City of Carson City Agenda Report

Date Submitted: December 7, 2012 Agenda Date Requested: December 20, 2012

Time Requested: Consent

To: Mayor and Supervisors

From: Purchasing and Contracts

Subject Title: For Possible Action: To approve Contract No. 1213-134 Pursuant to NRS 332.115(1)(b) and NRS 625.530 with Terracon Consultants, Inc., to provide Professional Services for Inspection and Testing Services for North County Booster Pump Station through January 1, 2014 for a not to exceed amount of \$55,000.00 to be funded from the Water Regional Pipeline Project Account as provided FY 2012/2013. (*Kim Belt*)

Staff Summary: This contract is to provide Inspection and Testing Services which include: Reinforced Concrete Inspection, Portland Cement Concrete testing, Structural Masonry Inspection, compressive strength testing and provide final reports of all inspections and tests.

Type of Action Requested: (check o	ne)	
() Resolution (_X) Formal Action/Motion	() Ordinance () Other (Specify)	
Does This Action Require A Business Impact Statement: () Yes (_X) No		

Recommended Board Action: I move to approve Contract No. 1213-134 Pursuant to NRS 332.115(1)(b) and NRS 625.530 with Terracon Consultants, Inc., to provide Professional Services for Inspection and Testing Services for North County Booster Pump Station through January 1, 2014 for a not to exceed amount of \$55,000.00 to be funded from the Water Regional Pipeline Project Account as provided FY 2012/2013. (Kim Belt)

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

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

Fiscal Impact: \$55,000.00

Explanation of Impact: Amount of contract.

Funding Source: Water Account- 520-3502-435-78-07	as provided in FY 2012/2013.
Alternatives: Not award contract and provide other direction	on.
Supporting Material: Contract No. 1213-134 and Exhibit	٩.
Prepared By: Kim Belt, Purchasing and Contracts Manage	
Date	: 12/11/12 : 12/11/12 : 12/11/12
Board Action Taken:	
Motion: 1) 2)	Aye/Nay
(Vote Recorded By)	

Inspection and Testing Services for North County Booster Pump Station THIS CONTRACT, made and entered into this 20th day of December, 2012, by and between Carson City, a consolidated municipality, a political subdivision of the State of Nevada, hereinafter referred to as the "CITY", and Terracon Consultants, Inc. hereinafter referred to as the "CONSULTANT".

WITNESSETH:

WHEREAS, the Purchasing and Contracts Manager 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. 1213-134 Inspection and Testing Services for North County Booster Pump Station 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 Board of Supervisors.

2 **CONTRACT TERM**:

2.1 This Contract shall be effective from December 20, 2012, subject to Carson City Board of Supervisors' approval (anticipated to be December 20, 2012) to January 1, 2014, unless sooner terminated by either party as specified in **Section 7 Contract Termination**.

For P&C Use Only		
CCBL expires		
GL expires		
AL expires		
PL expires		
WC expires		

Inspection and Testing Services for North County Booster Pump Station 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.
- 3.1.1 Notice to CONSULTANT shall be addressed to:

Thomas J. Adams, Principal Terracon Consultants, Inc. 5301 Longley Lane, Suite 157 Reno, NV 89511 775-351-2400 / FAX 775-351-2423 Email: tjadams@terracon.com

3.1.2 Notice to CITY shall be addressed to:

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

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.

Inspection and Testing Services for North County Booster Pump Station 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.

Inspection and Testing Services for North County Booster Pump Station 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 Fifty Five Thousand Dollars and No Cents (\$55,000.00).
- 5.2 **CONTRACT SUM** represents full and adequate compensation for the completed **SERVICES**, and includes the furnishing of all materials; all labor, equipment, tools, and appliances; and all expenses, direct or indirect, connected with the proper execution of the **SERVICES**.
- 5.3 **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.

Inspection and Testing Services for North County Booster Pump Station 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, 2013 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

Inspection and Testing Services for North County Booster Pump Station

- 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.

Inspection and Testing Services for North County Booster Pump Station 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.

Inspection and Testing Services for North County Booster Pump Station

- 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

Inspection and Testing Services for North County Booster Pump Station 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

Inspection and Testing Services for North County Booster Pump Station 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:

Inspection and Testing Services for North County Booster Pump Station 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:

Inspection and Testing Services for North County Booster Pump Station

- 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 <u>WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:</u>

- 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.

Inspection and Testing Services for North County Booster Pump Station
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 <u>all government obligations</u>, including, but not limited to, all taxes, assessments, fees, <u>fines</u>, <u>judgments</u>, premiums, permits, and licenses required <u>or imposed</u> by law <u>or a court</u>. 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**

Inspection and Testing Services for North County Booster Pump Station (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,

Inspection and Testing Services for North County Booster Pump Station 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).

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

Inspection and Testing Services for North County Booster Pump Station 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 DISPUTE 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 CONSULTANT cannot otherwise be settled, CITY and CONSULTANT agree that, before judicial action may be initiated, CITY and CONSULTANT will submit the dispute to non-binding mediation. CITY shall present CONSULTANT with a list of three potential mediators. CONSULTANT shall select one person to serve as the mediator from the list of potential mediators presented by CITY. The person selected as mediator shall determine the rules governing the mediation.

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 Board of Supervisors. The parties agree that each has had their respective counsel review this Contract which shall be construed as if it was jointly drafted.

Inspection and Testing Services for North County Booster Pump Station

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: Kim Belt, Purchasing and
Contracts Manager
201 North Carson Street Suite 3

Carson City, Nevada 89701 Telephone: 775-283-7137

Fax: 775-887-2107 KBelt@carson.org CITY'S LEGAL COUNSEL

Neil A. Rombardo, District Attorney

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

Kim Belt

DATED | 7/11/12 ____

Deputy District Attorney

DATED 12/11/12

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@carson.org

By:

Andy Burnham

DATED

Inspection and Testing Services for North County Booster Pump Station Thomas J. Adams 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: Thomas J. Adams, P.E. TITLE: Principal FIRM: Terracon Consultants, Inc. CARSON CITY BUSINESS LICENSE #: 12- Address: 5301 Longley Lane, Suite 157 City: Reno State: NV Zip Code: 89511 Telephone: 775-351-2400 / Fax #: 775-351-2423 E-mail Address: tjadams@terracon.com	
(Signature of CONSULTANT) DATED	
STATE OF) County of)	
Signed and sworn (or affirmed) before me on this day ofby	, 2012,
(Signature of Notary)	
(Notary Stamp)	
Page 18 of 20	

Inspection and Testing Services for North County Booster Pump Station SAMPLE INVOICE

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Inspection and Testing Services for North County Booster Pump Station **CONTRACT ACCEPTANCE AND EXECUTION:**

December 20, 2012 approved the accepta Board of Supervisors authorizes the Mayo	nevada at their publicly noticed meeting of ance of CONTRACT No. 1213-134. Further, the or of Carson City, Nevada to set his hand to this execution of this contract in accordance with the
	CARSON CITY, NEVADA
	ROBERT L. CROWELL, MAYOR
	DATED this 20 th day of December, 2012.
ATTEST:	
ALAN GLOVER, CLERK-RECORDER DATED this 20 th day of December, 2012.	



December 3, 2012

City of Carson City 3505 Butti Way Carson City, NV 89701

Attn: Mr. Rick Cooley

P: (775) 443-5352

E: Rcooley@carson.org

Re: Cost Estimate for Inspection and Testing Services

North County Booster Pump Station

North Douglas County Carson City, Nevada Proposal No. C67120020

Dear Mr. Cooley:

Terracon Consultants, Inc. (Terracon) appreciates the opportunity to submit this cost estimate to provide inspection and testing services for your upcoming project. This cost estimate presents our understanding of the project, proposed services, and the fee schedule that will apply.

A. PROJECT INFORMATION

It is our understanding that the proposed project will consist of the construction of a new booster pump station, generator pad, the detention basin and embankment. Observation and testing services will include earthwork for the building pad, detention basin and embankment, as well as Special Inspection services for structural concrete, structural masonry, and the overhead crane. This project will be subject to the North Douglas County Building Department jurisdiction. Our preparation of this proposal included the following:

Review of the structural plans prepared by Manhard Consulting Ltd., dated August 1, 2012

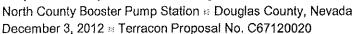
B. SCOPE OF SERVICES

The following inspections and tests will be provided in accordance with the Project Plans and Specifications, and the requirements of Section 1704 of the International Building Code (IBC).

Grading – A technician will be assigned to the project on a part-time basis to observe grading operations, obtain appropriate samples for laboratory tests, and perform in-place field density testing. The technician will observe the Contractor's compliance to the geotechnical recommendations

Terracon Consultants, Inc. 750 Pilot Road, Suite F Las Vegas, Nevada 89119
P [702] 597 9393 F [702] 597 9009 terracon.com

Proposal for Inspection and Testing Services





- Reinforced Concrete Inspection A certified Special Inspector will provide inspections of reinforcing steel placement, and testing of Portland Cement Concrete during placement. Representative test specimens will be cast at the specified frequency and tested for compressive strength.
- Structural Masonry Inspection A certified Masonry Inspector will observe the placement of masonry units, reinforcing steel, and grout spaces and provide continuous inspection during grouting. Masonry prisms, grout and mortar specimens will be cast at the frequencies required by code and the project plans, and tested for compressive strength.
- Project Management A project manager will be assigned to the project to review the daily activity and assist in scheduling the work. All field and laboratory tests will be reviewed prior to submittal. The project manager will be responsible for maintaining the project budget and will oversee the preparation of the final report.
- Final Reports Upon completion of the work, a final summary report will be prepared and submitted to the North Douglas County Building Department. The report will include the daily inspection reports, field tests and a summary of all of the laboratory tests performed. Documentation of corrective action in response to non-compliant reports will be included. The project manager will work closely with the North Douglas County Building Department to secure the report acceptance.
- Additional Services If additional work, beyond the scope and fees of this proposal is required, a short Supplement to the Agreement form can be issued to identify the additional work to be performed and the associated fees.
- Scheduling Work Field services will be provided on an on-call basis when scheduled by your authorized representative. A minimum of 24 hours notice is required to schedule our services, although we will attempt to meet requests in a short time frame. Terracon will only provide testing when called by your onsite representative.

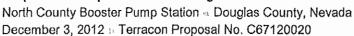
C. COMPENSATION

Based on the project information available for our review, our estimated budget to perform the proposed scope of services is \$ 55,000.00. Fees for services provided will be based on the unit rates included in the attached Standard Fee Schedule. Please note that this is only a budget estimate and not a not-to-exceed price.

Many factors, including those out of our control such as weather, the contractor's schedule, and how often we are called to the site to test, will dictate the final fee for our services. We will not exceed our budget amount unless authorized by you.

A 3-hour minimum charge for personnel and equipment is applicable to all trips made for the performance of testing, inspection or consulting services. The minimum charge is not applicable for trips to the project site for sample pick up only. All labor, equipment and transportation

Proposal for Inspection and Testing Services





Thomas J. Adams, P.E.

Principal

charges are billed on a portal to portal basis from our office. Invoices will be issued monthly for services actually performed and/or as authorized or requested by you or your designated representative.

D. AUTHORIZATION

This proposal may be accepted by executing the attached Agreement for Services and returning the executed copy along with this proposal to Terracon. This Agreement, including the limitations it contains, shall constitute the exclusive terms, conditions and services to be performed for this project. Nevada's Administrative Code Chapter 625 requires a written contract before providing professional services. Terracon's total fee is due within thirty days following receipt of invoice. This proposal is valid only if authorized within sixty days from the listed proposal date.

We appreciate the opportunity to provide this proposal and look forward to working with you. Please do not hesitate to call if you have any questions or comments regarding this proposal.

Sincerely,

TERRACON CONSULTANTS, INC.

Fintan Gaffney

Project Professional

Attachments: 2012 Standard Fee Schedule