregoing,

PROFESSIONAL SERVICES CONSULTANT AGREEMENT

Contract No.1415-145A

Title: Carson Street CMAR Preconstruction Agreement

CITY shall have no proprietary interest in any materials licensed for use by CITY that are subject to patent, trademark or copyright protection.

20. PUBLIC RECORDS:

Pursuant to NRS 239.010, information or documents received from CMAR 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. CMAR may clearly label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 332.061, provided that CMAR 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:

CMAR shall keep confidential all information, in whatever form, produced, prepared, observed or received by CMAR 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 CMAR 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 CMAR 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 CMAR 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 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, CMAR 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

PROFESSIONAL SERVICES CONSULTANT AGREEMENT

Contract No.1415-145A

Title: Carson Street CMAR Preconstruction Agreement

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

24. GENERAL WARRANTY:

CMAR 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. CMAR 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 CMAR before this Contract is effective or after it ceases to be effective is performed at the sole risk of CMAR.

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 CMAR 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 CMAR regarding that public work cannot otherwise be settled, CITY and CMAR agree that, before judicial action may be initiated, CITY and CMAR will submit the dispute to non-binding mediation. CITY shall present CMAR with a list of three potential mediators. CMAR 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. CMAR consents and agrees to the jurisdiction of the courts of the State of Nevada located in Carson City, Nevada for enforcement of this Contract.

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.

PROFESSIONAL SERVICES CONSULTANT AGREEMENT
Contract No.1415-145A
Title: Carson Street CMAR Preconstruction Agreement

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:

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 4/28/15

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 4/28/15

CITY'S ORIGINATING DEPARTMENT

I certify that funds are available and that
CMAR 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 4/28/15

PROJECT CONTACT PERSON:

_____, Project Manager
Telephone: 775-887-2355

PROFESSIONAL SERVICES CONSULTANT AGREEMENT

Contract No.1415-145A

Title: Carson Street CMAR Preconstruction Agreement

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

CMAR
BY: Jeff Bean
TITLE: Vice President
FIRM: Q & D Construction Inc.
CARSON CITY BUSINESS LICENSE #: 15-00004129
Address: P.O. Box 10865
City: Reno **State:** NV **Zip Code:** 89510
Telephone: 775-786-2677/**FAX No.** 775-786-5136
E-mail Address: jbean@qdconstruction.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.1415-145A

Title: Carson Street CMAR Preconstruction Agreement

CONTRACT ACCEPTANCE AND EXECUTION:

The Board of Supervisors for Carson City, Nevada at their publicly noticed meeting of May 7, 2015 approved the acceptance of the attached Contract hereinbefore identified as **CONTRACT No. 1415-145A**. 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 7th day of May, 2015.

ATTEST:

SUSAN MERRIWETHER, CLERK-RECORDER

DATED this 7th day of May, 2015.

PROFESSIONAL SERVICES CONSULTANT AGREEMENT

Contract No.1415-145A

Title: Carson Street CMAR Preconstruction Agreement

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

CMAR FEE Proposal

ARTICLE 1 INCORPORATED DOCUMENTS

The following documents are hereby incorporated and form the basis for the CMAR's Fee Proposal:

1. CMAR Request for Proposal dated 3/3/2015
2. CMAR's Response to Request for Proposal dated 4/1/2015
3. Owner-CMAR Pre-Construction Agreement
4. CMAR General Conditions of the Contract

ARTICLE 2 CMAR PRE-CONSTRUCTION SERVICES PERSONNEL

Provide a listing of the CMAR personnel, the anticipated hours of involvement, and the billable hourly pay rate for each person that will be involved in the CMAR's pre-construction services scope of work.

Name	Job Title	Burdened Rate	Hours	Rate x Hours
<u>Jeff Bean</u>	<u>Preconstruction/Project Manager</u>	<u>\$0.00</u>	<u>180</u>	<u>\$0.00</u>
<u>Kevin Hamilton</u>	<u>Estimator</u>	<u>\$0.00</u>	<u>150</u>	<u>\$0.00</u>
<u>Roy Haliburton</u>	<u>General Superintendent</u>	<u>\$0.00</u>	<u>100</u>	<u>\$0.00</u>
<u>Will Morgan</u>	<u>Project Engineer / Scheduler</u>	<u>\$0.00</u>	<u>140</u>	<u>\$0.00</u>
<u>Chris Barrett</u>	<u>Public Relations / Business Development</u>	<u>\$0.00</u>	<u>100</u>	<u>\$0.00</u>

ARTICLE 3 CMAR PRE-CONSTRUCTION SCOPE OF SERVICES

- Participate in regularly scheduled design progress meetings with the Design Engineer, the various consultants, and Carson City. The CMAR shall provide ongoing input with respect to constructability, construction costs, material selection, value engineering, and construction means and methods. Assist in consideration of different design/material/life cycle elements.
- Participate in meetings with the Owner and Design Engineer, utility companies, property owners, and local businesses in order to expedite the design/permit process. Provide a prime contact to establish relationships with project stakeholders prior to the construction phase.
- Maintain continuous "open book" communication with Owner and Design Engineer.
- Develop construction phasing and scheduling that will minimize interruptions to existing Businesses and the traveling public. Develop baseline schedules with continuous updates as the design process develops. Schedule shall identify the

overall construction period.

- Facilitate long-lead procurement studies and initiate procurement of long-lead items.
- Continuous development of review comments, suggestions, and cost models (estimates) throughout the phases of design.
- Manage the effort of the development of potential bidder's lists and coordination of the input from various subcontractors with regards to each of the items described in the description of work. Assist the City with their goal of using as many local sub-contractors as possible.
- Continuous development of a detailed, open book cost model with updates based on interim submittals for the refinement of the Guaranteed Maximum Price (GMP).

ARTICLE 4 COST OF TRAVEL AND PER DIEM

Provide the estimated cost of travel and per diem (if any) for all personnel:

1. During Pre-Construction \$ 0.00

ARTICLE 6 PROPOSED FEES

1. CMAR's Proposed Fee for Pre-Construction Services \$ 0.00

ARTICLE 7 CMAR PRE-CONSTRUCTION SERVICES MEETING INTERVAL

The CMAR will be expected to attend and participate in ongoing regularly scheduled design progress review meetings with the Engineer and the Owner for the duration of the design process (duration will be minimum 2 hours)

The design progress review meetings are anticipated to occur at least every four weeks during the design phase.

ARTICLE 8 PAYMENT SCHEDULE

Payment for pre-construction services will be made in accordance with the following schedule:

Phase of Work Payment

Design Development Phase 20% of Total

30% Construction Documents 20% of Total

60% Construction Documents 15% of Total

90% Construction Documents 15% of Total

Submittal of GMP Proposal 20% of Total

Submittal of Final CMAR Review Comments 10% of Total

CMAR SIGNATURE

Construction Manager at Risk

Firm Name: O&D Construction, Inc

By: 

Print: Lance Semenko

Title: Chief Operating Officer

Date: April 15, 2015