



STAFF REPORT

Report To: Board of Supervisors

Meeting Date: June 1, 2017

Staff Contact: Laura Rader and Darren Schulz

Agenda Title: For Possible Action: To approve Contract No. 1617-114 Water Resource Recovery Facility-Capital Improvements FY18 to Keller Associates, Inc. for a not to exceed amount of \$1,218,918.00 to be funded from the Sewer Fund Capital Account . (Laura Rader; LRader@carson.org and Darren Schulz; DSchulz@carson.org)

Staff Summary: The next phase of repair and rehabilitation improvements at the Water Resource Recovery Facility, called WRRF - Capital Improvements FY18, has an estimated total cost of \$9,720,000 and will continue through the next two fiscal years. Contract No. 1617-114 is for the design services. Tasks 1 - 2, project management and data collection, cover the entire scope of this design project and has a lump sum cost of \$156,113. Tasks 3.1 - 3.7 are for design services for odor control system, reconditioning of primary settling tanks and pumping equipment, new underground piping to the secondary system, reconditioning of the secondary settling tanks, lining of the overflow basin, re-purposing existing aeration basin and replacing electrical distribution and controls at the front and back end of the plant and has a lump sum cost of \$790,375. Tasks 4 - 6 are for value engineering coordination at 30% design, a constructability review at 90% design and bidding services assistance when the completed project is bid and has a lump sum cost of \$122,430. Task 7 is a time and material contingency line item, \$150,000 and if funds are available to complete additional tasks such as improvements to the Parshall Flumes, warehouse, effluent pump station surge tank and additional electrical upgrades.

Agenda Action: Formal Action/Motion

Time Requested: 5 minutes

Proposed Motion

I move to approve Contract No. 1617-114 Water Resource Recovery Facility-Capital Improvements FY18 to Keller Associates, Inc. for a not to exceed amount of \$1,218,918.00 to be funded from the Sewer Fund Capital Account .

Board's Strategic Goal

Sustainable Infrastructure

Previous Action

n/a

Background/Issues & Analysis

An RFP was published in the Nevada Appeal and on the Carson City website on March 10, 2017. One proposal was received by Keller Associates, Inc., who will be using Lumos and Associates as a sub-consultant.

Applicable Statute, Code, Policy, Rule or Regulation

NRS 338

Financial Information

Is there a fiscal impact? Yes No

If yes, account name/number: Sewer Fund Capital Account /510-3205-434.70-40

Is it currently budgeted? Yes No

Explanation of Fiscal Impact: If approved the Account will be reduced by an amount not to exceed \$1,218,918.00.

Alternatives

Not award contract and provide other direction.

Board Action Taken:

Motion: _____

1) _____

2) _____

Aye/Nay

(Vote Recorded By)

PROFESSIONAL SERVICES CONSULTANT AGREEMENT

Contract No.1617-114

Title: Water Resource Recovery Facility-Capital Improvements FY18

THIS CONTRACT made and entered into this 1st of June, 2017, by and between Carson City, a consolidated municipality, a political subdivision of the State of Nevada, hereinafter referred to as "CITY", and Keller Associates, Inc., 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. 1617-114** (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	_____
GL expires	_____
AL expires	_____
PL expires	_____
WC expires	_____

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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

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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 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 **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

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(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.

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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 June 1, 2017, subject to Carson City Board of Supervisors' approval to December 31, 2018, 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:

Rod J. Linja, President
Keller Associates, Inc.
131 SW 5th Ave. Ste. A
Meridian, ID 83642
208-288-1992
email: rlinja@kellerassociates.com

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4.3 Notice to **CITY** shall be addressed to:

Carson City Purchasing and Contracts Department
Laura Rader, Purchasing and Contracts Administrator
201 North Carson Street, Suite 3
Carson City, NV 89701
775-283-7137 / FAX 775-887-2107
LRader@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 One Million Two Hundred Eighteen Thousand Nine Hundred Eighteen Dollars and 00/100 (\$1,218,918.00), 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**.

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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 **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

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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, 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

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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 **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:

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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.

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

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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 **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 certificate 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 **CONTRACTOR**, 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, except for professional liability, shall provide for a waiver of subrogation in favor of City.

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 **CONTRACTOR** 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 **CONTRACTOR** from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$5,000.00 per occurrence, unless otherwise approved by **CITY**.

13.13 **Policy Cancellation:** Except for ten (10) calendar days' notice for non-payment of premium, premium, **CONTRACTOR** or its insurers must provide thirty (30) calendar days prior written notice to Carson City Purchasing and Contracts if any policy will be canceled, non-renewed or if required 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. When available, each insurance policy shall be endorsed to provide thirty (30) days' notice of cancellation, except for ten (10) days' notice for non-payment of premium, to City.

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 under federal and Nevada law and

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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, **CONTRACTOR** 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:** **CONTRACTOR** shall furnish City with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth herein. 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 **CONTRACTOR**.

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 Underlying 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 **CONTRACTOR**. Neither approval by **CITY** nor failure to disapprove the insurance furnished by **CONTRACTOR** shall relieve **CONTRACTOR** of **CONTRACTOR'S** full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of **CONTRACTOR** or its sub-contractors, employees or agents to **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:**

CONTRACTOR shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence.

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 CGL insurance shall be written on ISO occurrence form CG 00 01 04 13 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract [(including the tort liability of another assumed in a business contract)].

13.20.6 City and County of Carson City, Nevada, its officers, employees and immune contractors shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 or CG 20 26, or a substitute providing equivalent coverage, and under the commercial umbrella, if any.

13.20.7 This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to City There shall be no endorsement or modification of the CGL to make it excess over other available

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insurance; alternatively, if the CGL states that it is excess or pro rata, the policy shall be endorsed to be primary with respect to the additional insured.

13.20.8 There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability assumed under a contract.

13.20.9 Contractor waives all rights against City and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained pursuant to this Contract. Insurer shall endorse CGL policy as required to waive subrogation against City with respect to any loss paid under the policy.

13.21 BUSINESS AUTOMOBILE LIABILITY INSURANCE:

13.21.1 *Minimum Limit required:*

13.21.2 Contractor shall maintain automobile liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident for bodily injury and property damage.

13.21.3 Such insurance shall cover liability arising out of owned, hired, and non-owned autos (as applicable). Coverage as required above shall be written on ISO form CA 00 01, CA 00 05, CA 00 25, or a substitute form providing equivalent liability coverage.

13.21.4 Contractor waives all rights against City and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the automobile liability or other liability insurance obtained by **CONTRACTOR** pursuant this Contract.

13.22 PROFESSIONAL LIABILITY INSURANCE

13.22.1 *Minimum Limit required:*

13.22.2 **CONTRACTOR** shall maintain professional liability insurance applying to all activities performed under this Contract with limits not less than One Million Dollars (\$1,000,000.00) and Two Million Dollars (\$2,000,000) in the aggregate.

13.22.3 Retroactive date: Prior to commencement of the performance of this Contract.

13.22.4 **CONTRACTOR** will maintain professional liability insurance during the term of this Contract and for a period of three (3) years after termination of this Contract unless waived by the City. In the event of non-renewal or other lapse in coverage during the term of this Contract or the three (3) year period described above, **CONTRACTOR** shall purchase Extended Reporting Period coverage for claims arising out of **CONTRACTOR's** negligence acts, errors and omissions committed during the term of the Professional Liability Policy. The Extended Reporting Period shall continue through a minimum of 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 **CONTRACTOR** shall provide workers' compensation insurance as required by NRS Chapters 616A through 616D inclusive and Employer's Liability insurance

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with a minimum limit not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

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

13.23.3 **CONTRACTOR** waives all rights against City and its agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by the workers' compensation and employer's liability or commercial umbrella liability insurance obtained by Contractor pursuant to this Contract. Contractor shall obtain an endorsement equivalent to WC 00 03 13 to affect this waiver.

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

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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 **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.

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 grant funds are used for payment of all or part of this Contract:

22.1.1 **CONTRACTOR** certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

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

22.1.3 **CONTRACTOR** and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and 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).

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22.1.4 If and when applicable to the particular federal funding and the Scope of Work under this Contract, **CONTRACTOR** and its subcontractors shall comply with: American Iron and Steel (AIS) provisions of P.L. 113- 76, Consolidated Appropriations Act, 2014, 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.

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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. Conflicts in language between this Contract and any other agreement between CITY and CONSULTANT on this same matter shall be construed consistent with the terms of this Contract. The parties agree that each has had their respective counsel review this Contract which shall be construed as if it was jointly drafted.

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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

Chief Financial Officer
Attn: Laura Rader, Purchasing & Contracts Administrator
Purchasing and Contracts Department
201 North Carson Street, Suite 3
Carson City, Nevada 89701
Telephone: 775-283-7137
Fax: 775-887-2107
LRader@carson.org

By: _____
Nancy Paulson, Chief Financial Officer

Dated _____

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 _____

CITY'S ORIGINATING DEPARTMENT

CONSULTANT will not be given authorization to begin work until this Contract has been signed by Purchasing and Contracts

BY: Laura Rader, CPPB

Account: 510-3205-434.70-40

By: _____

Dated _____

PROJECT CONTACT PERSON:

David Bruketta, Project Manager
Telephone: 775-283-7357

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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: Rod J. Linja

TITLE: President

FIRM: Keller Associates, Inc.

CARSON CITY BUSINESS LICENSE #: 17-

Address: 131 SW 5th Ave., Suite A

City: Meridian **State:** ID **Zip Code:** 83642

Telephone: 208-288-1992

E-mail Address: rlinja@kellerassociates.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)

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CONTRACT ACCEPTANCE AND EXECUTION:

The Board of Supervisors for Carson City, Nevada at their publicly noticed meeting of June 1, 2017 approved the acceptance of the attached Contract hereinbefore identified as **CONTRACT No. 1617-114**. 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 1st day of June, 2017.

ATTEST:

SUSAN MERRIWETHER, CLERK-RECORDER

DATED this 1st day of June, 2017.

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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

Section 2 - SCOPE OF SERVICES

Date: May 1, 2017

Project Number: 1617-114 (KA#217047)

Project Name: Carson City Water Resource Recovery Facility (WRRF) Improvements FY18

PROJECT DESCRIPTION

Carson City (Owner) intends to implement improvements at the WRRF. The Keller Associates (Consultant) teams' scope and budget provided herein is for preliminary design (30%), 60% and 90% design, final design, and bidding of the FY18 WRRF Improvements Projects. Construction management services will be included as part of a future task. The projects will be funded using City funds, which requires adherence to Nevada policies for a publicly funded project.

The improvements include the following items: headworks odor control system, lining of emergency overflow pond, secondary clarifier mechanisms, electrical equipment replacement in headworks, primary clarifier rehabilitation, new sludge pumps, conversion of aeration basin to additional equalization storage, electrical upgrades at the effluent pumping station, 16-inch pipeline design, and participation in a value engineering review. The estimated construction budget for these improvements is ten million dollars.

SCOPE OF WORK

Task 1 – Project Management & Meetings

Consultant Responsibilities:

- 1.1 Provide general project administration services including contract administration, monthly invoicing, and internal project administration.
- 1.2 Develop and maintain project schedule.
- 1.3 Develop and maintain project budget.
- 1.4 Participate in weekly check-ins with the City's project manager and subconsultants.
- 1.5 Consultant shall attend up to eight project meetings. These are anticipated to include a kickoff meeting and five progress meetings (anticipated to occur approximately monthly), a value engineering meeting, and a constructability review meeting. Purpose of the meetings will be to review existing system evaluation findings, develop and screen alternatives, evaluate alternatives, evaluate and select preferred alternative, review design elements, and review pre-design deliverables.

City Responsibilities:

- 1.6 Provide notice and advertisement (if needed) and venue for meetings.

Assumptions:

- 1.7 Project management budget assumes a schedule of up to ten months for the design portion and three months for bidding.
- 1.8 Should additional meetings be required, these will be provided on a time and materials basis as part of Task 7, Management Reserve.
- 1.9 Funding administration services is being provided by others.

Deliverables:

- 1.10 Monthly invoices.
- 1.11 Project schedule.
- 1.12 Meeting agendas and meeting minutes.

Task 2 – Data Collection / Review

Consultant Responsibilities:

- 2.1 Prepare requests for information. Review existing information. Prepare recommendations for additional data collection.
- 2.2 Tour existing City facilities (anticipated to be coordinated with the kickoff meeting).
- 2.3 Provide direction on field work to be completed by the City (i.e. potholing, sampling, and testing).
- 2.4 Provide engineering services related to data collection, review, and the preparation of an O&M Manual for the WRRF. Data collection involves coordination with City plant staff to obtain information. The O&M Manual shall include the following components/chapters:
 - a. Influent pump station;
 - b. Odor control systems;
 - c. Headworks;
 - d. Aeration basins (future bioreactors);
 - e. Blower buildings;
 - f. RAS/WAS pump station;
 - g. Clarifiers;
 - h. Filters;
 - i. Chlorine system;
 - j. Non-potable water system;
 - k. Aerated sludge holding tank;

- l. Solids handling building;
- m. Anaerobic digesters; and emergency diesel generators.

City Responsibilities:

- 2.5 Provide information requested in a timely manner (generally within seven days of request).
- 2.6 Assist with field testing (if required).
- 2.7 Existing facilities' as-built drawings.
- 2.8 Existing facilities' equipment O&M manuals.
- 2.9 Operation and performance data on existing facilities.

Assumptions:

- 2.10 Consultant will rely on available record drawings, CAD drawings, data, and field information provided by the City and subconsultants in completing the work.
- 2.11 Consultant will rely on hard copies of the existing O&M manual to create portions of the O&M Manual in PDF format.

Deliverables:

- 2.12 Request(s) for information.
- 2.13 O&M Manual in searchable PDF format based on Water Technical Sheet-2 from the Nevada Division of Environmental Protection (NDEP).

Task 3 – PREDESIGN/DESIGN

3.1: Odor Control System

3.1.1 Predesign

For odor control, we will compare the biofilter option with up to two biotrickling filter options. Consultant will look at conveying foul air from the headworks to a treatment system near the headworks. Consultant will discuss with the City options of completely covering the headworks existing channels and exhausting the foul air to the odor treatment system (e.g. a biofilter or biotrickling filter from vendors such as Bohn, Biorem and Bioair). Consultant will also evaluate the rehabilitation of the existing odor control system at the North Lift Pump Station.

3.1.2 Final Design

Drawings and specifications for the selected headworks odor control option will be prepared, including coverings of the headwork channels. Budget assumes no building for the odor control system, but that it will be outside on a concrete slab. If rehabilitation of the North Lift Pump Station odor control system is selected in the predesign, it

will be included in the plans. Other options would be completed using available Task 7 Management Reserve budget.

3.2: Reconditioning Existing Primary Clarifier’s Mechanisms and Sludge Pumping Equipment

3.2.1 Predesign

Make a visual observation of the primary clarifiers. If concrete testing is recommended, a plan for concrete repair will be completed based on the visual observations. Evaluate the existing clarifiers and with input from the City determine the appropriate replacement. Improvements at the primary clarifiers are also anticipated to include replacement of worn components, coating of the clarifiers mechanisms and covering the launders. Recommendations for improvements, based on the evaluation, will be documented in the predesign report. Concrete testing and associated support services if determined necessary will be provided as part of Task 7 Management Reserve task.

Sludge Pumping Equipment predesign includes evaluating up to three options for replacing the existing primary clarifier sludge pumps. Budget assumes no building modification.

3.2.2 Final Design

Prepare engineering drawings and specifications for the reconditioning of the primary clarifier mechanisms and installation of new sludge pumping equipment.

3.3: 16 Inch Effluent Line

3.3.1 Predesign

Determine the routing of a new 16-inch force main from the intermediate pump station to the new bioreactors. Consider pothole information provided by the City for existing utility locations.

3.3.2 Final Design

Prepare engineering drawings and specifications for the construction of the new effluent piping, and related surface repairs. Plans will include tie in piping to Intermediate Pump Station or ponds. Budget assumes approximately 900 lineal feet with plan and profile sheets.

3.4: New Mechanisms for Existing Secondary Clarifiers

3.4.1 Predesign

Make a visual observation of the secondary clarifiers. If concrete testing is recommended a plan for concrete repair will be completed based on the visual observations. Improvements at the secondary clarifiers are also anticipated to include replacement of worn components and possibly entire mechanisms, coating of the clarifier mechanisms and covering the launders. Recommendations for improvements, based on the evaluation, will be documented. Concrete testing and associated support services if determined necessary will be provided as part of Task 7 Management Reserve.

3.4.2 Final Design

Prepare engineering drawings and specifications for the reconditioning or replacement of the secondary clarifier's mechanisms.

3.5: Lining of Existing Overflow Pond

3.5.1 Predesign

The existing overflow pond is an existing dirt basin historically utilized for emergency overflow from the treatment facility. The basin may have had a clay lining in the past; however, currently there is only soil. To continue utilizing the basin for emergency storage, NDEP will require Carson City to line the pond. Task includes developing a grading plan for the existing basin to be utilized in conjunction with a lining plan. A new HDPE lining system is anticipated. The budget does not anticipate groundwater and assumes the existing pond structure and piping can be retained.

3.5.1 Final Design

Under this task, Lumos will prepare engineering drawings and specifications for the construction and grading of the new lined overflow pond and related surface improvements.

3.6: Repurpose Aeration Pond

3.6.1 Predesign

The current concept is to utilize the existing aeration pond for additional equalization storage. This task includes connecting the two existing ponds, evaluating the various existing facilities and piping associated with the existing aeration pond to identify items that can remain, items that can be reused, what needs to be added, what components will need to be removed, and what pipes will need to be capped. Task includes evaluating the options of connecting the two ponds.

3.6.2 Final Design

Under this task, Lumos will prepare engineering drawings and specifications for the construction of improvements (piping/grading/concrete work/surface repairs) to repurpose the existing aeration pond, remove existing sludge, and connect the Aeration Pond to the existing equalization storage pond.

As part of the aeration pond repurposing, Lumos will provide a survey of the treatment plant with control for the project referenced to the Nevada Coordinate System, West Zone, NAD83 using a local combined scale factor to establish ground values for the base map. The vertical datum for the project will be referenced to NAVD88. A project base map will be created using a combination of aerial photogrammetry and ground collected survey field shots. The photogrammetry will be collected by an unmanned aerial vehicle (UAV).

The project will be flown at an appropriate elevation to obtain a horizontal scale of 1"=40' with a 0.5 foot contour interval accuracy and ground sampling distance of 0.20 feet per pixel. Field shots using conventional surveying methods will be obtained at critical locations such as buildings, edge of roadway, curb and flowline elevations, surface evidence of utilities, storm drain features (with inverts), and obscured areas to be combined with the aerial imagery to supplement the base map. A digital terrain model, topographic base map, and color orthophoto will be generated using the combination of ground and aerial collected data.

Lumos will develop the plans and specifications for rehabilitation, replacement, and grading related to updating the existing asphalt roads and existing asphalt areas within the existing WRRF site.

Lumos will prepare engineering drawings and specifications for the construction, grading, concrete work, and paving of the new roads and related surface improvements.

3.7: Replacing MCC in Headworks and Effluent Pumping Station

3.7.1 Predesign

Evaluate the existing aged electrical distribution and motor control centers based on their service life, serviceability, and capacity for future growth. Also, review existing headworks PLC control system to coordinate with new I/O and PLC Architecture.

This evaluation will be included in the predesign report for decisions to be made regarding replacements.

3.7.2 Final Design

Provide final electrical design including:

- Electrical Single Line Diagram
- Electrical Elevation Drawings for new Headworks Electrical Room
- Conduit and Cabling Schedule
- Motor Control Wiring Diagrams
- VFD Wiring Diagrams
- PLC Wiring Schematic
- PLC Power Distribution
- Process P&ID Diagrams for Electrical System
- PLC System Architecture Drawings
- Temporary Power plan during demolition and startup of new electrical gear

Utility Distribution System Switchover and Conversion Plan:

Consultant will prepare engineering drawings and specifications for the replacing the headworks and effluent pump station MCC. Plans will include recommended upgrade components and a separate, unclassified room for the new headworks electrical gear.

Task 3 Assumptions:

Consultant will rely on available record drawings, electronic CAD drawings, data, and field information provided by the City and subconsultants in completing the work.

City will provide standard front-end documents including general conditions and Consultant will coordinate its design with these documents and prepare special conditions to supplement.

The Aeration Pond Repurposing survey project budget assumes the FAA and the Carson City Airport Authority giving approval to fly the UAV over the project site.

No pre-purchase or preselection of equipment is included. Also, the project will be bid as one project. The City and/or agency comments will be incorporated with each subsequent deliverable.

Task 3 Deliverables:

Design review submittals will be provided to the City at 30%, 60%, 90%, and 100% design levels.

30% Deliverable

1. Project definition report or preliminary engineering report and draft deliverables relevant to a 30% design. Electronic plans shall be delivered as pdf files. Up to 5 copies of paper deliverables are included as a deliverable.
2. Site Topographical Survey 30% drawings include general sheets, site plan, architectural layouts, mechanical process plan sheets, and process instrumentation and control sheets.
3. Provide a Class 4 opinion of probable cost.

60% Deliverable

1. Draft deliverables relevant to a 60% design. Electronic plans shall be delivered as pdf files. Up to 5 copies of paper deliverables are included as a deliverable.
2. 60% drawings include general sheets, site plan and yard piping layout sheets, architectural layouts and sections, structural plan sheets, mechanical process plan sheets, major mechanical sections and schedules, and process instrumentation and control sheets.
3. Specifications include drafts of major equipment specifications.
4. Provide a Class 3 opinion of probable cost.

90% Deliverable

1. Draft deliverables relevant to a 90% design, on paper and electronically. Electronic plans shall be delivered as pdf files. Up to 5 copies of paper deliverables are included as a deliverable.
2. 90% drawings will include all drawings, with only minor coordination items remaining.
3. Complete specifications with only minor coordination items remaining.
4. Provide a Class 2 opinion of probable cost.

Final Contract Documents (Submitted to NDEP)

1. Final deliverables. Electronic plans shall be delivered as pdf files.
2. Review set and Bid set deliverable includes completed drawings and specifications. Up to 5 copies of 11"x17" paper deliverables are included as a deliverable. For bidding one reproducible set of sealed electronic documents are included.
3. Update the Class 2 opinion of probable cost.

Task 4 – Value Engineering Coordination

- 4.1 Value Engineering Participation. Consultant will coordinate with City staff and members of the Value Engineering Team. Coordination efforts are anticipated to include the following:
 - a. Participate in up to four conference calls to address Value Engineering review comments received on technical memoranda and other 30% project deliverables.
 - b. Participate in an additional meeting (coordinated with one of the City progress meetings) to review Value Engineering comments of the predesign draft report.

Value Engineering review comments will be provided at the 30% stage in the design process so as not to require rework. It is assumed that the Consultant level of effort is appropriate for the value engineering effort. Consultant shall be able to review the value engineering scope and determine if additional effort is necessary.

Task 5 – Constructability Review

Consultant will participate with the City for their Constructability Review of the 90% progress submittal. Participation includes attending one meeting and addressing review comments. It is assumed that the Consultant level of effort is appropriate for the constructability review effort. Consultant shall be able to review the constructability review scope and determine if additional effort is necessary. Changes at this stage are assumed to be minor in nature as review will coincide with the 90% complete documents.

Task 6 – Bidding Services

- 6.1 If requested, provide summary project language for the City's use for advertisement of the Project.
- 6.2 Respond to questions received during the bid phase through issuing up to three (3) addenda.
- 6.3 Manage the project bid documents including changes to drawings and specifications that result from the bid process. This includes updating the documents to clarify a response to contractor questions routed through the City.
- 6.4 Attend one pre-bid meeting with potential bidders.
- 6.5 Attend bid opening.
- 6.6 Assist the City in evaluating bids and provide a recommendation of award to the City.
- 6.7 Budgeting for bidding task includes one bid process and assumes award to one Contractor.

Task 7 – Management Reserve

- 7.1 From time to time the City may have additional tasks related to the project or additional tasks may be encountered that are not identified in this scope of work. For these instances a time and material budget is established in order for Consultant to complete the additional services. Prior to the use of this contingency budget, City will provide written (email) authorization to use the budget for particular tasks or activities. Anticipated additional tasks if budget is available include rebuild of the parshall flume, warehouse, effluent pump station surge tank, and additional electrical upgrades.

COMPENSATION

The Consultant will be compensated on a lump sum basis for Tasks 1 through 6. The lump sum fee allocation is summarized in the table below. The Consultant will be compensated on a time and material basis for Task 7. The time and material fee allocation is summarized in the table below. The total contract sum shall not be exceeded without approval from the Owner.

Scope of Fee Schedule

Task	Description	Billing	Fee/Budget
Task 1	Project Management & Meetings	LS	\$87,823
Task 2	Data Collection/Review	LS	\$68,290
Task 3.1	Odor Control System	LS	\$156,650
Task 3.2	Reconditioning Existing Primary Clarifier's Mechanisms and Sludge Pumping Equipment	LS	\$74,530
Task 3.3	16-inch Effluent Line	LS	\$54,110
Task 3.4	New Mechanism's for Existing Secondary Clarifier's	LS	\$126,890
Task 3.5	Lining of Existing Overflow Pond	LS	\$45,310
Task 3.6	Repurpose Aeration Pond	LS	\$160,370
Task 3.7	Replacing MCC at Headworks and Effluent Pump Station	LS	\$172,515
	Task 3 Design Subtotal	LS	\$790,375
	Task 1 through 3 Subtotal	LS	\$946,488
Task 4	Value Engineering Coordination	LS	\$37,700
Task 5	Constructability Review	LS	\$28,890
Task 6	Bidding Services	LS	\$55,840
	Task 4 through 6 Subtotal	LS	\$122,430
	Total Engineering Lump Sum	LS	\$1,068,918
Task 7	Management Reserve	T&M	\$150,000
	Total Contract Sum		\$1,218,918

SCHEDULE

The Consultant's preliminary design services (Task 3 – 30% deliverables) shall be a period of 2 months from the date of receiving a signed contract. Consultant's 60% Design Services (Task 3 – 60% deliverables) shall be a period of 2 months from the date of receiving Owner comments on the preliminary design and Value Engineering. Consultants 90% design (Task 3 – 90% deliverables) shall be a period of 3 months from the date of receiving Owner comments on the 60% design deliverables. Consultants 100% design (Task 3 100% deliverables) shall be a period of 1 month from the date of receiving Owner comments on the 90% design deliverables and Constructability review comments. Consultants Bidding Documents (Task 3 Bid Set deliverables) shall be a period of 1 month from the date of receiving NDEP approval comments. Assuming Owner review periods of 1 week,

and a 3 week approval period by NDEP, the estimated total duration to complete Task 3 is 10 months. Bidding (Task 6) is anticipated to be a period of 3 months.

City Responsibilities:

The following services/items will be provided by the City and are not included in the Consultant's scope and compensation outlined above:

1. Obtain access to WWTP site.
2. Input on infrastructure improvements.
3. Utility locates.
4. Access to records and mapping including electronic base maps.
5. If needed, provide supplemental sampling and data collection.
6. If needed, provide easement negotiation, acquisition, and documentation including records of survey and legal exhibits and descriptions.
7. Pay for publication expenses.
8. Provide facilities for bid opening.
9. Provide WRRF data.
10. Furnish to Consultant any available information pertinent to the project including reports and data, previous designs, or investigation at or adjacent to the site.
11. Following Consultant's assessment of initially-available project information and data and upon Consultant's request, furnish or otherwise make available such additional project related information and data as is reasonably required to enable Consultant to complete its services.
12. Provide reviews, approvals, and permits from governmental authorities having jurisdiction to approve all phases of the project designed or specified by Consultant and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the project. Provide services necessary to obtain a conditional use permit (if required).
13. Arrange for a Value Engineering Team and coordinate with others arranging a Value Engineering review meeting. Solicit input from Value Engineering review team at appropriate stages.
14. Arrange for a Constructability Review Team and coordinate with others arranging a Constructability Review meeting. Solicit input from Constructability Review Team at appropriate stages.
15. Manage the bid documents including plan holders list and facilitate bidder questions.
16. Recognizing and acknowledging that Consultant's services and expertise do not include the following services, provide, as required for the project:
 - i. Accounting, auditing, bond and financial advisory, independent cost estimating, and insurance counseling services
 - ii. Legal services with regard to issues pertaining to the Project
 - iii. Except as noted previously, reasonable expense based on GSA rates for special trips mutually agreed by both parties

KELLER ASSOCIATES, Inc.
2017 TITLE CODE BILLING RATES

<u>Personnel Classification</u>	<u>2017 Hourly Rate</u>
Project Engineer - I (EI)	\$85.00 - \$100.00
Project Manager - I (PE)	\$120.00 - \$155.00
Project Engineer - II (PE)	\$110.00 - \$185.00
Project Manager - II (PE)	\$160.00 - \$190.00
CAD - I	\$80.00 - \$100.00
CAD - II	\$110.00 - \$145.00
Engineering Student	\$65.00
Principal (PE)	\$210.00 - \$225.00
Chief Engineer/Structural Engineer (PE, SE, PLS)	\$225.00
Structural Engineer - I (PE, SE)	\$155.00
Electrical Engineer - I (PE)	\$150.00
Electrical Technician	\$75.00
Professional Surveyor (PLS)	\$145.00
Surveyor	\$75.00 - \$100.00
Field Representative	\$75.00 - \$120.00
Clerical & Administration	\$65.00 - \$85.00

Other Billing Terms

Mileage: Billed at Federal Rate (currently \$0.535 per mile)

Per Diem: \$60.00 per day

Reimbursable Expenses at Cost x 1.05

The Title Code Billing Rates are effective January 1, 2017 and will be adjusted each January of subsequent years

New employees may be added throughout the year

Engineering & Development	Per Hour
President	\$250
Director	225
Group Manager	200
Project Manager	170
Senior Hydrogeologist	165
Hydrogeologist	160
Senior Engineer	150
Project Engineer	140
Staff Engineer	130
Landscape Architect Manager	140
Landscape Architect	130
Landscape Architect Designer	115
Project Coordinator	120
Senior Project Designer	120
Project Designer	115
Engineering Technician I & II	90-100
Support Technician	65
Construction	Per Hour
Director	\$225
Group Manager	200
Project Manager	170
Geotechnical Engineer	190
Construction Services Engineer	155
Construction Services Supervisor	125
Geotechnician	125
Senior Inspector	110
Inspector	105
Field Technician I & II	90-95
Surveying	Per Hour
Director	\$225
Group Manager	200
Project Manager	170
Senior Surveyor	140
Project Surveyor	130
Project Coordinator	120
Staff Surveyor	120
Surveying Technician I & II	95-110
Party Chief	135
Chain Person	65
Administrative & Other Services	Per Hour
Administrator	\$75
Clerical	65
30x42 Color/B&W (per copy)	10/5
24x36 Mylar/Color/B&W (per copy)	20/5/3
8.5x11 Color /B&W (per copy)	0.50/0.15
Mileage (per mile)	0.70

- Fees for prevailing wage rate projects available upon request.
- Map filing, checking, consulting, and other fees paid on behalf of the client shall be billed at cost plus fifteen percent (15%).
- Overtime hours will be billed at 1.5 times standard rate where applicable.
- Survey and Field crew billing rates include standard testing equipment and truck up to 30 mile radius, after which mileage rates apply

Invoices are due upon receipt and considered to be past due after 30 days.
This fee schedule applies to services provided from February 1, 2017 until further notice.