Hem# 18

City of Carson City Agenda Report

Date Submitted: August 11, 2009 Agenda Date Requested: August 20, 2009

Time Requested: 5 minutes

Labor Commissioner PWP # CC-2009-297

To: Mayor and Supervisors
From: Purchasing and Contracts

Subject Title: Action to determine that Horizon Construction Inc. is the lowest responsive and responsible bidder pursuant to N.R.S. Chapter 338 and to award Contract No. 0910-046 Morgan Mill Road River Access Area Project to Horizon Construction, Inc. for a bid amount of \$196,699.90 plus a contingency amount not to exceed \$39,500.00 to be funded from the Construction Projects Morgan Mill Road River Bank Fund as provided in FY 2009/2010. (*Sandy Scott*)

Staff Summary: Carson City received sealed bids for all labor, materials, tools and equipment necessary for the Morgan Mill Road River Access Area Project. Project consists of construction of a new parking lot; striping and signage; a boat ramp; temporary river diversion and related erosion control measures; river bank stabilization; a restroom enclosure structure; Bid Alternates for the removal of a soil berm; construction of a 12-foot wide path with decomposed granite surfacing; installation of a new 4-strand smooth wire fence with steel 'T' posts along Morgan Mill Road; and paving and base for the new parking lot in lieu of asphalt grindings. The work includes, but is not limited to, riverbank grading for the construction of the boat ramp, boulder placement in the river, grading, boat ramp, riverbank stabilization, gate, placement of grinding, striping and signage, a restroom enclosure and revegetation.

Type of Action Requested:	(check one)
() Resolution (_X) Formal Action/Moti	Ordinance On Other (Specify)
Does This Action Require A Busin	ness Impact Statement: () Yes (_X) No

Recommended Board Action: I move to determine that Horizon Construction Inc. is the lowest responsive and responsible bidder pursuant to N.R.S. Chapter 338 and to award Contract No. 0910-046 Morgan Mill Road River Access Area Project to Horizon Construction, Inc. for a bid amount of \$196,699.90 plus a contingency amount not to exceed \$39,500.00 to be funded from the Construction Projects Morgan Mill Road River Bank Fund as provided in FY 2009/2010. (Sandy Scott)

Explanation for Recommended Board Action: *NOTICE TO CONTRACTORS* were distributed on July 15, 2009, and the *NOTICE TO CONTRACTORS* was published in the Nevada Appeal on July 15, 2009.

The bids were opened at approximately 11:10 a.m. on August 5, 2009, at 201 North Carson Street, Carson City, Nevada 89701. Present during the bid opening were: John Hutchings, Northern Nevada Excavating; Jayme Fowkes, A & K Earth Movers, Inc.; Dee Westmoreland, Marv McQueary Excavating; Lee Spears, United Rentals; John Bird, Wilson Construction, Inc.; John Duckett, Peavine Construction, Inc.; Joe Knopp, Horizon Construction, Inc.; Ann Bollinger, CC Parks and Rec.; Vern Krahn, CC Parks and Rec.; Tom Grundy, CC Public Works; and Sandy Scott, Purchasing and Contracts& Contracts Coordinator.

Bids were received from the following bidders. Please refer to the *BID TABULATION* for specifics.

Name of Bidder	Total Award Amount
Horizon Construction, Inc.	\$196,699.90
Northern Nevada Excavating, Inc.	\$216,494.20
A & K Earth Movers, Inc.	\$263,984.00
Marv McQueary Excavating, Inc.	\$261,917.80
Wilson Construction, Inc.	\$225,090.50
Peavine Construction, Inc.	\$275,100.00
Z 7 Development	\$361,440.00

Staff recommends award to Horizon Construction, Inc. as the lowest responsive and responsible bidder pursuant to N.R.S. Chapter 338.

Applicable Statue, Code, Policy, Rule or Regulation: N.R.S. Chapter 338 Public Works

Engineers Estimate: \$295,430.00

Project Budget: \$478,546.00

Fiscal Impact: Not to exceed \$236,199.90

Explanation of Impact: If approved the below referenced account could be decreased by \$236,199.90.

Funding Source: 275-5017-452-7801 Construction Projects Morgan Mill Road River Bank as provided in FY 2009/2010.

Alternatives: Determine another bidder is the lowest, most responsible, and responsive bidder pursuant to N.R.S. Chapter 338 or do not award contract.

Prepared By: Sandy Scott, Purchasing & Contracts Coordinator

Reviewed By: Date: 8/11/09

(Public Works) Date: 8/11/09

(City Manager) Date: 8-11-09

(District Adorley) Date: 8/11/09

(Finance Director)

Board Action Taken:

Motion: 1) ______ Aye/Nay

(Vote Recorded By)

Supporting Material: Bid Tabulation Report, Contract No. 0910-046, and Bid Response from

THIS **CONTRACT** made and entered into this 20th day of August, 2009, by and between the City and County of Carson City, a political subdivision of the State of Nevada, hereinafter referred to as the "**OWNER**", and Horizon Construction, Inc., hereinafter referred to as "**CONTRACTOR**".

WITNESSETH:

WHEREAS, the Purchasing and Contracts Coordinator for the City and County of Carson City is authorized pursuant to Nevada Revised Statutes 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, it is deemed necessary that the services of CONTRACTOR for CONTRACT No. 0910-046, titled "Morgan Mill Road River Access Area Project" are both necessary and in the best interest of CITY; and

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

REQUIRED APPROVAL

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

CONTRACT TERM AND LIQUIDATED DAMAGES

CONTRACTOR agrees to complete the Work on or before the date specified in the Notice to Proceed or any executed Change Orders to the entire satisfaction of the **OWNER** before final payment is made, unless sooner termination by either party as specified in the General Conditions, section GC 3.18.

Pursuant to the provisions under Time for Completion and Liquidated Damages in the Contract Documents of said Specifications; the CONTRACTOR will complete the work within the Contract time. Since OWNER and CONTRACTOR agree it is difficult to ascertain the actual amount of damages incurred due to delay of the Project, it is agreed that OWNER will be paid the liquidated damages as specified in the Contract Special Conditions for each and every calendar day of delay in the completion of the work, in addition to any direct charges incurred by the OWNER as a result of delay of the Project, including engineering fees and additional damages due to late construction. The OWNER also reserves the right to deduct any amounts due the OWNER from any moneys earned by the CONTRACTOR under this Contract.

That in the performance of this Contract, an employer shall pay 1 $\frac{1}{2}$ times an employee's regular wage rate whenever an employee who received compensation for employment at a rate less than 1 $\frac{1}{2}$ time the minimum wage who works more than forty (40) hours in any scheduled work week, more than eight (8) hours in a day, unless by mutual agreement the employee works a scheduled ten (10) hours per day for four (4) calendar days with an work week. Employers should refer to NRS 608.018 for further details on overtime requirements.

NOTICE

Unless otherwise specified, termination shall not be effective until seven (7) calendar days after a party has served written notice of default, or without cause upon the other party. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by e-mail with simultaneous 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.

For P&C Use C	nly
CCBL expires	
NVCL expires	
GL expires	
AL expires	
WC expires	

Notice to CONTRACTOR shall be addressed to:

Brian Smith, President Horizon Construction, Inc. PO Box 1696 Carson City, Nevada 89702 horizon@clearwire.net

Notice to CITY shall be addressed to:

Carson City Purchasing & Contracts
Sandy Scott, Purchasing & Contracts Coordinator
201 North Carson Street Suite 3
Carson City, NV 89701
775-887-2133 extension 30137 / FAX 775-887-2107
SScott@ci.carson-city.nv.us

COMPENSATION

The parties agree that **CONTRACTOR** will provide the Work specified in these Contract Documents for the Contract Amount of "One Hundred Ninety Six Thousand, Six Hundred Ninety-Nine Dollars and Ninety Cents" (\$196,699.90).

OWNER will pay **CONTRACTOR** progress payments and the final payment computed from the actual quantities of work performed and accepted and the materials furnished at the Unit and Lump Sum prices shown on the **CONTRACTOR'S** Bid Proposal and any executed Change Orders.

Contract Amount represents full and adequate compensation for the complete Work, and includes the furnishing of all materials; all labor, equipment, tools, transportation, services, appliances; and all expenses, direct or indirect connected with the proper execution of the work.

OWNER does not agree to reimburse CONTRACTOR for expenses unless otherwise specified.

CONTRACT TERMINATION

Termination Without Cause:

Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated upon written notice by mutual consent of both parties or unilaterally by either party without cause.

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 work actually completed. In no event if termination occurs under this provision shall CONTRACTOR be entitled to anticipated profits on items of work not performed as of the effective date of the termination or compensation for any other item, including but not limited to, unabsorbed overhead. CONTRACTOR shall assure that all subcontracts which he/she enters related to this Contract likewise contain a termination for convenience clause which precludes the ability of any subcontractor to make claims against

CONTRACTOR for damages, due to breach of contract, of lost profit on items of work not performed or of unabsorbed overhead, in the event of a convenience termination.

Termination for Nonappropriation:

The continuation of this Contract beyond June 30, 2010, is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the Carson City Board of Supervisors. CITY may terminate this Contract, and CONTRACTOR waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the funding is not appropriated or is withdrawn, limited, or impaired.

Cause Termination for Default or Breach:

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

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

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

If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by CONTRACTOR to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or

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

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

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 CONTRACTOR, or any agent or representative of CONTRACTOR, 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

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

CITY may terminate this Contract if CONTRACTOR:

Fails to maintain bonding, Nevada State Contractors' Board License, State Industrial Insurance requirements or insurance policies for limits as defined in this Contract;

Persistently or repeatedly refuses or fails to supply properly skilled workers or proper materials:

Fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between CONTRACTOR and the subcontractors;

Persistently disregards laws, ordinances, or rules, regulations or order of a public authority having jurisdiction; Otherwise makes a material breach of a provision of this Contract; or

CONTRACTOR fails to maintain safe working conditions.

When any of the above reasons exist, CITY may provide, without prejudice to any other rights or remedies of CITY and after giving CONTRACTOR and CONTRACTOR'S Surety, seven (7) calendar days written notice, terminate employment of CONTRACTOR and may, subject to any prior rights of the surety:

Take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by CONTRACTOR;

Accept assignment of subcontractors pursuant to this Contract (Contingent Assignment of Subcontracts to Carson City if this Contract is terminated); and,

Finish the Work by whatever reasonable method CITY may deem expedient.

If CITY terminates this Contract for one of the reasons stated above, CONTRACTOR shall not be entitled to receive further payment until the Work is finished.

If the unpaid balance of the Contract Amount exceeds the cost of finishing the Work including expenses made necessary thereby, such excess shall be paid to CONTRACTOR. If the costs of finishing the Work exceed the unpaid balance, CONTRACTOR shall pay the difference to CITY. The amount to be paid to CONTRACTOR or CITY, as the case may be, shall survive termination of this Contract.

In the event of such termination, all monies due CONTRACTOR or retained under the terms of this Contract shall be held by CITY; however, such holdings will not release CONTRACTOR or its sureties from liability for failure to fulfill this Contract. Any excess cost over and above the Contract Amount incurred by CITY arising from the termination of the operations of this Contract and the completion of the Work by CITY as provided above shall be paid for by any available funds held by CITY. CONTRACTOR will be so credited with any surplus remaining after all just claims for such completion have been paid.

If at any time before completion of the Work under this Contract, the Work shall be stopped by an injunction of a court of competent jurisdiction or by order of any competent authority, CITY may give notice to CONTRACTOR to discontinue the Work and terminate this Contract. CONTRACTOR shall discontinue the Work in such manner, sequence, and at such times as CITY may direct. CONTRACTOR shall have no claim for damages for such discontinuance or termination, nor any claim for anticipated profits on the Work thus dispensed with, nor for any claim for penalty, nor for any other claim such as unabsorbed overhead, except for the work actually performed up to the time of discontinuance, including any extra work ordered by CITY to be done.

Time to Correct:

Termination upon a declared default or breach may be exercised only after service of formal written notice as specified above, and the subsequent failure of the defaulting party within five (5) calendar days of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.

Winding Up Affairs Upon Termination:

In the event of termination of this Contract for any reason, the parties agree that the provisions of this paragraph survive termination:

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;

CONTRACTOR shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by CITY;

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

CONTRACTOR shall preserve, protect, and promptly deliver into CITY possession all proprietary information in accordance with City Ownership of Proprietary Information.

The parties agree that the scope of work will be specifically described and hereinafter referred to as the WORK. This Contract incorporates the following attachments, a CONTRACTOR'S attachment shall not contradict or supersede any OWNER specifications and/or terms or conditions without written evidence of mutual assent to such change appearing in this Contract.

CONTRACTOR agrees that the Contract Documents for Bid No. 0910-046 include, but not limited to, the Notice to Contractors, Table of Contents, Project Coordination, Instructions to Bidders, Contract Award Information, General Conditions, Special Conditions, Technical Specification, Prevailing Wages, Contract Drawings, and Addenda, if any, herein after referred to as Exhibit A, are intended to be complete and complementary and are intended to describe a complete work. These documents are incorporated herein by reference and made a part whereof.

CONTRACTOR additionally agrees **CONTRACTOR'S** Bid Bond, Bid Proposal, Executed Contract, Performance Bond, Labor and Material Bond, Certificate of Eligibility, Insurance Certificates, Permits, Notice of Award, Notice to Proceed and Executed Change Orders, referred to as Exhibit B, are incorporated herein and made a part whereof.

FAIR EMPLOYMENT PRACTICES

Pursuant to NRS 338.125, Fair Employment Practices, the following provisions must be included in any contract between **CONTRACTORS** and Public Bodies;

In connection with the performance of work under this Contract, **CONTRACTOR** agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation 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.

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

PREFERENTIAL EMPLOYMENT

Pursuant to Nevada Revised Statute 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.

In connection with the performance of work under this Contract, CONTRACTOR agrees to comply with the provisions of Nevada Revised Statute 338.130 requiring certain preferences to be given to which persons are employed in the construction of a public work. If CONTRACTOR fails to comply with the provisions of Nevada Revised Statute 338.130, pursuant to the terms of Nevada Revised Statute 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.

ALTERNATIVE DISPUTE RESOLUTION

Pursuant to Nevada Revised Statute 338.150, 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 before initiation of a judicial action if a dispute arising between the public body and the **CONTRACTOR** engaged on the public work if the dispute cannot otherwise be settled. Therefore, in the event that a dispute arising between **OWNER** and **CONTRACTOR** agree

that, before judicial may be initiated, **OWNER** and **CONTRACTOR** will submit the dispute to non-binding mediation. **OWNER** shall present **CONTRACTOR** with a list of three potential mediators. **CONTRACTOR** shall select one person to serve as the mediator from the list of potential mediators presented by **OWNER**. The person selected as mediator shall determine the rules governing the mediation.

LIMITED LIABILITY

OWNER will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any **OWNER** breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to **CONTRACTOR**, for the fiscal year budget in existence at the time of the breach. **CONTRACTOR'S** tort liability shall not be limited.

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.

INDEMNIFICATION

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 paragraph.

Except as otherwise provided below, the indemnifying party shall not be obligated to provide a legal defense to the indemnifying 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:

- 1) a written request for a legal defense for such pending claim(s) or cause(s) of action; and
- 2) a detailed explanation of the basis upon which the indemnified party believed that the claim or cause of action asserted against the indemnified party implicated the culpable conduct of the indemnifying party, its officers, employees, and/or agents.

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.

After the indemnifying party has begun to provide legal defense for the indemnified party, the indemnifying party shall not 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.

INDEPENDENT CONTRACTOR

An independent contractor is a natural person, firm or corporation who agrees to perform services for a fixed price according to his/her or its own methods and without subjection to the supervision or control of the other contracting party, except as to the results of the work, and not as to the means by which the services are accomplished.

It is mutually agreed that **CONTRACTOR** 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. **CONTRACTOR** is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract.

Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for CITY whatsoever with respect to the indebtedness, liabilities, and obligations of CONTRACTOR or any other party.

CONTRACTOR 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, **CONTRACTOR'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.

Neither CONTRACTOR nor its employees, agents, or representatives shall be considered employees, agents, or representatives of CITY.

COMPLIANCE WITH LEGAL OBLIGATIONS

Pursuant to NRS 338.153, a public body shall include in each contract for a public work a clause requiring each Contractor, subcontractor and other person who provide labor, equipment, materials, supplies and services for the public work to comply with the requirements of all applicable state and local laws, including without limitation, any applicable licensing requirements and requirements for the payment of sales and use taxes on equipment, materials and supplies provided for the public work.

CONTRACTOR shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by **CONTRACTOR** to provide the goods or services of this Contract. **CONTRACTOR** will be responsible to pay all taxes, assessments, fees, premiums, permits, and license required by law. Real property and personal property taxes are the responsibility of **CONTRACTOR** in accordance with NRS 361.157 and NRS 361.159. **CONTRACTOR** agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. **OWNER** may set-off against consideration due any delinquent government obligations.

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.

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 does not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

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

CITY OWNERSHIP OF PROPRIETARY INFORMATION

Any files, reports, histories, studies, test, manuals, instruction, 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 CONTRACTOR (or its subcontractors) in performance of its obligations under this Contract shall be exclusive property of the City of Carson City, Nevada, and such materials shall be delivered into OWNER'S possession by CONTRACTOR upon completion, termination, or cancellation of this Contract. CONTRACTOR shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of CONTRACTOR'S obligations under this Contract without the prior written consent of OWNER. Notwithstanding the foregoing, OWNER shall have no proprietary interest in any materials license for use by OWNER that are subject to patent, trademark or copyright protection.

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

CONTRACTOR'S drawings, specification and other documents shall not be used by **OWNER** or others without expressed permission of **CONTRACTOR**.

PUBLIC RECORDS

Pursuant to NRS 239.010, information or documents received from **CONTRACTOR** may be opened to public inspection and copying. **OWER** will have duty to disclose unless a particular record is made confidential by law or a common law balancing of interests. **CONTRACTOR** may clearly label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 332,061, provided that **CONTRACTOR** thereby agrees to indemnify and defend **OWNER** for honoring such a designation. The failure to so label any document that is released by **OWNER** shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

CONFIDENTIALITY

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

FEDERAL FUNDING

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

CONTRACTOR certified, by signing this Contract, that neither it not 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 if 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.

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.

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

LOBBYING

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:

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

Any federal, state, county or local legislator, commission member, counsel member, board member, or any other elected official; or

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

PROPER AUTHORITY

The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. **CONTRACTOR** acknowledges that this Contract is effective only after approval by the Carson City Board of Supervisors and only for the period of time specified in this Contact. Any services performed by **CONTRACTOR** before this Contract is effective or after it ceases to be effective are performed at the sole risk of **CONTRACTOR**.

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 principal of conflict-of-law that would require the application of the law any other jurisdiction. **CONTRACTOR** consents and agrees to the jurisdiction of the courts of the State of Nevada located in Carson City, Nevada for enforcement of this Contract.

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 or the Regional Transportation Commission.

AND ALL SUPPLEMENTAL AGREEMENTS AMENDING OR EXTENDING THE WORK CONTEMPLATED.

ACKNOWLEDGMENT AND EXECUTION:

In witness whereof, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

CARSON CITY

Finance Director

Attn: Sandy Scott, Purchasing and

Contracts Coordinator

201 North Carson Street, Suite 3 Carson City, Nevada 89701

Telephone: 775-887-2133 ext 30137

Fax: 775-887-2107

SScott@ci.carson-city.nv.us

By:

CITY'S LEGAL COUNSEL

as to its legal form.

Neil A. Rombardo, District Attorney

I have reviewed this Contract and approve

Dated

Dated

CITY'S ORIGINATING DEPARTMENT

BY: Andrew Burnham, Director Carson City Public Works Department

3505 Butti Way

Carson City, Nevada 89701

Telephone: 775-887-2355 Ext. 30367

Fax: 775-887-2164

ABurnham@ci.carson-city.nv.us

_,

Dated

Brian Smith deposes and says: That he is Contractor or authorized agent of Contractor; the he has read the foregoing Contractor; and that he understands the terms, conditions and requirements thereof.

CONTRACTOR

	FIRM: Horizon Construction, Inc. CARSON CITY BUSINESS LICENSE #: 09-25113 NEVADA CONTRACTOR'S LICENSE #: 44837, 44838 Address: PO Pox 1696 City: Carson City State: Nevada Zip Code: 89702 Telephone: 775-885-7700/Fax: 775-267-4881 E-mail Address: horizon@clearwire.net
	B-Smith
	(Signature of Contractor) DATED 8/12/09
	of Mevada) ss
Signed	and sworn (or, affirmed before me on this 12 day of flugust, 2009, by
9	Signature of Notary)
•	(Notary Stamp) JANET BUSSE NOTARY PUBLIC STATE OF NEVADA No.05-94721-5 My Appt. Exp. Feb. 4, 2013

CONTRACT ACCEPTANCE AND EXECUTION:

The Board of Supervisors for Carson City, Nevada at their publicly noticed meeting of August 20, 2009 approved the acceptance of the attached contract hereinbefore identified as **CONTRACT No. 0910-046** and titled **"Morgan Mill Road River Access Area Project"**. 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 20th day of August, 2009.

ATTEST:

ALAN GLOVER, CLERK-RECORDER

DATED this 20th day of August, 2009.