

Item # 44A

**CARSON CITY, NEVADA
REQUEST FOR BOARD ACTION**

Date Submitted: December 12, 2006

Agenda Date Requested: December 21, 2006

Time Requested: Consent Agenda

To: Mayor and Supervisors

From: Public Works - Contracts Division

Subject Title: Action to accept Public Works recommendation on the "**Biddability and Constructability Review of the Wastewater Treatment Plant Expansion**" project, Contract# 2006-090, and authorize Public Works to issue payments to Harris and Associates, 1817 Moody Street, Suite 30, Carson City, Nevada, 89706, in the amount of \$76,200 as provided for in Fiscal Year 2006/2007 from the WWTP Upgrade Phase 1A fund.

Staff Summary: This contract provides for a peer review of the plans and specifications for the Wastewater Treatment Plant Expansion Project which is currently estimated to cost upwards of \$19 million dollars. The review provides for evaluation of the plans and specifications to eliminate potential problems and to clarify issues with the complex project. It is a process recommended by the EPA to reduce overall costs and reduce exposure for construction claims.

Type of Action Requested: (Check One)

Resolution

Ordinance

(**) Formal Action/motion

Other (Specify)

Does this Action Require a Business Impact Statement: Yes No

Recommended Board Action: I move to accept Public Works recommendation on the "**Biddability and Constructability Review of the Wastewater Treatment Plant Expansion**" project, Contract# 2006-090, and authorize Public Works to issue payments to Harris and Associates, 1817 Moody Street, Suite 30, Carson City, Nevada, 89706, in the amount of \$76,200 as provided for in Fiscal Year 2006/2007 from the WWTP Upgrade Phase 1A fund.

Explanation for Recommended Board Action: This is a professional services contract. This consultant was selected using the guidelines of NRS as indicated below. This contract provides for a peer review of the plans and specifications for the Wastewater Treatment Plant Expansion Project which is currently estimated to cost upwards of \$19 million dollars. The review provides for evaluation of the plans and specifications to eliminate potential problems and to clarify issues with the complex project. It is a process recommended by the EPA to reduce overall costs and reduce exposure for construction claims.

Project Estimate: \$76,200

Project Budget: \$76,200

Applicable Statute, Code, Policy, Rule or Regulation: Architects, Engineers and Surveyors are considered professional services contracts pursuant to the requirements of N.R.S., Chapters 332 and 625, therefore, a formal bidding process is not required, however, a Statement of Qualifications process was used to select this consultant. Harris & Associates was selected as the one of the firms best qualified for this project.

Fiscal Impact: Not to exceed \$76,200.

Funding Source: WWTP Upgrade Phase IA, as Provided for in FY 2006/2007

Explanation of Impact: If approved the above referenced account could be decreased by \$76,200.

PROFESSIONAL SERVICES AGREEMENT RELATED TO CONSTRUCTION PROJECTS

THIS AGREEMENT, made and entered into this 21st day of December, 2006, 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 Harris & Associates, a qualified firm, licensed in the State of Nevada and Carson City, with an office located at 1817 Moody Street, Suite 30, Carson City, Nevada, 89706, hereinafter referred to as the "**CONSULTANT**".

WITNESSETH:

WHEREAS, the Contracts Division for the City and County of Carson City is authorized to approve and accept the Agreement as set forth in and by the following provisions; and

WHEREAS, no contract or agreement concerning the duties, responsibilities, and/or scope of work by the **CONSULTANT** presently exists; and

WHEREAS, the **CITY** desires to employ the services of the **CONSULTANT** for the intended work of hereinafter referred to as "**CONTRACT #2006-090**", and titled "**Biddability and Constructability Review of the Wastewater Treatment Plant Expansion**"; and

WHEREAS, the **CONSULTANT** shall be compensated for all services rendered as herein agreed.

NOW, THEREFORE, in consideration of the premises, mutual promises, covenants and undertakings hereinafter set forth, the parties agree as follows:

ARTICLE 1

1 SCOPE OF WORK:

1.1 Description of Work:

1.1.1 See attached proposal from Consultant dated November 30, 2006.

1.2 The **CONSULTANT**, as promptly and as economically as practicable, shall perform the services as described in the *Description of Work*.

1.3 This agreement represents the entire understanding between the parties. Any amendments to this Agreement shall be agreed upon in writing between the **CITY** and **CONSULTANT**.

PROFESSIONAL SERVICES AGREEMENT RELATED TO CONSTRUCTION PROJECTS

ARTICLE 2

2 TIME OF COMPLETION:

- 2.1 **CONSULTANT** shall complete the **Scope of Work** on or before January 30, 2007, however, this contract continues as long as funding exists to continue. The contract may be terminated after this date by either party giving five (5) days written notice to terminate the contract.
- 2.2 If, however, the **CONSULTANT** is delayed in the performance or completion of the work under this Agreement by laborstrikes, lock-outs, fire, unavoidable casualties, or other causes beyond the control of the **CONSULTANT** and without his fault or negligence, then the time for the performance or completion of said work may be extended for a reasonable period to allow therefor.

ARTICLE 3

3 COMPENSATION:

- 3.1 **CITY** agrees to pay the **CONSULTANT** upon performance of the work described in **Scope of Work**.
- 3.2 **CITY** shall pay **CONSULTANT** compensation based upon time and materials not to exceed a maximum amount of \$76,200 hereinafter referred to as the **CONTRACT SUM**.
- 3.3 The compensation named herein is for the completed work, and includes the furnishing of all materials, and all labor, equipment, tools, and appliances, and all expenses, direct or indirect, connected with the proper execution of the work.
- 3.4 **CITY** agrees to make payments within thirty (30) days after acceptance of the completed work or from the date the correct invoice is received by the **Contact Person**, whichever is the latter date. Payment is deemed to be made on the date payment is mailed to the **CONSULTANT**.
- 3.5 The **CITY** reasonably believes that funds can be obtained sufficiently to make all payments during the term of this Agreement. If the **CITY** does not allocate funds to continue the function performed by the **CONSULTANT** obtained under this Agreement, this Agreement shall be terminated when appropriated funds expire.
- 3.6 None of the sums due or to become due, nor any of the work to be performed under this Agreement shall be assigned, nor shall the **CONSULTANT** subcontract any substantial portion of this Agreement without the **CITY'S** prior written consent.

PROFESSIONAL SERVICES AGREEMENT RELATED TO CONSTRUCTION PROJECTS

ARTICLE 4

4 PERMITS AND REGULATIONS:

- 4.1 Before commencing with the performance of any work under this Agreement, the **CONSULTANT** shall obtain all necessary permits and licenses as may be necessary.
- 4.2 Before and during the progress of work under this Agreement, the **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 Agreement.
- 4.3 If the **CONSULTANT** performs any work that is contrary to any such law, ordinance, rule or regulation, he shall bear all the costs arising therefrom.
- 4.4 **CONSULTANT** agrees to obtain a Carson City Business License and provide a copy of same to Carson City Public Works - Contracts Division prior to commencing work.

ARTICLE 5

5 CITY'S RESPONSIBILITIES:

- 5.1 The **CITY** shall provide requested information to the **CONSULTANT** in a timely manner.
- 5.2 The **CITY** shall designate three (3) representatives who are authorized to act on the **CITY'S** behalf with respect to the Project. These authorized representatives shall render decisions on documents submitted by the **CONSULTANT** in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the services.
 - 5.2.1 Contract Administrator:
Juanita Smith, Management Assistant I
Carson City Public Works - Contracts Division
3505 Butti Way
Carson City, NV 89701
775-887-2355 x1100 / FAX 887-2164
 - 5.2.2 Project Manager:
Ken Arnold, Public Works Operations Manager
Carson City Public Works
3505 Butti Way
Carson City, NV 89701
775-887-2355 x1015 / FAX 887-2164

PROFESSIONAL SERVICES AGREEMENT RELATED TO CONSTRUCTION PROJECTS

- 5.2.3 **Detailed Invoices using the City's format shall be mailed to:**
Karen White, Accounting Clerk II
Carson City Public Works - Engineering
3505 Butti Way
Carson City, NV 89701
775-887-2355 x1023 / FAX 887-2112

ARTICLE 6

6 INSURANCE:

6.1 GENERAL LIABILITY:

- 6.1.1 The **CONSULTANT** agrees, as a condition precedent to any duty of the **CITY** to make any payment under this Agreement, to furnish and maintain throughout the term of the Agreement at no cost to the **CITY**, such general liability and property damage insurance as shall protect him and any subconsultant performing work covered by the Agreement from claims for, but not limited to, bodily injury, sickness, disease, death, or property damage arising or resulting from the **CONSULTANT'S** performance, or by any subconsultant, person, firm or employee directly or indirectly employed by him.
- 6.1.2 The **CONSULTANT** agrees that the City of Carson City, 3505 Butti Way, Carson City, Nevada 89701 shall be listed as an additional insured.

6.2 PROFESSIONAL LIABILITY:

- 6.2.1 The **CONSULTANT** agrees, as a condition precedent to any duty of the **CITY** to make any payment under this Agreement, to furnish and maintain throughout the term of the Agreement at no cost to the **CITY**, errors and omissions insurance.

6.3 INDUSTRIAL INSURANCE:

- 6.3.1 The **CONSULTANT** agrees, as a condition precedent to any duty of the **CITY** to make any payment under this Agreement, to furnish and maintain throughout the term of the Agreement at no cost to the **CITY**, worker's compensation insurance as required by the provisions of Chapter 616 of the NRS.

6.4 ADDITIONAL INSURANCE REQUIREMENTS:

- 6.4.1 Upon failure to provide insurance, the **CITY** may, at its sole option, order the **CONSULTANT** to stop work, suspend the Agreement, or terminate the Agreement.
- 6.4.2 The **CONSULTANT** shall furnish to the City of Carson City, 3505 Butti Way, Carson City, Nevada 89701, the certificates of said insurances prior to commencing work.

PROFESSIONAL SERVICES AGREEMENT RELATED TO CONSTRUCTION PROJECTS

- 6.4.3 Within 24 hours of any suspension, cancellation, reduction, or termination of coverage, the **CONSULTANT** agrees to provide the **CITY** written notice of same.
- 6.4.4 In the event the **CITY** must pay any premium(s) on behalf of the **CONSULTANT**, after the execution of this Agreement, the **CONSULTANT** shall reimburse the **CITY** for all such payment(s). Said payment(s) shall be deducted from any compensation due, or about to become due the **CONSULTANT** by the **CITY**.

ARTICLE 7

7 INDEMNIFICATION:

- 7.1 This Agreement does not create an employee/employer relationship between the parties. It is the parties' intention that the **CONSULTANT** will be an independent contractor and not Carson City's employee for all purposes, including but not limited to the application of the Fair Labor Standards Act, The Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Nevada State revenue and taxation law. The **CONSULTANT** will retain sole and absolute discretion in the judgment of the manner and means of carrying out the **CONSULTANTS** activities and responsibilities hereunder. The **CONSULTANT** agrees that it is a separate and independent enterprise from the public employer, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This agreement shall not be construed as creating any joint employment relationship between the **CONSULTANT** and the City, and the City will not be liable for any obligation incurred by the **CONSULTANT**, including but not limited to unpaid minimum wages and/or overtime premiums.
- 7.2 The **CONSULTANT** hereby agrees to indemnify, hold harmless and defend, not excluding the City's right to participate, the City, its officers, agents and employees, from and against all liability, claims, actions, damages, losses and expense, including but not limited to reasonable attorneys' fees and costs arising out of any negligent or willful acts or omissions of the Consultant, its officers, agents and employees.

ARTICLE 8

8 TERMINATION:

- 8.1 Anything in this Agreement to the contrary notwithstanding, if the **CONSULTANT** should fail to make progress as to endanger performance of this Agreement in accordance with its terms, or if he should fail to make prompt payments to subconsultants for material or labor, or if he should violate any laws, ordinances or regulations, or otherwise violate any provision of this Agreement, then the **CITY** may, without prejudice to any other right or remedy, terminate this Agreement in whole or from time to time in part upon written notice and proceed to complete or cause the work to be completed.
- 8.2 The **CITY** may deduct the cost of completing the said work from payments then or thereafter due to the **CONSULTANT**, who shall pay the **CITY** any amount by which such cost of completion shall exceed the unpaid monies due or to become due to the **CONSULTANT**.

PROFESSIONAL SERVICES AGREEMENT RELATED TO CONSTRUCTION PROJECTS

- 8.3 In addition to the provisions of the preceding paragraph, the **CITY** shall have the right to terminate this Agreement without cause upon five (5) days' written notice to the **CONSULTANT**. In that event, the **CITY** shall pay to the **CONSULTANT** a proportionate amount of the **CONTRACT SUM**, as amended, based upon the percentage of the completion of the work under this Agreement and any amendment hereto.

ARTICLE 9

9 USE OF CONSULTANT'S DRAWINGS, SPECIFICATIONS & OTHER DOCUMENTS:

- 9.1 The Drawings, Specifications and other documents prepared by the **CONSULTANT** for the Project are instruments of the **CONSULTANT'S** service for use solely with respect to the Project and, unless otherwise provided, the **CONSULTANT** shall be deemed the author of these documents and shall retain all common law statutory and other reserved rights, including the copyright.
- 9.2 The **CITY** shall be permitted to retain copies, including reproducible copies, of the **CONSULTANT'S** Drawings, Specifications, and other documents for information and reference in connection with the Project.
- 9.3 The **CONSULTANT'S** Drawings, Specifications and other documents shall not be used by the **CITY** or others without expressed permission of the **CONSULTANT**.

ARTICLE 10

10 MISCELLANEOUS:

- 10.1 This Agreement shall be construed, interpreted, and the rights of the parties determined in accordance with the laws of the State of Nevada.
- 10.2 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion, or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion.
- 10.3 The **CITY** and **CONSULTANT**, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement.
- 10.4 This Agreement represents the entire and integrated agreement between the **CITY** and **CONSULTANT** and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both **CITY** and **CONSULTANT**.
- 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the **CITY** or **CONSULTANT**.

PROFESSIONAL SERVICES AGREEMENT RELATED TO CONSTRUCTION PROJECTS

- 10.6 **CONSULTANT** shall be required to maintain telephone service such that the **CITY** may contact or leave a message for the **CONSULTANT** or their designee at any time. **CONSULTANT** shall provide advance notice to the **CITY** of any change in telephone number.
- 10.7 Written notice under this Agreement, shall be deemed to have been duly served when delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if sent by registered mail to the **CONSULTANT** at the address shown on page 9, or to the **CITY** at the address shown herein.

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

Carson City Public Works - Contracts Division
C/O Juanita Smith, Management Assistant I
3505 Butti Way
Carson City, NV 89701
775-887-2355 x1100 / FAX 887-2164

- 10.8 Failure of either party to this Agreement to enforce any provision of this Agreement shall not be deemed a waiver of such provision or of subsequent failures to comply with any such provision.

ARTICLE 11

11 COST ACCOUNTING AND AUDITS:

- 11.1 If required by the **CITY**, the **CONTRACTOR** agrees to make available to the **CITY** within two (2) years after the completion of the work under this Agreement, such books, records, receipts, vouchers, or other data as may be deemed necessary by the **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 work performed under this Agreement.

PROFESSIONAL SERVICES AGREEMENT RELATED TO CONSTRUCTION PROJECTS

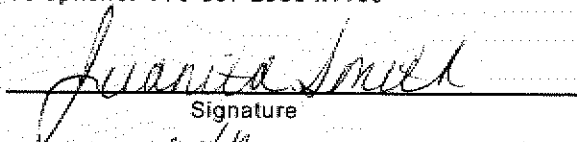
12 ACKNOWLEDGMENT AND EXECUTION:

12.1 This **AGREEMENT** entered into as of the day and year first written above.

CITY'S CONTRACTING AGENT

BY: Juanita Smith
Title: Management Assistant I

Carson City Public Works
Contracts Division
3505 Butti Way
Carson City, Nevada 89701
Telephone: 775-887-2355 x1100


Signature

DATED this 7th day of December, 2006.

CITY CONTACT PERSON

NAME: Andrew Burnham

PHONE: (775) 887-2355 x1001

CITY DEPARTMENT:

Public Works

I hereby concur with the initiation of this Agreement and I certify that the consultant will not be given authorization to begin work until this Agreement has been signed by all parties.


BY: Lawrence A. Werner

Title: City Engineer

Address: 3505 Butti Way

Carson City, NV 89701

Telephone: 775-887-2355 x1011



Signature

DATED this 22nd day of December, 2006.

I certify that the funds are available for this project.

FUNDING SOURCE: 515-0000-434-7984

BUDGET ALLOCATION: \$76,200

By: Ken Arnold, Public Works Operations Manager


Signature

**PROFESSIONAL SERVICES
AGREEMENT RELATED
TO CONSTRUCTION PROJECTS**

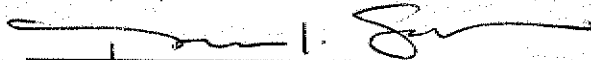
STATE OF NEVADA)
) ss
CARSON CITY)

Darren L. Schulz, deposes and says: That he is the Consultant, or authorized agent of the Consultant, for whom the aforesaid described work is to be performed by; that he has read the foregoing Agreement and understands the terms, conditions, and requirements thereof.

I further understand that I must not begin work on this project until this agreement has been signed by the Board of Supervisor's.

CONSULTANT

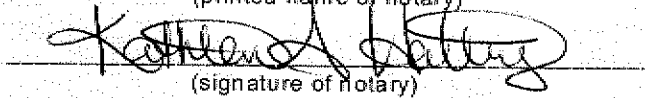
BY: Darren L. Schulz, P.E.
TITLE: Regional Manager
FIRM: Harris & Associates
BUSINESS LICENSE #:
Address: 1817 Moody Street, Suite 30
City: Carson City
State/Zip Code: Nevada, 89706
Telephone: (775) 841-2225
Fax# (775) 841-7335



(Signature of Consultant)

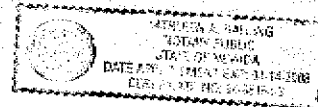
DATED this 5TH day of December, 2006.

NOTARY
NAME: Kathleen A. Halling
(printed name of notary)


(signature of notary)

L.S.

DATED this 5 day of December, 2006.



PROFESSIONAL SERVICES AGREEMENT RELATED TO CONSTRUCTION PROJECTS

13 CONTRACT ACCEPTANCE AND EXECUTION:

- 13.1 The Board of Supervisors for Carson City, Nevada at their publicly noticed meeting of December 21, 2006, approved the acceptance of the attached contract hereinbefore identified as **CONTRACT No. 2006-090** and titled "**Biddability and Constructability Review of the Wastewater Treatment Plant Expansion.**" Further, the Board of Supervisors authorizes the Mayor of Carson City, Nevada, to set his hand to this document and record his signature for the execution of this contract in accordance with the action taken.

CARSON CITY, NEVADA

MARV TEIXEIRA, MAYOR

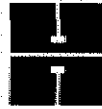
DATED this 21st day of December, 2006.

ATTEST:

ALAN GLOVER, CLERK-RECORDER

DATED this 21st day of December, 2006.

*** END OF DOCUMENT ***



Harris & Associates

Program Managers
Construction Managers
Civil Engineers

November 30, 2006

Carson City
Andrew Burnham
Public Works Director
3505 Butti Way
Carson City, NV 89701

**RE: Biddability and Constructability Review of the
Wastewater Treatment Plant Expansion**

At your request, Harris & Associates (CONSULTANT) is pleased to submit a proposed scope of services and fee agreement (AGREEMENT) for the Carson City Wastewater Treatment Plant Expansion Project – Biddability / Constructability Review.

Our scope of work is based on our conversations over the past month regarding this project and City's desire to have a B/C Review done. The following Tasks, Fees, Schedule, Insurance and Indemnification requirements are hereby included in this AGREEMENT.

TASK I - (DESIGN SERVICES)

1.1 Perform a biddability and constructability review of the 90% Plans and Specifications for the Wastewater Treatment Plant Expansion Project. Work to include but not limited to the following:

Perform technical review of the Plans and Specifications for the referenced project for the purpose of accuracy, interferences, inconsistencies or ambiguities and evaluating constructability to provide a sound construction program.

Participate in a design review workshop with the City and its Design Consultant in Las Vegas, NV the week of December 11th, 2006.

Provide a tabulation of the deficiencies and / or modifications to the contract documents.

Meet with the City and their consultant to discuss the report contents and recommendations and discuss appropriate resolution to all comments.

FEEES

As consideration for providing the services described above, TASK I, CONSULTANT shall be compensated on a time and material basis as follows:

<u>Basic Services</u>	<u>Time and Material Amount</u>
TASK I	\$76,200

Not-to-Exceed \$76,200

TIME OF PERFORMANCE

CONSULTANT shall commence work immediately following written notice to proceed (NTP) by the CITY and receipt of 90% plans and specification documents (Minimum 4 copies of documents). Work shall be completed in accordance with the schedule listed below.

<u>Task</u>	<u>Completion Date</u>
TASK 1	Within 30 working days of NTP

INSURANCE

As requested, CONSULTANT will procure and maintain, at its own expense, during the entire term of the AGREEMENT, the following insurance:

1. Nevada State Industrial Insurance System. Such insurance will protect CONSULTANT and CITY from employee claims based on Project related sickness, disease, or accident.
2. Comprehensive General Liability (bodily injury and property damage) insurance with respect to CONSULTANT's agents and vehicles assigned to the prosecution of work under this AGREEMENT in a policy limit of not less than \$1,000,000 for combined single limit per occurrence. CONSULTANT's General Liability insurance policies shall be endorsed as to include the CITY as additional insured.
3. Professional Liability insurance, for the protection from claims arising out of performance of professional services caused by a negligent act, error or omission for which the insured is legally liable; such Professional Liability insurance will provide for coverage in an amount of not less than \$1,000,000 for



each occurrence and \$2,000,000 in the aggregate for the period of time covered by this AGREEMENT.

4. CONSULTANT's Comprehensive General Liability insurance policies shall automatically include or be endorsed to cover CONSULTANT's contractual liability to the CITY to waive subrogation against the CITY, its officers, agents, servants and employees; and to provide that the CITY will be given 30 calendar days notice in writing of any cancellation of, or material change in the policies.
5. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer and licensed by the State of Nevada. All deductibles and self-insured retentions shall be fully disclosed in the Certificate of Insurance. No deductible or self-insured retention may exceed \$250,000 without written approval of the CITY.
6. Certificates indicating that such insurance is in effect shall be delivered to the CITY before work is begun under this AGREEMENT. If the CONSULTANT is underwritten on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the AGREEMENT and the Certificate of Insurance shall state the coverage is claims-made at the retroactive date. CONSULTANT shall provide the CITY annually with a Certificate of Insurance as evidence of such insurance. It is further agreed that the CONSULTANT and/or Insurance Carrier shall provide the CITY with 30-day advance written notice of policy cancellation of any insurance policy required to be maintained by CONSULTANT.

INDEMNITY

Notwithstanding any of the insurance requirements herein above set forth or limits of liability set forth therein, CONSULTANT shall defend, protect, indemnify and hold harmless the CITY, its officers, agents, and employees from any liabilities, claims, damages, losses, expenses, proceedings, suits, actions, decrees, judgments, reasonable attorney fees, and court costs which the CITY suffers, and/or its officers or employees suffer, as a result of, or arising out of, the negligent acts or omissions of the CONSULTANT, its subconsultants, or agents or anyone employed by the

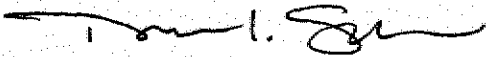


CONSULTANT of its subconsultants or agents, in fulfillment or performance of the terms, conditions or covenants of this AGREEMENT. This section shall survive the completion of the project and the termination or expiration of this AGREEMENT until such time as the applicable statutes of limitation expire.

If you have any questions or comments concerning this letter, please contact me at your convenience.

Sincerely,

Harris & Associates



Darren L. Schulz, PE
Regional Manager

