

DESIGNATED SERVICES CONTRACT

FOR CENTENNIAL HILLS COMMUNITY CENTER HVAC COMMISSIONING

THIS PRIME DESIGN SERVICES CONTRACT (this "Contract") is made and entered into by and between the CITY OF LAS VEGAS, a municipal corporation within the State of Nevada (the "City") whose address is 495 S. Main Street, Las Vegas, Nevada 89101, and HENDERSON BUILDING SOLUTIONS (the "Consultant"), a LLC, whose address is 8311 West Sunset Road, Suite 240, Las Vegas, NV. 89118.

This Contract is effective on the date signed by the City and Consultant, whichever date is later, as long as the date signed by the second party is within sixty (60) calendar days of signature by the first party (the "Effective Date").

PROJECT DESCRIPTION:

Act as the commissioning authority and provide commissioning services for the newly installed HVAC System at Centennial Hills Community Center

RECITALS

WHEREAS, the City intends to construct the CENTENNIAL HILLS COMMUNITY CENTER HVAC COMMISSIONING (the "Project"); and

WHEREAS, the City desires to retain the Consultant who will be responsible for providing the professional services more fully described herein and in the exhibits attached hereto; and

WHEREAS, the Consultant is properly licensed pursuant to NRS Chapter 623, 623A, or 625, whichever is legally required for the services to be provided within the State of Nevada, and if applicable to the Consultant's business organization, is in compliance with NRS 623.349 for architects, interior designers, and residential designers and NRS 623A.250 for landscape architects, which requires the Consultant to control and have no less than two-thirds ownership of the business organization or association be held by persons registered or licensed in the State of Nevada pursuant to NRS Chapters 623, 623A, or 625, and possesses the knowledge, skills and experience to perform the services hereinafter set forth within the time required under this Contract;

NOW, THEREFORE, in consideration of the above premises, the parties hereto agree to the following terms, conditions and covenants set forth herein:

ARTICLE 1 CONSULTANT RESPONSIBILITIES

1.0. Description of Consultant's Services.

A For the compensation set forth in Section 7, the Consultant hereby agrees to perform the basic services set forth in the Scope of Services, Exhibit "A" attached hereto and incorporated herein as a part of this Contract and, if so requested, the additional services set forth in the Compensation, Exhibit "E" attached hereto and incorporated herein as a part of this Contract and to provide the submittals described in the Required Submittals Exhibit "B," attached hereto.

1.1 Performance Standards.

A In performing the services set forth in this Contract, the Consultant shall follow the practices consistent with the generally accepted standards in the profession of the services being provided to the City pursuant to this Contract.

1.2. Document Review.

A The Consultant shall review each document prepared by the Consultant and its subconsultants including, without limitation, the plans, specifications for conformance with quality control requirements, Project standards and applicable federal, state and local laws and other regulations. Consultant shall also review each document for violations or infringements upon any patent rights.

B The Consultant's failure to comply with the quality assurance and quality control provisions of Exhibit A - Scope of Services, to adequately review documents prior to submittal or to address City comments prior to resubmittal will be considered

an Event of Default pursuant to Section 10.3.

1.3. Waiver.

A. The City's approval of any documents or services furnished by the Consultant shall not in any way relieve the Consultant of responsibility for the professional and technical accuracy of its documents or services. The City's review, approval, acceptance or payment for any of the Consultant's services shall not be construed to operate as a waiver of any rights enjoyed by the City under this Contract or of any cause of action arising out of the performance of this Contract. The Consultant shall remain liable for any damages to the City caused by the Consultant's negligent act or omission committed in the performance of this Contract.

1.4. **Designation of Consultant's Representative.**

A. The Consultant's representative is the individual identified in the Key Personnel List, Exhibit "F" attached hereto (the "Consultant Representative") to act in that capacity, who shall be responsible for the services required under this Contract. The services specified by this Contract shall be performed by the personnel identified in the Key Personnel List provided that such associates and employees perform under the personal supervision of the Consultant Representative.

B. If any person or subconsultant who is expected to provide any of the services required under this Contract is objectionable to the City for any reason, the Consultant shall, without additional compensation, replace such person or subconsultant with someone acceptable to the City.

C. If the Consultant's personnel are unable to complete their responsibilities for any reason under this Contract, or the Consultant desires for any reason to substitute personnel assigned to the Project, the Consultant agrees to obtain the approval of the City for the substitution. The City shall not unreasonably deny approval unless the City adjudges the substitution to not be in the interest of the City or the Project.

D. If the Consultant fails to make an acceptable replacement within thirty (30) days, the City may terminate this Contract for default as provided in Section 10.3 of this Contract.

1.5. Correspondence Review.

A. The Consultant shall furnish the City Representative draft copies of each correspondence to be sent to any contractor involved with the Project, and to any regulatory agencies, for approval and review prior to mailing such correspondence.

1.6. Cooperation with the City.

A. The Consultant agrees that its officers, associates, employees and subconsultants will cooperate with the City in providing the services under this Contract and will be, with advance notice, available for consultation with the City at such reasonable times as to not conflict with the City's other responsibilities.

1.7. Responsibility for Construction Document Revisions

A. Applicability. The Consultant's responsibility described in this Section applies only if the Consultant is responsible for providing a construction cost estimate and preparing construction documents for the Project.

B. Responsibility for Revisions. The Consultant does not warrant or represent that the bids or proposed price received by the City to construct the Project will come within the estimate prepared by the Consultant. If the bids or proposed price received by the City exceeds the Consultant's estimate, the Consultant agrees to cooperate with the City in revising the requirements of the Project as required to lower the cost and to change the construction documents. If the changes requested by the City cause an increase in the cost or time required to perform any of the services required under this Contract, the Consultant may submit a request for an Adjustment in Compensation pursuant to Section 3.1.

ARTICLE 2 CITY RESPONSIBILITIES

2.0. City Representative.

A The Director of Public Works or their authorized representative identified in the Key Personnel List is hereby designated as the City's representative (the "City Representative") with respect to this Contract. The City Representative shall have complete authority to transmit instructions, receive information, interpret and define the City's policies and decisions with respect to the services of the Consultant. The City Representative is not authorized to change or waive any of the provisions set forth in Sections 1.0 through 10.25 of this Contract.

2.1. Review of Consultant's Services and Documents.

A The services to be performed by the Consultant shall be subject to periodic review by the City Representative. To prevent an unreasonable delay in the Project, the City Representative will endeavor to examine and comment in writing on the documents furnished by the Consultant including, without limitation, the plans, drawings, specifications, test results, evaluations, and reports within twenty-one (21) days of receipt of such documents, unless the Contract provides for a different review time with respect to the document.

2.2. Access to Records.

A The City shall, without charge, furnish a copy to, or make available for examination or use by, the Consultant, as it may request, any documents and data which the City has available including, without limitation, reports, maps, plans, specifications, surveys, records, ordinances, codes, regulations, and other documents related to the services required under this Contract. The City shall assist the Consultant in obtaining data and documents from public agencies and from private citizens and business firms whenever the City determines that such material is necessary for the completion of the services required by this Contract.

2.3. Cooperation with Consultant.

A The City agrees that its officers and employees will cooperate with the Consultant in the performance of this Contract and will be, with advance notice, available for consultation with the Consultant at such reasonable times as to not conflict with the Consultant's other responsibilities. The City shall provide access to the Consultant on to the Project site as may be required to perform the services under this Contract.

ARTICLE 3 CHANGES TO CONSULTANT'S SERVICES

3.0 Requested Changes.

A The City may at any time, by written order of the City Representative, make a change in the services to be performed by the Consultant under this Contract.

3.1 Adjustment of Compensation.

A If the change requested by the City causes an increase or decrease in the cost or time required to perform any of the services required under this Contract, an equitable adjustment shall be made in the compensation to be paid to the Consultant under Section 7, or in the performance schedule under Section 8, or both, and this Contract shall be modified in writing accordingly. Each claim for adjustment under this Section must be asserted in writing within thirty (30) days from the date of receipt by the Consultant of written notification of the change, unless the City grants in writing an extension. Provided proper notice has been given to the City as required herein, the claim for an adjustment shall be handled pursuant to the provisions of 10.20.B and 10.20.C of this Contract. The failure to provide notification of the claim within the time required herein shall constitute a waiver of the right to seek any equitable or legal adjustment in compensation with respect to that change.

ARTICLE 4 ADDITIONAL SERVICES OF CONSULTANT

4.0 Additional Services.

A The Consultant shall provide the additional services described in the Additional Compensation if, and only if, so requested in writing by the City. Payment for the additional services will be made to the Consultant in accordance with Section 7 of this Contract.

B. Attendance at Meetings or Public Hearings. The Consultant shall notify the City in advance of any estimated additional costs that may be incurred prior to attending any meetings or public hearings as may be necessary in connection with the services performed by the Consultant under this Contract.

ARTICLE 5 SUBCONSULTANT CONTRACT

5.0 Subconsultant Provisions.

A. If, with the approval of the City as required pursuant to Section 10.7, the Consultant enters into an CONTRACT with a subconsultant for the performance of any of its obligations under this Contract, the Consultant agrees to include in each subconsultant contract a provision that:

1. the Consultant agrees to pay the subconsultant when paid by the City for that portion of the services provided to the City and that no liability arises on the part of the Consultant for payment of the subconsultant services until payment has been made by the City. If the City has paid the Consultant for the subconsultant services, the subconsultant's only recourse is against the Consultant and not against the City, either through the institution of legal or equitable action or the attachment of any lien; and

2. the subconsultant shall have no more rights against the City than that of the Consultant; and

3. the subconsultant agrees to be bound by the terms, conditions and obligation of this Contract unless the City has approved any deviation, change or modification in writing; and
unless otherwise approved in writing by the City Representative, the subconsultant shall obtain and maintain professional liability insurance (Errors and Omissions coverage) in connection with the subconsultant services in an amount equal to that required of the Consultant in this Contract.

ARTICLE 6 TERMOF CONTRACT

6.0 Term.

A. This Contract shall commence on the Effective Date and shall remain in force and effect for ONE-YEAR from the Effective Date unless terminated earlier pursuant to Section 10.2 or 10.3 of this Contract. Such termination shall not release either party from any of its continuing obligations under this Contract. The City reserves the right to exercise an option to temporarily extend this Contract for up to thirty (30) calendar days from the expiration date, for any reason.

B. Disputes. This Section shall not be construed to preclude the filing of any dispute arising out of the performance of this Contract or in connection with the subject matter hereof, nor shall this Section be construed to change the date or the time on which a cause of action arising out of the performance of this Contract or in connection with the subject matter hereof, would otherwise accrue under the statutes of limitation or doctrines of law.

ARTICLE 7 COMPENSATION AND TERMS OF PAYMENT

7.0 COMPENSATION AND TERMS OF PAYMENT

A. Compensation: Basic Services.

1. For the services to be performed by the Consultant under this Contract and set forth in the Scope of Services, the City agrees to pay the Consultant the fee in the amount identified in the Fee Breakdown, Exhibit "D" attached hereto, pursuant to invoices submitted in accordance with Section 7.D of this Contract.

B. Compensation: Additional Services.

1. For any services not set forth in the Scope of Services, the City shall pay to the Consultant either a lump sum fee, or an hourly fee based on the hourly labor rate schedule set forth in the Additional Compensation, whichever is agreed to by the parties, provided prior written approval for such services is given by the City Representative.

C. Compensation: Reimbursable Expenses.

1. The Consultant agrees that all of its direct and indirect expenses are included in the fee for Basic Services and the agreed upon compensation for any Additional Services, except as may be specifically allowed for reimbursable expenses as part of Additional Compensation.

D. Payment Invoicing

1. The Consultant shall submit an invoice for payment for the services provided by the Consultant based on the manner or method of payment set forth in Exhibit A (Scope of Services) and Exhibit D (Fee Breakdown). The City Representative will notify the Consultant of any problems regarding the invoice within fourteen (14) days from receipt thereof. If no response is received from the City Representative within the aforementioned period of time, the Consultant may expect payment within a period of (60) days from the date of receipt by the City. If payment has not been received within the sixty (60) days, the Consultant agrees to contact the City Representative to resolve the problem causing the delay. If resolution of the delay is not satisfactory to the Consultant, the Consultant may submit a claim pursuant to Section 10.20.A of this Contract.

Right to Off-Set.

2. The City Representative may subtract or offset from any unpaid invoice from the Consultant any claims, which the City may have incurred for failure of the Consultant to comply with the terms, conditions or covenants of this Contract, or any damages, costs and expenses caused by, resulting from, or arising out of the negligent act or omission of the Consultant in the performance of the services under this Contract including, without limitation, any error or deficiency in the report or other documents prepared by the Consultant. Within seven (7) days, the City Representative shall provide a written statement to the Consultant of the off-set which has been subtracted from any payment to the Consultant along with appropriate documentation and receipts, if any, and a description of the failure, error or deficiency attributed to the Consultant. The Consultant may dispute the right or amount of the off-set made by the City by providing written notification to the City within fourteen (14) days after receipt of the City's written notice. The City Representative shall provide a written response to the Consultant within seven (7) days of receipt of the Consultant's written dispute notice. If the Consultant disputes the City Representative's determination, the Consultant may file a claim pursuant to Section 10.20 of this contract. Should the City's damages, costs or expenses arising out of the negligence act or omission of the Consultant exceed the off-set amount retained by the City, the City reserves all rights and remedies under law and equity to recover any damages, costs or expenses arising out of the negligence act or omission of the Consultant.

E. Final Payment.

1. Upon completion of the services required under this Contract, and acceptance thereof by the City (which acceptance will not be unreasonably withheld), the Consultant will, within sixty (60) days of the City's acceptance, be paid the balance of any money due for such services.

ARTICLE 8 PERFORMANCE SCHEDULE

8.0 Performance Schedule.

A. The Consultant shall perform and complete the services required under this Contract according to the schedule (the "Performance Schedule") set forth in the Schedule of Performance, Exhibit "C" attached hereto. If the performance of services is delayed or submittals are not delivered in the time period as outlined in the Performance Schedule, the Consultant shall notify the City Representative in writing of the reasons for the delay and include a plan which brings the Consultant's performance into compliance with the Performance Schedule. Failure to notify the City of potential delays or failure to meet schedule requirements due to Consultant performance issues may be considered an Event of Default pursuant to Section 10.3.

ARTICLE 9 AUDIT: ACCESS TO RECORDS

9.0 Records.

A. The City shall have the right to audit the Consultant's books, records and other documents directly pertinent to the performance of this Contract. The Consultant agrees to maintain books, records and other documents directly pertinent to performance of this Contract in accordance with generally accepted accounting principles and practices. The Consultant shall also maintain the financial information and data used to prepare or support the invoices submitted to the City. Audits conducted pursuant

to this provision shall be in accordance with generally accepted auditing standards, procedures and guidelines of the City, or its designated representative. The City, or its duly authorized representatives, shall have access to such books, records, and documents for the purpose of inspection, audit and copying. The Consultant will provide proper facilities for such access and inspection.

9.1 Disclosure.

A The Consultant shall be afforded the opportunity for an audit entrance and exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report, and that the final audit report will include the written comments, if any, of the Consultant.

9.2 Period of Maintenance.

A The books, records and other documents under Sections 9.1 and 9.2 of this Contract shall be maintained for six (6) years after the date of the final payment for the services under this Contract. In addition, those records and other documents which relate to any arbitration, litigation or the settlement of any claim arising out of this Contract, or to which an audit exception has been taken, shall be maintained and made available until three (3) years after the date that the arbitration, litigation or exception has been resolved.

9.3 Subcontract Provisions.

A The Consultant agrees to include Sections 9.1 through 9.3 of this Contract in all its subcontracts directly related to performance of services specified in this Contract which are in excess of \$10,000.

ARTICLE 10
MISCELLANEOUS PROVISIONS

10.0 Suspension.

A The City may suspend, without cause, the performance by the Consultant under this Contract for such period of time as the City, in its sole discretion, may prescribe by providing written notice to the Consultant. The suspension shall be effective as of the date set forth in the written notice. With such suspension, the City agrees to pay to the Consultant the amount of compensation, based on percentage of completion of the Project, earned as of the effective date of suspension less all previous payments. The Consultant shall not provide any further services under this Contract after the effective date of suspension until otherwise notified in writing by the City. In no event shall the City be liable to the Consultant for services in excess of the percentage of the Project completed at the time of suspension

If, after notice to resume performance has been given by the City, the suspension was for a period in excess of ninety (90) days, which has resulted in an increase in the performance of this Contract to the Consultant and:

1. the Consultant was not a contributing cause for the suspension; and
 2. the Consultant has not received an equitable adjustment under another provision of this Contract;
- and
3. the Consultant could not mitigate the increase in the performance cost,

then the Consultant's fee shall be reviewed by the City and, if justified, equitably adjusted to provide for any additional expenses resulting from the suspension.

10.1 Termination for Convenience.

A The City reserves the right to terminate this Contract without cause or default on the part of the Consultant with ten (10) days' prior written notification to the Consultant served pursuant to Section 10.18 of this Contract. In the event of termination, without cause or default, the City agrees to pay to the Consultant the reasonable value for the services performed as of the date that notification of termination is received by the Consultant. In no event shall the City be liable to the Consultant for services in excess of the percentage completed at the time of termination.

10.2 Termination for Cause or Other Resolution.

A Event of Default.

1. If, during the term of this Contract, the Consultant (i) fails to deliver services that comply with the Scope of Services, including failure to comply with quality assurance and quality control provisions, (ii) fails to deliver the services within the time specified in the Contract or any extension thereof, (iii) fails to make progress so as to endanger the performance of this Contract, (iv) becomes insolvent, bankrupt or makes an assignment for the benefit of creditors, or if a receiver or trustee in bankruptcy is appointed for the Consultant, or if any proceeding in bankruptcy, receivership, or liquidation is instituted against the Consultant and is not dismissed within thirty (30) days following commencement thereof, or (v) fails to perform any of the other obligation or requirement of this Contract, then any of the aforementioned failures shall constitute an "Event of Default" under this Contract.

2. If there occurs an Event of Default, the Consultant shall be entitled to ten (10) calendar days from written notice thereof to remedy the Event of Default, provided, however, such is capable of being remedied within that period. If the Event of Default can be remedied, but the remedy cannot be completed within the ten (10) day period, the Consultant may be allowed such additional time as may be reasonably necessary to remedy the Event of Default, provided, however, the remedy is commenced within the ten (10) day period and is diligently pursued to completion but in no event later than thirty (30) days after such written notice. Said cure time period may be extended at City's sole discretion. If the Event of Default is incapable of remediation, or is not remedied as required herein, the City may, in addition to any other remedies available in law or equity, invoke any of the remedies provided for under Section 10.3.B "City's Rights", below.

B City's Rights.

1. Upon the occurrence of an Event of Default, and without prejudice to any other right or remedy it may have at law or equity, the City may:

a. terminate this Contract, suspend payment of all pending invoices otherwise due to the Consultant hereunder, and finish this Contract by such means as deemed appropriate by the City, reserving the right to deduct from any balance due Consultant any additional cost for completing this Contract. In the event the reasonable cost of finishing the Consultant's performance of this Contract exceeds the balance due the Consultant, the excess shall be paid by the Consultant to the City within thirty (30) days of invoicing by the City; or

b. terminate this Contract, and the obligations imposed hereunder, including the obligation of any further payment for the services of the Consultant except for the reasonable value for the services performed to the date of termination; or

c. continue with performance by the Consultant and serve within a reasonable time after completion of the Contract a notice of claim or dispute pursuant to the procedure set forth in Section 10.20.

In the event that the City elects to implement 10.3, the costs and expenses of completing this Contract shall be computed and audited by the City's designated representative. The audit shall be conducted in accordance with generally accepted accounting principles and the cost thereof shall be paid by the City.

10.3 Documents.

A Ownership.

1. The Consultant agrees that all documents of any kind whatsoever, and in whatever medium expressed, prepared by the Consultant and the Consultant's subconsultants in connection with the Project or otherwise pursuant to this Contract (collectively, the "Documents") and all rights therein (including without limitation trademarks, trade names, rights to use and reuse, copyrights and/or all other proprietary rights) shall be and remain the sole property of the City (regardless of whether the City or Consultant terminates this Contract for any reason whatsoever). The Consultant hereby agrees that the Documents are or shall be deemed to be "Works for Hire" within the meaning of Section 101 of the Copyright Act, and the Consultant hereby assigns to the City all right, title, and interest therein. If for any reason the Documents should not be considered a "Work for Hire" under applicable law by a court or other tribunal of competent jurisdiction, then it is mutually agreed that that under this Section 10.4, the Consultant shall hereby be deemed to have transferred to the City, its successors and assigns, the Consultant's entire right, title and interest in and to the Documents and the legal rights therein including, but not limited to, copyright, included therein.

2. The Consultant further agrees that neither it nor any of its employees shall exercise any of the rights embodied in the copyrights in or to such Documents, unless authorized to do so by the City under the terms of a separate written Contract executed by the Consultant and the City. The Consultant shall place a conspicuous notation upon each such Document that indicates that the copyright thereto is owned by the City.

3. City agrees to waive any and all claims against the Consultant and to defend, indemnify, and hold the Consultant harmless from and against any and all claims, losses, liabilities and damages arising out of or resulting from the City's use, reuse, or alteration by any new consultant or other agent of the City, of the Documents. The Consultant shall be entitled to retain a reproducible copy of the Documents furnished to the City; however, the Consultant shall not sell, license, or otherwise market the Documents in any way.

B. Delivery of Documents.

1. In the event of the completion of this Contract and upon the City's payment in the services rendered by the Consultant, the City shall have the right to require delivery of any and all of the plans, drawings, specifications, and all other documents (including, without limitation, design concepts and sketches, test results, evaluations, reports and studies), including the magnetic or electronic media of the aforementioned documents, not in the possession of the City.

2. In the event of the suspension or termination of this Contract, the Consultant shall have the right to invoice the City to request full payment for all services performed or furnished in accordance with this Contract through the suspension or termination date. Any dispute regarding the amount of any payment to be made by the City under this Contract shall not diminish, restrict or limit the right of the City to promptly receive delivery of any and all plans, drawings, specification, and all other documents (including without limitation, design concepts and sketches, test results, evaluations, reports and studies), including the magnetic or electronic media of the aforementioned documents, not in possession of the City. The Consultant may file a claim pursuant to Section 10.20 of this Contract for any disputed payment claims.

C. Confidentiality.

1. The plans, drawings, specifications and other documents (including, without limitation, design concepts and sketches, test results, evaluations, reports and studies) (including the magnetic or electronic media of the aforementioned documents) which are prepared or assembled by the Consultant, or its subconsultants, under this Contract shall not be made available to any individual or organization without the prior written consent of the City. Except for marketing pamphlets and submittals to clients, the Consultant shall not publish, submit for publication, or publicly display the Project without the written consent of the City. The obligations of confidentiality shall survive the termination of this Contract.

D. Contractual Rights.

1. Notwithstanding the provisions of 10.4 A above, the City is hereby licensed to use all design concepts developed by the Consultant and subconsultants under this Contract, including the right to construct derivative works of the Project, and to use the design concepts for other projects of the City. Provided, that however, none of the documents or materials are intended or represented by Consultant to be suitable for reuse by the City, or others on extension of the project or on any other project. Any reuse without written verification or adaptation by Consultant for the specific purpose intended will be at City's sole risk and without liability or legal exposure to Consultant. The City agrees to indemnify, defend, and hold harmless Consultant for any claims related to the City's or City's authorized use of the design concepts developed by the Consultant. The design concepts include, but are not limited to, the form, aesthetic appeal, site layout, arrangement, and composition of spaces and elements, the use of colors and materials, system designs, construction methods, and interior design.

10.4 Insurance.

The Consultant shall procure and maintain, at its own expense, during the entire term of the Contract, the following coverage(s):

A. Industrial/Workers' Compensation Insurance protecting the Consultant and the City from potential Consultant employee claims based upon job-related sickness, injury, or accident, during performance of this Contract, and must submit proof of such insurance on a certificate of insurance issued by an insurer qualified to underwrite workers' compensation insurance in the State of Nevada, in accordance with NRS 616A-616D, inclusive. If Consultant is a sole proprietor, it will be required to submit an affidavit indicating that the Consultant has elected not to be included in the terms, conditions and provisions of NRS 616A-616D, inclusive, and is otherwise in compliance with those terms, conditions and provisions. The Consultant's Workers' Compensation policy shall have a waiver of subrogation endorsement in favor of the City of Las Vegas.

B. Commercial General Liability Insurance (bodily injury, property damage) with respect to the Consultant's agents assigned to the activities performed under this Contract in a policy limit of not less than One Million Dollars (\$1,000,000)

per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, for bodily injury, products, completed operations, personal injury and property damages. Such coverage shall be on an "occurrence" basis and not on a "claims made" basis, and be provided on either a Commercial General Liability or a Broad Form Comprehensive General Liability (including a Broad form CGL endorsement) insurance form. The form must be written on an ISO Form CG 00 01 10 01, or an equivalent form. The Consultant's General Liability policy shall have a waiver of subrogation endorsement in favor of the City of Las Vegas, and shall be endorsed to include the City, its officers, and employees as additional insured.

C. Commercial Automobile Liability Insurance of limits no less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage to include, but not be limited to, coverage against all insurance claims for injuries to persons or damages to property which may arise from services rendered by Consultant and any auto used in the performance of services under this Contract. The policy must insure all vehicles owned by the Consultant and include coverage for hired and non-owned vehicles. If the services requested do not require the use of the vehicle to perform, the Commercial Automobile Liability Insurance requirements as described in this paragraph do not apply. The Consultant's Automobile Liability policy shall have a waiver of subrogation endorsement in favor of the City of Las Vegas, and shall be endorsed to include the City, its officers, and employees as additional insured.

D. Professional Liability Insurance (Errors and Omissions Coverage). This insurance shall protect the Consultant 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 coverage shall be in a minimum amount of \$1,000,000 for the period of time covered by this Contract.

E. The Consultant must provide compliant certificates of insurance and required endorsements to the City or its designated certificate tracking service immediately upon request. The Consultant shall maintain coverage for the duration of this Contract, and any renewal periods if applicable. The Consultant shall annually provide the City's designated certificate tracking service with a certificate of insurance and endorsements as evidence that all insurance requirements have been met. A certified, true and exact copy of each of the project specific insurance policies (including renewal policies) required under this Section shall be provided to the City or its designated certificate tracking service if so requested.

F. All required aggregate limits must be disclosed and amounts entered on the certificate(s) of insurance. The certificates must identify the Contract number and the Contract description. The Consultant and/or insurance carrier shall provide the City with 30-day advance notice of policy cancellation, sent by certified mail "return receipt requested".

G. 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. Each insurance carrier's rating as shown in the latest Best's Key Rating Guide shall be fully disclosed and entered on the required certificate of insurance. The City requires insurance carriers to maintain a Best's Key minimum rating of A- VII, A- VIII, A- IX, A- X, or higher. The adequacy of the insurance supplied by the Consultant, including the rating and financial health of each insurance carrier providing coverage, is subject to the approval of the City.

H. All deductibles and self-insurance retentions shall be fully disclosed in the certificate of insurance. No deductible or self-insured retention (with the exception of professional Liability Insurance) may exceed Twenty-Five Thousand (\$25,000) without the prior written approval of the City. The deductible or self-insured retention for professional Liability Insurance shall not exceed One-Hundred Thousand (\$100,000) without the prior written approval of the City.

I. Consultants requesting increased deductibles or self-insured retentions must provide the City a written request stating the desired amounts along with recent audited financial statements for review. The City will review the request and determine if the requested deductibles or self-insured retentions are acceptable. In the event the request for increased deductibles or self-insured retentions is denied, the Consultant is obligated to provide the deductibles or self-insured retentions established in the Contract at no additional expense to the City.

J. If the Consultant fails to carry the required insurance, the City may (i) order the Consultant to stop further performance hereunder, declare the Consultant in breach, pursuant to Section E-5, terminate the Contract if the breach is not remedied, or (ii) purchase replacement insurance and withhold the costs or premium payments made from the payments due to the Consultant or charge the replacement insurance costs back to the Consultant.

K. Any subcontractor or subconsultant approved by the City shall be required to procure, maintain and submit proof of insurance to the City of the same insurance requirements as specified above, and as required in this paragraph.

L. The Consultant is encouraged to purchase any additional insurance it deems necessary.

M. The Consultant is required to remedy all injuries to persons and damage or loss to any property of the City caused in whole or in part by the Consultant, its subcontractors or anyone employed, directed or supervised by the Consultant.

N. Period of Coverage. If the insurance coverage is underwritten on a "claims made" basis, the retroactive date shall be prior to or coincident with the Effective Date and the Certificate of Insurance shall state that coverage is "claims made"

and the retroactive date. The Consultant shall maintain all insurance coverages specified in Section 10.5 for the duration of this Contract. Claims made insurance (Professional Liability-10.5.D) shall be kept in place after construction of the Project is substantially complete until the "Statute of Repose" in the State of Nevada has expired. In the event if a claims made policy has a lapse or cancellation of coverage before the Statute of Repose has expired, the Consultant shall be responsible for any claim made in the absence of valid collectable insurance.

10.5 Indemnity.

A. Claims Not Based Upon or Arising out of Professional Services. Notwithstanding any of the insurance requirements set forth in Section 10.5, and not in lieu thereof, the Consultant shall defend, indemnify, and hold the City, its Mayor, Councilmen, officers, employees, and agents (herein the "Indemnitees"), harmless from any and all claims (including, without limitation, patent infringement, and copyright claims), damages, losses, expenses, suits, actions, decrees, judgments, arbitration awards, or any other form of liability (including, without limitation, reasonable attorney fees and court costs) (collectively herein the "Claims") to the extent that such Claims are caused by the negligence, errors, omissions, recklessness, or intentional misconduct of the Consultant, its employees, subcontractors, agents, or anyone employed by the Consultant's subcontractors or agents (herein the "Consultant Parties"), which are not based upon or arising out of the professional services performed by the Consultant Parties in the performance of this Contract.

As part of its obligation hereunder, the Consultant shall, at its own expense, defend the Indemnitees against the Claims brought against them, or any of them, which is caused by the negligence, errors, omissions, recklessness, or intentional misconduct of the Consultant, its employees, subcontractors, or agents, for and against which the Consultant is obligated to indemnify the Indemnitees pursuant to this Section, unless the Indemnitees, or any of them elect to conduct their own defense which, in such case, shall not relieve the Consultant of its obligation of indemnification set forth herein. If the Consultant or the Consultant's insurer fails to defend the Indemnitees as required herein, the Indemnitees shall have the right, but not the obligation, to defend the same and, if the Consultant is adjudicated by the trier of fact to be liable, the Consultant agrees to pay the direct and incidental costs of such defense (including reasonable attorney fees and court costs) which is proportionate to the liability of the Consultant.

B. Claims Based Upon or Arising out of Professional Services. Notwithstanding any of the insurance requirements set forth in Section 10.5, and not in lieu thereof, the Consultant shall indemnify and hold the Indemnitees, harmless from any and all claims (including, without limitation, patent infringement and copyright claims), damages, losses, expenses, suits, actions, decrees, judgments, arbitration awards, or any other form of liability (including, without limitation, reasonable attorney fees and court costs) (collectively herein the "Professional Liability Claims") to the extent that such Professional Liability Claims are caused by the negligence, errors, omissions, recklessness, or intentional misconduct of the Consultant Parties, which are based upon or arising out of the professional services performed by the Consultant Parties in the performance of this Contract.

If the Consultant Parties are adjudicated to be liable by a trier of fact, the trier of fact shall award reasonable attorney's fees and costs to be paid by the Consultant to the Owner, as reimbursement for the attorney's fees and costs incurred by the Owner in defending the Professional Liability Claims, in an amount proportionate to the liability of the Consultant.

As used in this Section 10.6, "agents" means those persons who are directly involved in and acting on behalf of the City or the Consultant, as applicable, in furtherance of the contract or the public work to which the Contract pertains.

10.6 Assignment.

A. The City and the Consultant each bind itself and its partners, successors, administrators and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party in respect to all covenants of this Contract, except the Consultant shall not assign, sublet or transfer any obligation or benefit under this Contract without the written consent of the City. Nothing contained herein shall be construed as creating any personal liability on the part of any officer or agent of the City.

10.7 Waiver.

A. No consent or waiver, express or implied, by either party to this Contract, or of any breach or default by the other in the performance of any obligations hereunder, shall be deemed or construed to be a consent or waiver of any other breach or default by such party hereunder. Failure on the part of any party hereto to complain of any act, or failure to act of the other party, or to declare that other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder. Inspection, payment, or tentative approval or acceptance by the City or the failure of the City to perform any inspection hereunder, shall not constitute a final acceptance of the work or any part thereof and shall not release the Consultant of any of its obligations hereunder.

10.8 Consultant Warranties.

A The Consultant hereby represents and warrants that:

1. it is financially solvent, able to pay its debts as they mature, and is possessed of sufficient working capital to complete this Contract; that it is experienced, competent, qualified and able to furnish the plant, tools, materials, supplies, equipment and labor which is used to perform the services contemplated by this Contract, and that it is authorized to do business in the City of Las Vegas and the State of Nevada,
2. it holds a license, permit or other special license to perform the services included in this Contract, as required by law, or employs or works under the general supervision of the holder of such license, permit or special license,
3. its computer hardware, software, and firmware will continue functioning without interruption, and will continue to accurately process date, time, and data necessary to the performance of this Contract, and
4. it has, pursuant to the requirements of Resolution 79-99 adopted by the Las Vegas City Council on August 4, 1999, (effective October 1, 1999), as amended by resolution 105-99 (adopted by the City Council on November 17, 1999), filed with the City's Purchasing & Contracts Division, a current "Disclosure of Ownership/Principals," which is incorporated herein by reference and will form a part of this Contract as if set forth herein in its entirety. During the term of this Contract, the Consultant shall notify the City in writing of any material change in the Disclosure of Ownership/Principals previously submitted within fifteen (15) days of such change as required thereunder.

10.9 Consultant's Employees.

A The Consultant shall be responsible for maintaining satisfactory standards of competency, conduct and integrity, of personnel assigned to the Project, and shall be responsible for taking such disciplinary action with respect to such personnel as may be necessary. In the event the Consultant fails to remove any employee from the work of this Contract whom the City deems incompetent, careless or insubordinate, or whose continued employment on the work is deemed by the City to be contrary to the public interest, the City reserves the right to require such removal as a condition for the continuation of this Contract.

10.10 Independent Contractor.

A It is hereby expressly agreed and understood that in the performance of the services required herein, the Consultant and any other person employed by him hereunder shall be deemed to be an independent contractor and not an agent or employee of the City.

10.11 Applicable Law.

A This Contract shall be construed and interpreted in accordance with the laws of the State of Nevada.

B Compliance with Laws. The Consultant shall in the performance of its obligations hereunder comply with all applicable laws, rules and regulations of all governmental authorities having jurisdiction over the performance of this Contract including, without limitation, the Federal Occupational Health and Safety Act and all state and federal laws prohibiting and/or related to discrimination by reason of race, sex, age, religion or national origin.

10.12 Certification—No Israel Boycott.

A By signing this Contract, Company certifies that, at the time of Contract signature, it is not engaged in, and agrees for the duration of the Contract, not to engage in a boycott of the State of Israel.

"Boycott of Israel" means, refusing to deal or conduct business with, abstaining from dealing or conducting business with, terminating business or business activities with or performing any other action that is intended to limit commercial relations with Israel; or a person or entity doing business in Israel or in territories controlled by Israel, if such an action is taken in a manner that discriminates on the basis of nationality, national origin or religion. It does not include an action which is based on a bona fide business or economic reason; is taken pursuant to a boycott against a public entity of Israel if the boycott is applied in a nondiscriminatory manner; or is taken in compliance with or adherence to calls for a boycott of Israel if that action is authorized in 50 U.S.C. § 4607 or any other federal or state law.

10.13 Severability.

A. In the event that any provisions of this Contract shall be held to be invalid or unenforceable, the remaining provisions of this Contract shall remain valid and binding on the parties hereto.

10.14 Confidentiality.

A. The Consultant shall treat the information relating to the Project, which has been produced by the Consultant or provided by the City, as Confidential Information of the City and shall not permit its release to other parties or make any public announcement or publicity release without the City's written authorization. The Consultant shall also require each subconsultant to comply with this requirement. The submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication relieving the Consultant of its confidentiality obligation imposed herein.

B. Definition. The term "Confidential Information" shall mean any confidential or proprietary business, technical, financial or other non-public information or materials in a tangible or electronic format of a party ("Disclosing Party") provided to the other party ("Receiving Party") in connection with the Project, whether orally or in physical form, that is not generally known or available to others and shall include the terms of this Contract. However, Confidential Information shall not include information (i) previously known by Receiving Party without an obligation of confidentiality; (ii) acquired by Receiving Party from a third party which was not, to Receiving Party's knowledge, under an obligation of confidentiality; (iii) that is or becomes publicly available through no fault of Receiving Party; or (iv) that Disclosing Party gave written permission to Receiving Party to disclose, but only to the extent of such permitted disclosure.

C. Requirements. Except as required by applicable law, each Receiving Party agrees that (i) it will use Confidential Information of Disclosing Party solely for the purpose of the Contract; and (ii) it will not disclose the Confidential Information of the Disclosing Party to any third party other than the Receiving Party's employees or agents, on a need-to-know basis, who are bound by obligations of nondisclosure and restricted use at least as strict as those contained herein, provided that Receiving Party remains liable for any breach of the confidentiality provisions of this Contract by its employees or agents. The Receiving Party will protect the Confidential Information of the Disclosing Party in the same manner that it protects the confidentiality of its own proprietary and confidential information, but in no event using less than a reasonable standard of care. In the event Receiving Party receives a subpoena or other administrative or judicial demand for any Confidential Information of Disclosing Party, Receiving Party will give Disclosing Party prompt written notice of such subpoena or demand and allow Disclosing Party to assert any available defenses to disclosure. Upon request by Disclosing Party, Receiving Party will return or destroy all copies of any Confidential Information of the Disclosing Party. Confidential Information will at all times remain the property of the Disclosing Party. The provisions of this Section will expire three (3) years after the expiration or termination of the Contract, except with respect to Confidential Information that constitutes "trade secrets" under applicable law for which this Section shall survive indefinitely.

D. Nevada Public Records Act. Consultant acknowledges that City is a government entity subject to the public records laws of the State of Nevada as set forth in Chapter 239 of the Nevada Revised Statute ("NPRSA") and that certain Confidential Information may be subject to the NPRSA. Therefore, notwithstanding anything to the contrary contained in this Contract or that (i) the City is subject to the requirements and obligations for disclosure of the NPRSA; (ii) certain records of the City are subject to inspection and reproduction by the general public, Consultant shall nevertheless continue to treat all Confidential Information confidential pursuant to the terms of this Contract. Consultant, therefore agrees (i) that any disclosure of Confidential Information by the City pursuant to the NPRSA shall not be a violation, waiver, and/or a default whatsoever of this Contract by the City; and (ii) any disclosure of Confidential Information by the City pursuant to the NPRSA is permitted under this Contract and shall not waive or relieve Consultant's ongoing contractual obligations under this Contract. For the avoidance of doubt, any Confidential Information disclosed by the City pursuant to the NPRSA shall still remain subject to the confidentiality obligations stated in this Contract. In the event City receives any subpoena, demand, or request under the NPRSA or other public records law for any Confidential Information or other data or information received by City from Consultant that was received in connection with any services performed by Consultant, City will immediately notify Consultant of such subpoena, demand or request and reasonably cooperate with any efforts by Consultant to assert any available defenses to disclosure. In no event shall City make disclosure of such information before ten (10) business days have elapsed from the date City notifies Consultant of the subpoena, demand, or request in order to provide Consultant with a reasonable opportunity to seek judicial intervention concerning the potential disclosure of Consultant's Confidential Information and/or trade secret information. If Consultant informs City in writing of Consultant's intent to seek a court order barring disclosure, City agrees to withhold the requested information, to the extent permitted by the NPRSA, pending court resolution of the matter, or interim order by a court. Whenever a requesting party pursues legal action to compel disclosure of Confidential Information or other data or information received by City from Consultant, Consultant will bear responsibility for all costs of defending such legal action.

10.15 Site Inspection.

A The Consultant represents that it has visited the location of the Project and has satisfied itself as to the general condition thereof and that the Consultant's compensation as provided for in this Contract is just and reasonable compensation for performance hereunder including reasonably foreseen and foreseeable risks, hazards and difficulties in connection therewith based on such above-ground observations.

10.16 Modification.

A All modification, amendments, and change orders to this Contract are null and void unless reduced in writing and signed by the parties hereto.

10.17 Notice.

A Any written notice required to be given under Sections 1.0 through 10.24 of this Contract shall be deemed to have been given when the written notice is (i) received by the party to whom it is directed by personal service or (ii) deposited with the United States Postal Service, postage prepaid, addressed to the City Representative or the Consultant Representative, whomever is the proper recipient, and mailed to the address set forth in the introductory paragraph to this Contract.

10.18 Prohibition Against Contingent Fees.

A The Consultant warrants that no person or entity has been employed or retained to solicit or secure this Contract with the agreement or understanding that a commission, percentage, brokerage or contingent fee would be paid to that person. For breach or violation of this provision, the City shall have the right to annul this Contract without liability or, in its discretion, to deduct from the compensation to be paid to the Consultant, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

10.19 Claim or Dispute Resolution.

A Notice of Claim or Dispute. For each claim or dispute which the Consultant has against or with the City (except for any claim for an equitable adjustment under Section 3.1 which is subject to the 30-day limitation set forth therein), notice thereof must be submitted in writing to the City Representative within a reasonable time after the claim or dispute arises, but no later than thirty (30) days after final payment is made to the Consultant. The purpose of written notification is to place the City on notice so that proper measures can be taken to properly defend against the claim or dispute, and the failure to give such notice shall preclude the Consultant from subsequently mediating that particular claim or dispute pursuant to Section 10.20.C of this Contract, and the Consultant shall have no further recourse against the City. Pending a final decision on the claim or dispute under Sections 10.20.B or 10.20.3, the Consultant shall proceed diligently with the performance of this Contract.

B Resolution by Management. The City Representative and the Consultant Representative shall meet within a reasonable time after receipt of the written notice received pursuant to Section 10.20.A in an attempt to resolve the claim or dispute to the mutual satisfaction of the parties. If the matter is not disposed of by mutual agreement between the City Representative and the Consultant Representative, the claim or dispute shall be decided by the Director of Public Works, whose decision shall be reduced to writing and mailed or otherwise furnished to the Consultant. The decision of the Director of Public Works shall be final and conclusive unless, within thirty (30) days after the date on which the Consultant receives its copy of such decision, the Consultant mails or otherwise furnishes to the Director of Public Works a written request to mediate the claim or dispute, in which event the parties shall proceed pursuant to provisions of Section 10.20.C. The failure to make such request shall preclude the Consultant from proceeding any further on the claim or dispute, and the Consultant shall have no further recourse against the City.

C Resolution by Mediation. Upon receipt of the request to mediate authorized pursuant Section 10.3.B or Section 10.20.B, the City and the Consultant shall come to an agreement as to the appointment of a mediator for purposes of hearing the appeal. If the parties cannot agree upon an independent private mediator within forty-five (45) days after notice of the receipt of the request to mediate, the party may proceed to file a judicial action with the Eighth Judicial District Court, Clark County, Nevada. The mediation shall take place in Clark County, Nevada, unless otherwise agreed to by the parties. The fees and expenses of the mediator shall be equally shared by both parties. Each party is responsible for their own costs, expenses, consultant fees and attorney fees incurred in the presentation or defense of any claim, dispute or controversy that is subject to mediation between the

parties. The decision of the mediator shall be non-binding.

D. Right of Judicial Action. Any claim, dispute, or other matter in question between the parties concerning any provisions of this Contract that cannot otherwise be resolved between the parties through the use of mediation required herein may be submitted for judicial action. Prior to the exercise of this right, the party seeking judicial relief shall have provided the other party 30 days prior written notice before filing such judicial action.

10.20 Attorney Fees.

A. The City or the Consultant as the prevailing party that brought any litigation or arbitration to enforce the provisions of this Contract shall be entitled to reasonable attorney fees and court costs.

10.21 Calendar Day.

A. All references in this Contract to days are to calendar days unless otherwise indicated.

10.22 Exhibits.

A. All exhibits referenced in this Contract are hereby incorporated by this reference as a part of this Contract. Any conflict between the provisions of this Contract and the Exhibits incorporated herein shall be governed by the provisions of this Contract.

10.23 Counterparts; Electronic Delivery.

A. This Contract may be executed in any number of counterparts, each of which shall be an original and all of which shall together constitute one and the same instrument. It shall not be necessary for any counterpart to bear the signature of all parties hereto. Executed copies hereof may be delivered by facsimile or e-mail, pursuant to NRS 719.240, and upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter.

B. The parties agree that this Contract may be signed electronically via the City's designated electronic signature platform, and that the electronic signatures appearing herein shall be considered the same as handwritten signatures for the purposes of validity, admissibility, and enforceability.

10.24 Contract Version.

This document reflects the current standard provisions for the City's Professional Services Contract updated as of May 2024.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed the day and year first above written.

CITY OF LAS VEGAS


CONSULTANT

Signature	Date	Signature	Date
<hr/>		<hr/>	
Tonya Kemble			
Printed Name		Printed Name	
<hr/>		<hr/>	
Purchasing & Contracts Manager			
Title		Title	

ATTEST:

<hr/>	
LuAnn D. Holmes, MMC	Date
City Clerk	

APPROVED AS TO FORM

DocuSigned by:	
	12/31/2024 10:20 AM PST
<hr/>	
8862966F49B8449...	
Deputy City Attorney	Date

Carmen Gilbert
<hr/>
Printed Name

LIST OF EXHIBITS

- EXHIBIT “ A ”** SCOPE OF SERVICES
- EXHIBIT “ B ”** REQUIRED SUBMITTALS
- EXHIBIT “ C ”** PERFORMANCE SCHEDULE
- EXHIBIT “ D ”** FEE BREAKDOWN
- EXHIBIT “ E ”** COMPENSATION
- EXHIBIT “ F ”** KEY PERSONNEL LIST
- EXHIBIT “ G ”** EXAMPLE INVOICE

EXHIBIT A

SCOPE OF SERVICES

100 SCOPE OF WORK

- A. Building Energy-Related and/or Essential Systems to be commissioned
 1. HVAC systems and associated controls:
 - a) (2) Air Cooled Chillers
 - b) (2) Boilers
 - c) (8) Pumps
 - d) (8) Air Handling Units
 - e) (1) Rooftop Unit
 - f) (1) Fan Coil
 - g) (5) Exhaust Fans
 2. Plumbing systems:
 - a) (1) Domestic water heater
 - b) (1) Recirculation pump

- B. Commissioning Services
 1. Construction Phase Commissioning Services:
 - a) Develop a project specific Commissioning Plan for use during construction.
 - b) Review construction documents and equipment submittals for the purpose of preparing Functional Performance Test plans and to provide any feedback to be considered on the design and the approved submittals.
 - c) Develop project specific Functional Performance Test plans for execution by the installing contractors and equipment vendors as directed by the commissioning agents to demonstrate functionality of the systems.
 - d) Plan and conduct a Commissioning Kick-off Meeting to establish the purpose and proposed process for commissioning during the construction phase, and to establish the individual roles and responsibilities of each member of the Commissioning Team.
 2. Mid-Construction Site Observation Visits
 - a) Conduct site observation visits during the construction phase of the project to interface with installing contractors and verify proper system installation. Identify any potential installation issues prior to start-up and functional testing. Includes three (3) site visits.
 3. Acceptance Phase Commissioning Services:
 - a) Functional Performance Testing:
 - i. Coordinate and execute the system Functional Performance Tests with assistance by the equipment vendors or installing contractors. No sampling will be allowed with the exception of lighting controls (25% sample rate, minimum of one of each type).
 - ii. Organize and maintain an Issues Log during construction to track the resolution of deficiencies throughout the construction and acceptance phases. Update the log and provide periodic reports to the Commissioning Team.
 - iii. Review contractor provided Operations & Maintenance (O&M) Manuals for compliance with IECC requirements, prior to contractor submission to AHJ.
 - b) Organize and maintain an Issues Log during construction to track the resolution of deficiencies throughout the construction and acceptance phases. Update the log and provide periodic reports to the Commissioning Team.
 - c) Review contractor provided Operations & Maintenance (O&M) Manuals for compliance with IECC requirements, prior to contractor submission to AHJ.
 4. Post-Occupancy Phase Commissioning Services:
 - a) Issue a Commissioning Final Report summarizing the work completed and which demonstrates compliance with the contract documents. The report will include a summary of any deficiencies found and the resolution to these deficiencies.
 5. Warranty Review

- a) Review building operation within 10 months after substantial completion with facility staff. Develop plan for resolving outstanding commissioning-related issues and assist facility staff in this regard. Issue a warranty report summarizing testing and issues observed.
- C. Onsite Commissioning Activities
 - 1. Construction Phase:
 - a) Site visits observe equipment installations and provide feedback to installing contractors. Includes approximately three (3) days on site.
 - 2. Acceptance Phase:
 - a) Site visits to direct/witness Functional Performance Testing. Includes approximately ten (10) days on site.
 - 3. Warranty Phase:
 - a) Site visits to review system operation at the end of the warranty period. Includes approximately two (2) days on site.

100.1.1. Scope or Workload Increase

If increased scope or workload is encountered, the Consultant is to notify the City in writing and receive written confirmation to proceed prior to the performance of any work related to the increased scope or workload.

100.2. SUBCONTRACTS

The Consultant agrees to include in all its subcontracts related to the Project, and require the same of all subconsultant contracts at all tiers, the provisions of this Contract related to the City's and Consultant's rights (including copyright), ownership and uses of the concepts, designs, documents, intellectual property, and tangible property.

100.3. REGULATORY AUTHORITIES

The Consultant does hereby acknowledge, understand and agree that the Capital Project Management Section of the Department of Public Works, acting as the City's representative for purposes of the Project, does not have any control, authority or influence over the decisions or requirements of other departments of the City acting in a regulatory capacity including, but not limited to, the Building Department, Fire Department, Planning Department and Department of Public Works of the City of Las Vegas. The City's representative acts in a capacity similar to that of a representative working for a private property owner which is to ensure that the City receives a quality product, delivered on schedule, for a fair price. Furthermore, the Capital Project Management Section of the Department of Public Works does not speak or act for any regulatory authority, nor does any regulatory authority speak or act for the Capital Project Management Section of the Department of Public Works. The Consultant agrees that its relationship with the regulatory authorities having jurisdiction over the Project is separate from its relationship with the City, and that the Consultant's interaction with each regulatory authority is to be conducted without assistance from the City.

END OF EXHIBIT "A"

EXHIBIT B

REQUIRED SUBMITTALS

200 GENERAL

For the services set forth in Exhibit "A" (Scope of Services), the Consultant shall deliver the following minimum submittals and deliverables for the Project, which shall be accomplished as soon as practical after the completion of each event, task, phase, and service, and as a prerequisite to payment for each related event, task, phase, and service.

201 DELIVERABLE

- Commissioning Plan
- Functional Performance Test
- Project Issues Report Summary
- Commissioning Final Report

201.1. REPORTS

All reports shall be on white acid-free paper, 8-1/2 x 11 inches, suitable for photocopying and bound in booklet form. Submittals to regulatory agencies shall be as required for each agency.

201.2. REPORTS DISTRIBUTION

It is understood that the City may make and distribute copies of the reports as necessary in connection with the Project without incurring obligation for additional compensation.

END OF EXHIBIT "B"

EXHIBIT C
PERFORMANCE SCHEDULE

300 NOTICE TO PROCEED

300.1. START DATE

The start date for the Consultant's scope of services shall be, without any further notice requirement, the date of this Contract. The Consultant shall perform the services required as expeditiously as is consistent with professional skill and care and the orderly progress of the Project.

300.2. ACCESS

Site access is hereby provided to the Consultant by the City for the scope of services contained in this Contract. The City either has title to the property and the right of entry, or the City has secured permission from the present owner and tenant for entry to the property. The Consultant shall coordinate site access with any contractors working on site.

301 SCHEDULE OF SERVICES

301.1. SERVICES

For the services set forth in Exhibit "A" (Scope of Services), the Consultant shall accomplish the services in accordance with the following schedule:

As required over the course of the construction of the Project, with the construction term anticipated by the City to be approximately Eleven months, subject to modifications and contractor performance.

END OF EXHIBIT "C"

EXHIBIT D
FEE BREAKDOWN

400 TOTAL COMPENSATION

The total compensation to be paid to the Consultant for performance of this Contract including Basic Services and Additional Services Allowance shall not exceed \$53,000. Increases to total compensation may only be authorized by written amendment to this Contract. This total compensation amount is comprised of the parts described in this Exhibit "D" (Fee Breakdown).

401 BASIC SERVICES PAYMENT

For the services set forth in Exhibit "A" (Scope of Services), the City agrees to pay to the Consultant the fixed fee assigned for each phase of the Project identified in this Exhibit "D" (Fee Breakdown). The Consultant agrees to perform the services required under this Contract Exhibit "A" (Scope of Service) for the amount of the fixed fee set forth in this Exhibit "D" (Fee Breakdown). Payment shall be made for each phase pursuant to monthly invoices submitted in accordance with this Contract based upon the percentage of services completed for each phase. The fixed fee shall constitute the entire compensation to be paid to the Consultant regardless of the number of man-hours actually expended to complete the performance of the services set forth in Exhibit "A" (Scope of Services).

COMMISSIONING SERVICES		REMARKS
TOTAL NOT-TO-EXCEED COST	\$48,000.00	

402 ADDITIONAL SERVICES ALLOWANCE

402.1. NOT-TO-EXCEED ALLOWANCE

A Not-To-Exceed Allowance for Additional Services is hereby established as set forth below. The City shall pre-authorize in writing Additional Services up to the Total Not-To-Exceed Cost. Services performed prior to receiving the required written authorization or in excess of the Total Not-To-Exceed Cost shall not be obligated for compensation.

402.2. ADDITIONAL SERVICES

Additional Services are services provided in the interests of the Project that are not set forth in Exhibit "A" (Scope of Services).

402.3. COMPENSATION FOR ADDITIONAL SERVICES

The Consultant shall be compensated for Additional Services in accordance with the Additional Services fees set forth in Table D-2 and Exhibit "E" (Compensation), or if no Additional Service fee has been established for the service, in accordance with the Consultant Hourly Rates established in Exhibit "E" (Compensation). Additional Service compensation disputes shall be resolved in accordance with the claims and disputes provisions of this Contract and shall not be cause for the Consultant to delay providing requested services. Payment shall be made for each completed Additional Service pursuant to invoices submitted in accordance with this Contract.

402.4. REIMBURSABLE EXPENSES

Reimbursable Expenses may be compensated from this Allowance for Additional Services to the extent they are allowed by Exhibit "E" (Compensation). Payment shall be made for each completed Reimbursable Expense pursuant to invoices submitted in accordance with this Contract. Expenses not listed in Exhibit "E" (Compensation) as allowed Reimbursable Expenses shall not be compensated without amendment to this Contract to allow them as Reimbursable Expenses.

402.5. INCREASES TO THIS TOTAL NOT-TO-EXCEED COST

Increases to this Total Not-To-Exceed Cost for Additional Services may only be authorized by written amendment to this Contract.

ADDITIONAL SERVICES ALLOWANCE		ALLOWED SERVICES
TOTAL NOT-TO-EXCEED COST	\$5,000.00	Additional Commissioning Services

END OF EXHIBIT "D"

EXHIBIT E

COMPENSATION

500 CONSULTANT HOURLY RATES

The following hourly rates are to be used as the basis for negotiation of added and reduced services. These hourly rates are valid for the duration of the Project and include salary costs, overhead, administration and profit. The overhead included in these rates covers all support personnel who normally work on non-specific project tasks including but not limited to receptionists, senior executives together with their assistants, financial accounting personnel, and personnel maintaining facilities, equipment and computers.

CLASSIFICATION	MAXIMUM HOURLY RATE*
Executive	\$240
Director	\$225
Regional Commissioning Manager	\$190
Commissioning Manager/Agent	\$175
Technician	\$125
Project Administration	\$100

*The City will not reimburse for overtime rates

501 ADDITIONAL SERVICES RATES

The cost of the following potential future Additional Services have been negotiated as of the date of this Contract.

ADDITIONAL SERVICE	SUBMITTALS	SCHEDULE IMPACT	FIXED FEE
None authorized or anticipated as of the date of this Contract.			\$0
			\$0
			\$0

501.1. ADDITIONAL SERVICES RATES

These Additional Services Rates are valid for the duration of the Project and include salary costs, equipment, overhead, administration and profit.

501.2. ADDITIONAL SERVICES OF SUBCONSULTANTS

For Additional Services of subconsultants, the City shall compensate the Consultant at the amounts billed to the Consultant for such services. The Consultant may bill for their expenses in managing the Additional Service of subconsultants, the amount of which is already included in the above Additional Service Rates or, if not listed in the above Additional Service Rates, shall be approved by the City in writing prior to the Consultant or subconsultant providing the services.

501.3. PROVISION OF SERVICES

The Consultant agrees to provide services in connection with the Project, which are in addition to those required by Exhibit "A" for Basic Services, as Additional Services if so requested by the City in writing. Such requests may include, but are not limited to, and are not necessarily indicated by this statement as being Additional Services rather than Basic Services: (i) significant changes in the Project's size, quality, complexity, budget, or time schedule, (ii) changes required due to conflicting instructions previously given by the City, (iii) changes required by the enactment or amendment to codes, laws or regulations subsequent to the preparation of such documents, (iv) services concerning the replacement of that portion of the Project damaged by fire or other cause, and (v) services made necessary by the default or failure of the Contractor including major defects or deficiencies in the construction.

502 REIMBURSABLE EXPENSES

The following Reimbursable Expenses are allowed:

REIMBURSABLE EXPENSE
None authorized or anticipated as of the date of this Contract.

502.1. REIMBURSABLE EXPENSES OF THE CONSULTANT

For Reimbursable Expenses of the Consultant, the City shall compensate the Consultant at the actual direct costs incurred by the Consultant.

503 LIMITATIONS OF REIMBURSABLE EXPENSES

Reimbursable Expenses are limited to specific pre-authorized items or services purchased from third parties to this Contract, dedicated to only this Project. Additions to the above allowed Reimbursable Expenses may only be granted as a written amendment to this Contract.

504 ESTABLISHING REIMBURSABLE EXPENSES

If Reimbursable Expenses are established in this Contract as a fixed sum or a not-to-exceed amount, the Consultant has determined that this Reimbursable Expense amount will not be exceeded for the allowed Reimbursable Expenses for performance of the Services set forth in Exhibit "A" (Scope of Services), and accordingly does hereby assume the risk to complete the performance of this Contract without further compensation for Reimbursable Expenses should the costs exceed this fixed sum or not-to-exceed amount for Reimbursable Expenses.

505 TRAVEL AND PER DIEM

Travel and per diem expenses are included in the Basic Services Fees, Consultant Hourly Rates, Subconsultant Hourly Rates, and Additional Services Rates shown in this Contract, and may otherwise only be authorized as reimbursable expenses by written amendment to this Contract. Expenses incurred prior to written authorization shall not be considered for reimbursement.

506 AUTHORIZED TRAVEL AND PER DIEM

Should travel and per diem expenses be so authorized by the City:

506.1. BASIS OF EXPENSES

Expenses shall be based on actual costs submitted for reimbursement with valid original receipts. If a receipt is not normally provided for the expense, a certification signed by the traveler shall be submitted. Submitted receipts for travel and per diem reimbursement shall name each traveler covered.

506.2. RATES FOR LODGING AND INDIVIDUAL MEALS

Rates for lodging and individual meals shall not exceed the published U.S. General Services Administration rates at Clark County, Nevada, including the 75% limitation on the day of departure and return.

506.3. MILEAGE

Passenger vehicle mileage shall be reimbursed at the rate stipulated by the Internal Revenue Service.

507 EXAMPLES OF NON-REIMBURSABLE EXPENSES

Examples of expenses that will not be reimbursed include alcoholic beverages, entertainment, laundry, dry cleaning and pressing, parking fines, gratuities and tips excepting for taxicab and meals a 15% tip if shown on the receipt, costs related to making reservations or other accommodations for travel, phone calls, computer or Internet access costs, car rentals larger than mid-size and car rental insurance, air travel other than the lowest coach fair available and travel insurance, premature departure and extended stays for personal reasons, and indirect route for personal preference.

END OF EXHIBIT "E"

EXHIBIT F
KEY PERSONNEL LIST

600 CITY PERSONNEL

601 CITY REPRESENTATIVE: MARK POTOKAR

The following personnel will be assigned by to work on the Project. Any changes or additions require City approval.

602 CONSULTANT REPRESENTATIVE (WHO MAY ALSO BE ONE OF THE FOLLOWING STAFF):

602.1. CONSULTANT REPRESENTATIVE'S: JON JENSEN, PE, CXA

END OF EXHIBIT "F"

EXHIBIT "G"

EXAMPLE INVOICE

Project Name:
Contract No.:
Purchase Order No.:
Hansen #:
Invoice Number
Period of Performance for this Pay Request:
Invoice Date:

Consultant:
Project Number:
Consultant Rep:
Consultant Phone:
CLY Project Manager:
CLY Program Manager:

Task	Description	Amount of Task	Amount Billed this Period	Amount Previously Billed	Amount Billed to Date	Amount Remaining	Percent Billed this Period	Percent Billed to Date	Percent Funds Remaining
1	Conceptual	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00			
	Conceptual				\$0.00	\$0.00			
					\$0.00	\$0.00			
2	Schematic	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00			
	Schematic				\$0.00	\$0.00			
					\$0.00	\$0.00			
3	Design Development	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00			
	Design Development				\$0.00	\$0.00			
					\$0.00	\$0.00			
4	90% Construction Documents	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00			
	90% Construction Documents				\$0.00	\$0.00			
					\$0.00	\$0.00			
5	100% Construction Documents	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00			
	100% Construction Documents				\$0.00	\$0.00			
					\$0.00	\$0.00			
6	Bidding Phase	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00			
	Bidding Phase				\$0.00	\$0.00			
					\$0.00	\$0.00			
7	Construction Phase	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00			
	Construction Phase		\$0.00		\$0.00	\$0.00			
					\$0.00	\$0.00			
8	Post-Construction Phase	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00			
	Post-Construction Phase		\$0.00		\$0.00	\$0.00			
					\$0.00	\$0.00			
	Not-to-Exceed Total Basic Services Fee	\$0.00	\$0.00						

Additional Services Allowance:									
ASR#	Total Additional Services	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00			
1	0				\$0.00	\$0.00			
2	0				\$0.00	\$0.00			
3	0				\$0.00	\$0.00			

	Total Billed to Date	Total Remaining	Percent Remaining
Basic Services:	\$0.00	\$0.00	
Authorized Additional Services:	\$0.00	\$0.00	
Unauthorized Additional Services Remaining:		\$0.00	
TOTAL AMOUNT OF INVOICE:	\$0.00		

Total PO Amount:	\$0.00
Total Contracted Amount:	\$0.00
Total Billed to Date:	\$0.00
PO Balance:	\$0.00
Contract Balance:	\$0.00

Project Name:
Project Number:
Consultant
Invoice Number:
Invoice Date:

STAFF WHO WORKED ON PROJECT FOR THIS PAY REQUEST

[illegible]

OTHER DIRECT EXPENSES (backup documentation required)

DESCRIPTION			TOTAL
TOTAL			\$0.00

SUBCONSULTANTS (Backup documentatuiou with breakdown required)

FIRM NAME	TOTAL
TOTAL	\$0.00

END OF EXHIBIT "G"