Item G-4

CARSON CITY REGIONAL TRANSPORTATION COMMISSION
REQUEST FOR COMMISSION ACTION

Date Submitted: February 1, 2010 **Meeting Date:** February 10, 2010

To: Regional Transportation Commission

From: Purchasing and Contracts

Subject Title: Action to determine that Contract No. 0910-150 is a contract for the services of a professional engineer, professional land surveyor or registered architect; that the selection was made on the basis of the competence and qualifications of the engineer, land surveyor or architect for the type of services to be performed and not on the basis of competitive fees; and therefore not suitable for public bidding pursuant to NRS 625.530; and to approve Contract No. 0910-150 with Bowling Mamola Group to provide Roop Street-Phase 2 Construction Management Services through November 26, 2010 for a not to exceed cost of $623,244.00 to be funded from the RTC Roop Street Phase 2 as provided in FY 2009/2010.

Staff Summary: This contract is to provide construction administration services for the Roop Street –Phase 2 Project. The firm (Bowling Mamola Group) was selected via RFP #0809-233 – Request for Proposals for Construction Management and Inspection Services.

Type of Action Requested: (check one)

(☐) None – Information Only
(☒) Formal Action/Motion

Recommended Commission Action: I move to determine that Contract No. 0910-150 Is a contract for the services of a professional engineer, that the selection was made on the basis of the competence and qualifications of the engineer, for the type of services to be performed and not on the basis of competitive fees; and therefore not suitable for public bidding pursuant to NRS 625.530; and to approve Contract No. 0910-150 with Bowling Mamola Group to provide Roop Street-Phase 2 Construction Management Services through November 26, 2010 for a not to exceed cost of $623,244.00 to be funded from the RTC Roop Street Phase 2 Project account as provided in FY 2009-2010.

Explanation for Recommended Commission Action: Pursuant to **NRS 625.530**, staff is requesting the Regional Transportation Commission declare that this contract is not adapted to award by competitive bidding.

NRS 625.530 Restrictions upon public works. Except as otherwise provided in NRS 338.1711 to 338.1727, inclusive, and 408.3875 to 408.3887, inclusive:

1. The State of Nevada or any of its political subdivisions, including a county, city or town, shall not engage in any public work requiring the practice of professional engineering or land surveying, unless the maps, plans, specifications, reports and estimates have been prepared by, and the work executed under the supervision of, a professional engineer, professional land surveyor or registered architect.

2. The provisions of this section do not:

(a) Apply to any public work wherein the expenditure for the complete project of which the work is a part does not exceed $35,000.

(b) Include any maintenance work undertaken by the State of Nevada or its political subdivisions.

(c) Authorize a professional engineer, registered architect or professional land surveyor to practice in violation of any of the provisions of chapter 623 of NRS or this chapter.

(d) Require the services of an architect registered pursuant to the provisions of chapter 623 of NRS for the erection of buildings or structures manufactured in an industrial plant, if those buildings or structures meet the requirements of local building codes of the jurisdiction in which they are being erected.

3. The selection of a professional engineer, professional land surveyor or registered architect to perform services pursuant to subsection 1 must be made on the basis of the competence and qualifications of the engineer, land surveyor or architect for the type of services to be performed and not on the basis of competitive fees. If, after selection of the engineer, land surveyor or architect, an agreement upon a fair and reasonable fee cannot be reached with him, the public agency may terminate negotiations and select another engineer, land surveyor or architect.

[12a:198:1919; added 1947, 797; A 1949, 639; 1943 NCL § 2875.06a]—(NRS A 1967, 953; 1971, 774; 1973, 1700; 1975, 208; 1977, 320; 1983, 807; 1989, 788; 1997, 1055; 1999, 3489; 2001, 2022; 2003, 119)

Applicable Statute, Code, Rule or Policy: NRS 625.530

Fiscal Impact: $623,244

Explanation of Impact: Below referenced account will be decreased by $623,244.

Funding Source: RTC Roop Street-Phase 2 Account 250-3035-431-7841 as provided in FY 2009/2010

Alternatives: Not Award the contract and provide other direction.

Supporting Material: Contract No. 0910-150

Prepared By: Sandy Scott, Purchasing & Contracts Coordinator

Commission Action Taken:

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

_____ (Vote Recorded By)

PROFESSIONAL SERVICES AGREEMENT RELATED TO CONSTRUCTION PROJECTS (Architects, Engineers, and Land Surveyor's)
Contract No. 0910-150
Roop Street-Phase 2 Construction Management Services

THIS CONTRACT, made and entered into this 10th day of February, 2010, by and between the City and County of Carson City, a political subdivision of the State of Nevada, hereinafter referred to as the **"CITY"**, and Bowling Mamola Group hereinafter referred to as the **"CONSULTANT"**.

W I T N E S S E T H :

WHEREAS, the Purchasing and Contracts Coordinator for the City and County of Carson City is authorized, pursuant to Nevada Revised Statutes Chapter 332 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 that the services of **CONSULTANT** for **CONTRACT No. 0910-150 Roop Street-Phase 2 Construction Management Services** are both necessary and in the best interests of **CITY**; and

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

1 **REQUIRED APPROVAL:**

1.1 This Contract shall not become effective until and unless approved by the Carson City Regional Transportation Commission.

2 **CONTRACT TERM:**

2.1 This Contract shall be effective from February 10, 2010, subject to Carson City Regional Transportation Commissions'' approval (anticipated to be February 10, 2010) to November 26, 2010, with the option to automatically renew for one year, unless sooner terminated by either party as specified in **Section 7 Contract Termination**.

3 **NOTICE:**

3.1 Unless otherwise specified, termination shall not be effective until thirty (30) 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 Only	
CCBL expires	_____
GL expires	_____
AL expires	_____
PL expires	_____
WC expires	_____

3.1.1 Notice to **CONSULTANT** shall be addressed to:

Randy Bowling, P.E./CEO
Bowling Mamola Group
180 W. Huffaker Lane, Suite 302
Reno, Nevada 89511
775-825-2000/FAX 775-825-2020
randy@bowlingmamola.com

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

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

4 **SCOPE OF WORK:**

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

4.2 **CONSULTANT** represents that it is duly licensed by Carson City for the purposes of performing the **SERVICES**.

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

4.4 **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**.

4.5 **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**.

4.6 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, he shall bear all the costs arising therefrom.

4.7 **Special Terms and Conditions for Engineers, Architects, and Land Surveyors:**

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

4.7.1.1 The drawing, 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.

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

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

4.7.2 Cost Accounting and Audits:

4.7.2.1 If required by **CITY, CONSULTANT** agrees to make available to **CITY** within 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.

4.8 **CITY Responsibilities:**

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

4.8.2 **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**.

4.8.3 **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**.

4.8.4 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**.

5 **CONSIDERATION:**

5.1 The parties agree that **CONSULTANT** will provide the **SERVICES** specified in **Section 4 Scope of Work** and **CITY** agrees to pay **CONSULTANT** the **CONTRACT SUM** based upon time and materials and the attached fee schedule for a not to exceed maximum amount of Six Hundred Twenty Three Thousand, Two Hundred Forty Four Dollars and No Cents ($623,244.00).

5.2 **CONTRACT SUM** represents full and adequate compensation for the completed **WORK**, 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 **WORK**.

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

5.4 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 latter date.

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

6 **TIMELINESS OF BILLING SUBMISSION:**

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

7 CONTRACT TERMINATION:

7.1 Termination Without Cause:

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.

7.2 Termination for Nonappropriation:

7.2.1 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 **CONSULTANT** 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.

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 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 required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or

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

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

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

7.4.1 Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in **Section 3 Notice**, and the subsequent failure of the defaulting party within fifteen (15) calendar days of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.

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 paragraph 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;

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

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**;

7.5.1.4 **CONSULTANT** shall preserve, protect, and promptly deliver into **CITY** possession all proprietary information in accordance with **Section 23 City Ownership of Proprietary Information**.

8 REMEDIES:

8.1 Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. 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:

9.1 **CITY** will not waive and intends to assert available Nevada Revised Statutes 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 **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:

10.1 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 As required by AB 483, and NRS 338.155, **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 attorneys' fees, to the extent that such liabilities, damages, losses, claims, actions or proceedings are caused by the negligence, errors, omissions, recklessness or intentional misconduct of the **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 paragraph.

11.2 Except as otherwise provided in Subsection 11.4 below, the indemnifying party shall not be obligated to provide a legal defense to the indemnified party, nor reimburse the indemnified party for the same, for any period occurring before the indemnified party provides written notice of the pending claim(s) or cause(s) of action to the indemnifying party, along with:

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

11.2.2 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.

11.3 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.

11.4 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 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 other contracting party, except as to the results of the work, 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** 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:

13.1 **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.

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

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

13.4 **Insurance Coverage:**

13.4.1 **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 latter of:

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

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

13.4.2 Any insurance or self-insurance available to **CITY** 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.

13.5 **General Requirements:**

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

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

13.5.3 **Waiver of Subrogation**: Each liability insurance policy shall provide for a waiver of subrogation as to additional insureds.

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

13.5.5 **Deductibles and Self-Insured Retentions**: Insurance maintained by **CONSULTANT** shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by **CITY**. Such approval shall not relieve **CONSULTANT** from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed $5,000 per occurrence, unless otherwise approved by **CITY**.

13.5.6 **Policy Cancellation**: Except for ten (10) calendar days notice for non-payment of premium, each insurance policy shall be endorsed to state that; without thirty (30) calendar days prior written notice to Carson City Purchasing and Contracts, the policy shall not be canceled, non-renewed or coverage and /or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mail to Carson City Purchasing and Contracts, 201 N. Carson Street Suite 3, Carson City, NV 89701.

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

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

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

13.5.8.2 **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 13.5.2.

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

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

14 **COMMERCIAL GENERAL LIABILITY INSURANCE:**

14.1 Minimum Limits required:

14.1.1 Two Million Dollars ($2,000,000.00) - General Aggregate

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

14.1.3 One Million Dollars ($1,000,000.00) - Each Occurrence

14.2 Coverage shall be on an occurrence basis and shall be at least as broad as ISO 1996 form CG 00 01 (or a substitute form providing equivalent coverage); and shall cover liability arising from premises, operations, independent contractors, completed operations, personal

injury, products, civil lawsuits, Title VII actions and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

15 **BUSINESS AUTOMOBILE LIABILITY INSURANCE:**

15.1 Minimum Limit required:

15.1.1 One Million Dollars ($1,000,000) per occurrence for bodily injury and property damage

15.2 Coverage shall be for "any auto", including owned, non-owned and hired vehicles. The policy shall be written on ISO form CA 00 01 or a substitute providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

16 **PROFESSIONAL LIABILITY INSURANCE:**

16.1 Minimum Limit required: One Million Dollars ($1,000,000.00)

16.2 Retroactive date: Prior to commencement of the performance of this Contract

16.3 Discovery period: Three (3) years after termination date of this Contract.

16.4 A certified copy of this policy may be required.

17 **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:**

17.1 **CONSULTANT** shall provide workers' compensation insurance as required by Nevada Revised Statutes Chapters 616A through 616D inclusive and Employer's Liability insurance with a minimum limit of $500,000 each employee per accident for bodily injury by accident or disease.

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

18 **BUSINESS LICENSE:**

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

18.2 The Carson City business license shall continue in force until the latter 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.

19 COMPLIANCE WITH LEGAL OBLIGATIONS:

19.1 **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 of this Contract. **CONSULTANT** will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of **CONSULTANT** in accordance with Nevada Revised Statutes 361.157 and 361.159. **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.

20 WAIVER OF BREACH:

20.1 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.

21 SEVERABILITY:

21.1 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.

22 ASSIGNMENT/DELEGATION:

22.1 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**.

23 CITY OWNERSHIP OF PROPRIETARY INFORMATION:

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

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

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

24 PUBLIC RECORDS:

24.1 Pursuant to Nevada Revised Statute 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 Nevada Revised Statute 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.

25 CONFIDENTIALITY:

25.1 **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.

26 FEDERAL FUNDING:

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

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

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

26.1.3 **CONSULTANT** and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions).

26.2 Nondiscrimination Assurance - Each federally funded contract the CAMPO and/or RTC signs with a **CONSULTANT**, and each subcontract the prime **CONSULTANT** signs with a subcontractor, will include the following statement:

26.2.1 **CONSULTANT**, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. **CONSULTANT** shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted Contracts. Failure by **CONSULTANT** to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the CAMPO and/or RTC deems appropriate.

26.3 Prompt Payment Policy and Provisions - Each federally funded contract the CAMPO and/or RTC signs with a **CONSULTANT** will include the following provision:

26.3.1 The prime **CONSULTANT** must pay subcontractors for satisfactory performance of their contracts no later than thirty (30) calendar days from the receipt of payment made to the prime **CONSULTANT** by the CAMPO and/or RTC. Prompt return of retainage payments from the prime **CONSULTANT** to the subcontractor will be made within thirty (30) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment among the parties may take place only for good cause and with the CAMPO and/or RTC's prior written approval. If the prime **CONSULTANT** determines the work of the subcontractor to be unsatisfactory, it must notify the CAMPO and/or RTC's project manager

and DBE Liaison Officer immediately in writing and state the reasons. Failure by the prime **CONSULTANT** to comply with this requirement will be construed to be a breach of contract and may be subject to sanctions as specified in this Contract or any other options listed in 49 CFR Section 26.29.

27 LOBBYING:

27.1 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:

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

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

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

28 GENERAL WARRANTY:

28.1 **CONSULTANT** warrants that all services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications as set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.

29 PROPER AUTHORITY:

29.1 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 are performed at the sole risk of **CONSULTANT**.

30 ALTERNATIVE DUSPUTE RESOLUTION:

30.1 Pursuant to NRS 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 cannot otherwise be settled. Therefore, in the event that a dispute arising between **CITY** and **CONTRACTOR** cannot otherwise be settled, **CITY** and **CONTRACTOR** agree that, before judicial action may be initiated, **CITY** and **CONTRACTOR** will submit the dispute to non-binding mediation. **CITY** 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 **CITY**. The person selected as mediator shall determine the rules governing the mediation.

31 **GOVERNING LAW; JURISDICTION:**

31.1 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.

32 **ENTIRE CONTRACT AND MODIFICATION:**

32.1 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 Regional Transportation Commission.

33 **ACKNOWLEDGMENT AND EXECUTION:**

33.1 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 & 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: _____
Sandy Scott

DATED _____.

CITY'S LEGAL COUNSEL
Neil A. Rombardo, District Attorney

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

By: _____
Deputy District Attorney

DATED _____.

CITY'S ORIGINATING DEPARTMENT
BY: Andrew Burnham, Director
Carson City Public Works Department
3505 Butti Way
Carson City, NV 89701
Telephone: 775-887-2355
Fax: 775-887-2112
ABurnham@ci.carson-city.nv.us

By: _____
Andy Burnham

DATED _____

PROFESSIONAL SERVICES AGREEMENT RELATED TO CONSTRUCTION PROJECTS (Architects, Engineers, and Land Surveyor's)
Contract No. 0910-150
Roop Street-Phase 2 Construction Management Services

Randy Bowling, P.E. deposes and says: That he is the **CONSULTANT** or authorized agent of the **CONSULTANT;** that he has read the foregoing Contract; and that he understands the terms, conditions, and requirements thereof.

CONSULTANT
BY: Randy Bowling, P.E.
TITLE: CEO
FIRM: Bowling Mamola Group
CARSON CITY BUSINESS LICENSE #: 09-15965
Address: 180 W. Huffaker Lane, Suite 302
City: Reno **State:** Nevada **Zip Code:** 89511
Telephone: 775-825-2000/ **Fax #**: 775-825-2020
E-mail Address: randy@bowlingmamola.com

_____
(Signature of **CONSULTANT**)

DATED _____.

STATE OF _____)
) ss
County of _____)

Signed and sworn (or affirmed) before me on this _____ day of _____, 2010, by _____.

_____
(Signature of Notary)

(Notary Stamp)

PROFESSIONAL SERVICES AGREEMENT RELATED TO CONSTRUCTION PROJECTS (Architects, Engineers, and Land Surveyor's)
Contract No. 0910-150
Roop Street-Phase 2 Construction Management Services

SAMPLE INVOICE

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

Vendor Number: _____
Bowling Mamola Group
180 W. Huffaker Lane, Suite 302
Reno, Nevada 89511

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

PROFESSIONAL SERVICES AGREEMENT RELATED TO CONSTRUCTION PROJECTS (Architects, Engineers, and Land Surveyor's)
Contract No. 0910-150
Roop Street-Phase 2 Construction Management Services

CONTRACT ACCEPTANCE AND EXECUTION:

The Carson City Regional Transportation Commission at their publicly noticed meeting of February 10, 2010 approved the acceptance of **CONTRACT No. 0910-150**. Further, the Carson City Regional Transportation Commission authorizes the Chairperson to set her hand to this document and record her signature for the execution of this contract in accordance with the action taken.

CARSON CITY, NEVADA

_____
SHELLY ALDEAN, CHAIRPERSON

DATED this 10th day of February, 2010.

ATTEST:

_____
ALAN GLOVER, CLERK-RECORDER

DATED this 10th day of February, 2010.

Bowling Mamola Group
bowlingmamola.com

January 20, 2010

Darren Schulz, P.E.
Deputy Public Works Director
3505 Butti Way
Carson City, NV 89701

Subject: Roop Street-Phase II Construction Management Services

Dear Darren:

As you requested, Bowling Mamola Group is providing a description of the scope of services and budget for the Roop Street Widening-Phase II construction project. This letter transmits the scope and budget for construction management, inspection, and testing services. The scope and budget are based on the contract requirements, time, and limitations contained in the current project specifications, and subsequent discussions with you. We look forward to receiving Carson City's professional services agreement.

Sincerely,

Patty Mamola, P.E.
BOWLING MAMOLA GROUP

RCB: slo

Enclosure: Project Scope and Budget

180 W. Huffaker Lane, Suite 302 • Reno, NV 89511 • P.O. Box 12926 • Reno, NV 89510 • p (775) 825-2000 • f (775) 825-2020

Bowling Mamola Group
bowlingmamola.com

Bowling Mamola Group

Roop Street-Phase II Scope of Services

Construction Administration

- Preconstruction Conference – Prepare agenda, facilitate preconstruction conference, and prepare and distribute minutes
- Construction Schedule – Review contractor's schedule, provide comments, and approve final schedule
- Contractor Submittals – Review and approve contractor submittals
- Dispute Resolution – Resolve disputes at lowest possible level, elevate to Carson City Deputy Public Works Director as necessary
- Labor Compliance – Monitor contractor's compliance with labor laws and regulations
- Construction Administration Procedures – Establish construction administration procedures for project

Quality Control Inspection and Testing

- Inspection Services – Observe and monitor the contractor's work and materials for compliance with the contract documents
- Interpretation of Contract Documents – Review plans and specifications to identify and clarify issues relating to the work; consult with designer as necessary
- Modifications – Evaluate revisions to contractor's operations to determine compliance with contract documents
- Public Relations – Serve as Carson City's representative on project-related matters with the public
- Coordination with NDOT - Serve as Carson City's representative on matters relating to NDOT

Document Control, Meetings, and Reports

- Administrative and Project Filing System – Establish administrative system that includes filing organization and procedures relating to project document control
- Photographs and Videotapes – Maintain photo and video log of project conditions prior to and during construction
- Change Order Preparation, Negotiation, and Processing – Establish system for initiating, evaluating, negotiating, and processing contract change orders
- Weekly Progress Meeting - Prepare agenda, facilitate weekly progress meetings, and prepare and distribute minutes
- Progress Payments – Prepare contractor pay requests for approval and processing by Carson City
- Traffic Control and Public Safety – Review and approve contractor's traffic control plan and monitor contractor's operations for impacts on traffic

- Visitors – Escort visitors on project
- Record Drawings – Provide notations to project drawings for inclusion in as-built drawings and review contractor's submittal for completeness
- Project Files – Establish and maintain project filing system
- Daily Diary – Prepare and maintain project personnel daily diaries
- Submittal Review – Accept and review contractor submittals
- Shop Drawing Review – Accept and review contractor shop drawing submittals
- Certification Review - Accept and review contractor certifications

Project Closeout

- Final Inspection and Punch Lists – Conduct final inspection and prepare punch list, monitor completion of punch list items
- Final Notice of Completion – Prepare Final Notice of Completion
- Project Closeout – Organize, prepare, and provide Carson City with project closeout documentation

Material Testing

- Material Testing Performed by Construction Materials Engineers (CME) – Provide materials sampling and testing in accordance with project specifications

Supplemental Services

- Supplemental Services by Written Authorization Only

Bowling Mamola Group
Roop Street Phase II Staffing Plan and Budget

Months		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Project
Hours		168	152	176	176	160	176	176	168	176	168	168	168	Hours	Totals
	Billing Rate														
Principal	*$145*	0	4	4	4	4	4	4	4	4	4	2	2	40	$5,800
Construction Manager	*$115*	40	152	176	176	160	176	176	168	176	168	168	84	1,820	$209,300
Senior Inspector	*$95*	0	76	176	176	160	176	176	168	80	24	24	0	1,236	$117,420
Junior Inspector	*$75*	0	16	88	120	120	20	20	168	176	168	168	42	1,106	$82,950
Clerical	*$60*	8	76	44	44	40	20	20	16	16	16	42	42	384	$23,040
Senior Inspector (Overtime)	*$109*	0	0	20	20	20	0	0	0	0	0	0	0	60	$6,540
Subtotal Hours		48	324	508	540	504	396	396	524	452	380	404	170	4,646	$445,050
Subtotal Cost		$5,080	$31,040	$48,960	$51,360	$47,760	$40,240	$40,240	$49,420	$42,580	$35,740	$37,010	$15,620	$445,050	
Materials Testing															$43,482
CME Project Manager	*$142*	0	0	14	14	14	14	14	14	14	14	14	0	126	$17,892
CME Senior Inspector/Tester	*$99*	0	16	176	176	160	176	176	168	76	40	16	0	1,180	$116,820
TOTALS															**$623,244**