

**PRIME DESIGN SERVICES CONTRACT**

**FOR  
DOOLITTLE ACTIVE ADULT CENTER VESTIBULE REPLACEMENT**

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 NOVUS Architecture (the "Consultant"), a LLC, whose address is 900 S Las Vegas Blvd, #110, Las Vegas, Nevada 89101.

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:**

Replacement of the existing vestibule with new and other improvements.

**RECITALS**

WHEREAS, the City intends to construct the DOOLITTLE ACTIVE ADULT CENTER VESTIBULE REPLACEMENT (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 Additional 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, cost estimates, and other required submittals 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 10.24 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**

**4.1 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**

**5.1 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
4. 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 TERM OF CONTRACT**

### **6.0 Term.**

A. This Contract shall commence on the Effective Date and shall remain in force and effect until the Project is completed 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.

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.E 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 sixty (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.

E. Right to Off-Set.

1. 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.

F. 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**

**9.1 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.

**9.2 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.

**9.3 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.

**9.4 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**

**10.1 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.

**10.2 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.

**10.3 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.

**10.4 Documents.**

**A. Ownership.**

1. The Consultant hereby 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") 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 (including without limitation trademarks, trade names, rights or use and reuse, copyrights and/or all other proprietary rights). 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.

**10.5 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 of this Contract 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.

## **10.6 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.

#### **10.7 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.

#### **10.8 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.

#### **10.9 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, and
  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.
  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.

#### **10.10 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.

#### **10.11 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.

**10.12 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.

**10.13 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.

**10.14 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.

**10.15 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 NPRA 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 NPRA 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 NPRA shall still remain subject to the confidentiality obligations stated in this Agreement. In the event City receives any subpoena, demand, or request under the NPRA 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 NPRA, 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.

**10.16 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.

**10.17 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.

**10.18 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.

**10.19 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.

**10.20 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.C, 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 10.20C. 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 10.3.1 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 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.

**10.21 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.

**10.22 Calendar Day.**

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

**10.23 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.

**10.24 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.

**10.25 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

Tonya Kemble  
\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

Purchasing & Contracts Manager  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**ATTEST:**

\_\_\_\_\_  
LuAnn D. Holmes, MMC Date  
City Clerk

**APPROVED AS TO FORM:**

DocuSigned by:  
*John S. Ridilla* 11/19/2024 | 11:42 AM PST  
\_\_\_\_\_  
B4B55ADEFB494B5...  
Deputy City Attorney Date

John S. Ridilla  
\_\_\_\_\_  
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 “ H “ FEDERAL REQUIREMENTS**

## **EXHIBIT A**

### **SCOPE OF SERVICES**

#### **100 GENERAL**

Upon authorization to proceed as described in Exhibit "C", the Consultant shall provide the following in accordance with the Schedule (Exhibit "C") included herein.

##### **100.1. PROJECT SITE DESCRIPTION**

The Project improvement area, which may be adjusted as the Project develops, is described as:

- Site address 1930 North J Street

##### **100.2. PROJECT PROGRAM**

**100.2.1. *The project program, which may be altered as the Project develops, contains the following:***

- Improvement description: Replacement of the existing vestibule w/ new and other improvements

##### **100.3. CONSTRUCTION COST BUDGET**

As used herein Construction Budget means the monetary limit established by the City for construction of the Project which limit includes the cost of the Contractor's labor, materials, equipment, expenses, overhead and profit, but excludes the Project's soft costs, cost of change orders and other cost impacts encountered after award of the construction contract.

**100.3.1. *Construction Cost Budget: \$450,000.***

##### **100.4. CHANGES TO SCOPE OR SERVICES**

###### **100.4.1. *Scope***

The following scope of services is in addition to the scope required elsewhere in this Contract. This scope is to be considered preliminary and may be altered as the Project develops.

###### **100.4.2. *Scope 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.

###### **100.4.3. *Authorized Scope Changes***

Should the Project size or budget as described herein be adjusted during the programming and schematic design phase of this Contract by less than twenty percent, no adjustment of the Consultant's compensation or performance schedule will be considered. Should the Project size or budget as described herein be adjusted during the programming and schematic design phase by at least twenty percent, it is understood that this change would constitute a change in scope requiring a consideration for adjustment to the Consultant's compensation and performance schedule to the extent the change results in a change in the amount of the Consultant's work on the Project. This adjustment shall apply equally to additions to the Project scope as well as reductions to the Project scope such that reductions may result in a reduction to the compensation and performance schedule.

###### **100.4.4. *City Representative Authority***

The City Representative shall have authority to make decisions with respect to the materials, equipment, elements, and systems which are pertinent to the Project to be performed under this Contract and to approve changes to the scope of the Project that do not affect the Consultant's compensation or performance schedule.

## **101 GENERAL REQUIREMENTS**

### **101.1. CONSULTANT**

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.

### **101.2. VARA**

Should any portions of the Project contain works provided protection under the Visual Artists Rights Act of 1990 ("VARA"), the Consultant and their subconsultants at all tiers agree to waive and do hereby waive voluntarily all rights to attribution and integrity with respect to any and all claims as may arise under VARA, Nevada Revised Statutes "Works of Art" NRS 597, or any other local, state, foreign, or international law, as currently drafted or as may be hereafter amended, that conveys the same or similar moral rights with respect to any or all portions of the Project, including but not limited to display, removal from display, exhibition, installation, restoration, conservation, storage, study, alteration, destruction, relocation, and any other activities conducted by the City, its officers, employees, agents, contractors, licensees, successors or assigns. The Consultant acknowledges that all such decisions concerning the Project shall be made in the sole discretion of the City, its officers, employees, agents, contractors, licensees, successors or assigns. In addition to the extent such rights may not be waived, Consultant and their subconsultants at all tiers covenant not to assert such rights against the City, its officers, employees, agents, contractors, licensees, successors or assigns.

### **101.3. DRAWINGS**

All Drawings shall be prepared using AutoDesk's AutoCAD 2018 or newer release in accordance with City CAD standards and industry accepted standards, including the American Institute of Architects (AIA) Computer Aided Design (CAD) Layer Guidelines. Specifications shall be prepared in Construction Specification Institute (CSI) format using the software program Microsoft Word 2016 or newer release.

### **101.4. DOCUMENTATION**

The Consultant and their subconsultants at all tiers agree to maintain copies of the latest version of each drawing, specification section, calculation, map, survey, report, and other project document prepared under this Contract, in a secure off-site location and to restore these documents upon need and to provide them to the City upon request. This backup obligation shall beginning upon notice to proceed and extend continuously until one year after final payment of this Contract has been made.

### **101.5. PRODUCT SPECIFICATION**

Where the Consultant specifies materials and equipment by brand names, provide three or more brand names with model numbers for each item specified. Where less than three suitable brand names/model numbers are commercially available state "or equal under the Substitution requirements of Section 01600."

### **101.6. QUALITY CONTROL**

Coordination and quality control checks shall be made in accordance with a disciplined procedure and scheduled accordingly.

### **101.7. SOFTWARE**

Verify, using commercially available software with current virus definitions, that digital electronic submittals are free of electronic "viruses", "worms", "Trojan horses", and other programs or data stored on the host computer or the electronic

submittal. Should the City choose to check incoming electronic submittals for such afflictions, utilizing commercially available software and at the first indication of such an affliction, the entire electronic submittal will be considered unacceptable and will be returned to the Consultant. The Consultant shall remove the unwanted programs or the unwanted programs or data and further verify the integrity of the electronic submittal. The Consultant shall bear the expense of correction, checking and resubmittal and shall not be released from submittal requirements required in this Contract.

#### **101.8. ACCURACY AND COMPLIANCE**

Prior to each design submittal, check all documents for technical accuracy, compliance with applicable codes and ordinances, complete incorporation of all Design Review Comments (DRC), and coordination within and between design disciplines. Each submittal shall be in accordance with the appropriate submittal requirements listed herein. Incomplete submittals shall be rejected. All costs associated with the re-submittal shall be borne by the Consultant.

#### **101.9. CORRECTIONS**

The Consultant shall without additional compensation correct or revise any error or deficiencies in the plans, drawings, specifications or other related documents prepared by the Consultant.

#### **101.10. SUBCONSULTANT COORDINATION**

The Consultant shall be responsible for all coordination with its subconsultants. Each submittal to the City shall be organized by discipline and shall be thoroughly crosschecked to avoid conflicts between Consultant and subconsultant documents. Vague references to project requirements on other discipline's plans shall not be permitted. Where references to others' plans are necessary for direction, reference notes shall specifically state the drawing number or specification section, as appropriate. It shall be the Consultant's responsibility to advise each subconsultant of this requirement.

#### **101.11. CONFORMANCE WITH LAWS AND REGULATIONS**

The professional services to be rendered by the Consultant under this Contract shall be in conformance with applicable federal, state and local statutes, acts, rules, codes, ordinances, laws and regulations. These include but are not limited to the latest adopted versions of the building code, electrical code, plumbing code, fire code and related ordinances pertaining to fire safety, mechanical code and the heating, ventilation, air conditioning guide, uniform standards for public works construction for off-site improvements, State of Nevada Industrial Commission codes and safety orders, Nevada State Department of Health regulations, mandatory standards and policies of the State of NV Energy conservation plan, Americans with Disabilities Act (ADA) guidelines and requirements including conformance to any ADA provisions and guidelines that have been issued in "final form" regardless of their adoption by the Department of Justice, municipal ordinances in effect at the Project site, and any other applicable Federal, state and local acts, rules, laws or regulations.

#### **101.12. PROVISION OF WORK**

All work, including but not limited to drawings, specifications, and calculations, shall be provided by the Consultant for each and every part of the Project including those items that the building department may normally allow as "deferred submittals." When complying with NRS 338.140 by listing multiple manufacturers in the specifications, the Consultant shall review options with the City and select the most available, standard, or economical manufacturer's model to fully engineer and include in the bid and permit documents. Should the Contractor propose one of the other manufacturers listed in the specifications after award, the cost of the other listed manufacturer's effect on the documents and the construction shall be borne by the Contractor, except that the Consultant shall have the duty to cooperate with the Contractor in reviewing the proposal for design compliance (including the Contractor provided structural calculations) and providing revisions to the Consultant's documents as required to accommodate the proposed change. Such revisions to the Consultant's documents shall be an Additional Service, which shall be approved in writing by the City prior to the Consultant making any revisions and charged to the Contractor by change order.

#### **101.13. DESIGN STANDARDS**

All work shall be in full compliance with the applicable City of Las Vegas "Design Standards for Buildings, Parks, and Parking Facilities" ("Design Standards"), incorporated herein by reference, and that any failure in this regard shall be at the sole expense of the Consultant to correct specifically including any additional construction costs resulting from such failures in the construction bid documents. The Consultant agrees to include this requirement into subcontract agreements with subconsultants providing services for the Project.

#### **101.14. ASBESTOS**

The Consultant shall insure that the new design contains no asbestos containing building materials of any kind.

#### **101.15. SUBCONSULTANT CONTRACTS**

The Consultant acknowledges the City's requirement to incorporate the City's "Instructions to Bidders", "General Conditions" and "Division One", incorporated herein by reference, into the contracts prepared for bidding on the Project covered by this Contract. The Consultant further agrees to perform in accordance with the obligations stated in these referenced documents and agrees to include this provision in all subconsultant contracts. The Consultant acknowledges familiarity with the City's standard format, terms and conditions of these documents and that such document examples were made available to the Consultant upon request, prior to signing this Contract.

#### **101.16. DISCLAIMERS**

No disclaimers are allowed on any documents, except as required due to City of Las Vegas Building Department's request for inclusion and stamping of documents not prepared by the Consultant such as reports of testing and details of fire rated assemblies or similar copyrighted documents.

#### **101.17. DESIGN MEETINGS**

Throughout the design phases of the project, participate in regularly scheduled weekly design meetings with the City. Coordinate attendance of subconsultants and other parties as appropriate to the progress of the work and to avoid delay. Unless the City elects to do so and provides written instrument stating such, record, prepare and distribute to all attendees and other affected parties, a meeting summary documenting decisions made and actions required by attendees and other affected parties, in a format acceptable to the City, within 5 days following each meeting.

#### **101.18. PROJECT MANAGEMENT SOFTWARE**

Upon City request, Consultant shall utilize the City's online project management software (MasterWorks) as the primary means of communication with the City for this Project including, but not limited to, correspondence, contract changes, claims, reports, schedules, invoices, photos, drawing and specification submittals, and construction administration.

##### **101.18.1. *The City shall provide:***

- A limited training manual for the MasterWorks software and a maximum of two hours of MasterWorks software training for up to four people at the City's offices.
- The cost of any software licenses required by the MasterWorks software manufacturer or distributor.
- User accounts for Consultant's access to the MasterWorks software.

##### **101.18.2. *The Consultant shall provide:***

- Training of Consultant personnel required to utilize the MasterWorks software, except as provided by the City above.
- Information using the forms, screen views, and information fields provided in the software and training materials.
- Electronic notification in the MasterWorks software of any submittals that cannot be transmitted electronically, such as material samples.
- Large format scanning capabilities with file size, resolution, and file naming convention as directed by the City.

- Computer hardware, software, peripheral equipment, accessories, and Internet access as needed to integrate with and fully utilize the MasterWorks software, such as Adobe Acrobat, Internet Explorer, and Microsoft Word.
- Frequent monitoring of the MasterWorks software.
- Documents approved in the MasterWorks software shall have the same effect as ink-signed originals. Accordingly, the Consultant is required to safeguard their usernames and passwords, particularly those that have been given the rights within the MasterWorks software to provide approvals, and no excuse will be entertained by the City for unauthorized MasterWorks software access that uses the Consultant's assigned usernames. The Consultant shall ink-sign documents, in addition to or instead of the MasterWorks approvals, upon City request.
- CMAR Coordination. If the Project utilizes the Construction Manager at Risk (CMAR) delivery method, the Consultant shall coordinate and cooperate as necessary for the CMAR to provide their scope of preconstruction services for the Project.

**101.18.3. Waiver of Film Permit**

The requirement for the Consultant to obtain a City issued Film Permit to photograph the Project is waived for the Term of this Contract. Photographs of the Project taken by the Consultant after final Consultant payment will again require a City issued Film Permit. Reference 10.04, E. Confidentiality for the allowed uses of Consultant photographs.

**101.19. DEFINITIONS**

**101.19.1. Construction Cost Estimate**

As used herein, means a forecast of the construction cost prepared on the basis of detailed analysis of materials and labor for all items of work.

**101.19.2. Contractor**

Refers to the party or parties that the City contracts to construct the Project. This includes without limitation general or specialty contractors utilizing a design-bid-build delivery method, a construction manager at risk, and design-builder when utilizing alternate delivery methods.

**101.19.3. Drawings and Specifications**

As used herein, drawings and specifications shall be deemed in all instances to include architectural, structural, mechanical, plumbing, electrical, civil, and landscape drawings and specifications, and any drawing and specification prepared by specialty consultants.

**101.20. CITY'S REVIEW PROCESS**

**101.20.1. City Review**

Upon receipt of any documents furnished by the Consultant, the City Representative shall conduct a preliminary review of such documents and determine whether the documents comply with the scope of the Project. After the preliminary review, if the City Representative determines that the documents are insufficient, inadequate, or incomplete, the City shall notify the Consultant and request documents which are professionally complete and appropriate, per Exhibit "B", for each service phase submitted. The decision by the City Representative in this matter shall be final.

**101.20.2. Event of Default**

If the City Representative determines, after requesting the Consultant to provide corrected and professionally complete Phase submittals, that the documents remain insufficient, inadequate, or incomplete, the City may: i) declare the Consultant in default, or (ii) demand a letter of explanation from the Consultant as to the reason the furnished documents are insufficient, inadequate or incomplete. If the City elects the second option, the Consultant, at Consultant's own expense, shall furnish additional sets of all documents, based on the quantity set forth in Exhibit "B", that are sufficient, adequate and complete in the discretion of the City Representative for review by the City. The Consultant, at Consultant's

own expense, shall attend any meeting, whether formal or informal, including the City Council meeting when requested by City to explain the reason the Consultant presented inadequate, insufficient, or incomplete documents to the City, and the delay, if any, that such submittal and re-submittal may cause in completion of the Project.

**101.20.3. Review Period**

The City’s review period in the Project Schedule shall not begin until the City Representative determines that the documents presented by Consultant fully comply with the requirements. After the City Representative determines that the documents comply with such requirements, the City shall begin a review of the documents.

**101.20.4. Review Comments**

After the City reviews the documents, one (1) set of the documents shall be returned to the Consultant with comments and corrections noted thereon. The Consultant shall make the changes necessitated by the corrections or other comments into the documents, and return the correction set with the corrected documents, together with written responses to the City’s correction(s), comments(s), and change(s), which state the action taken and reason for such action for each item presented by the City.

**101.21. THE CITY’S RESPONSIBILITIES**

The City will be responsible for performing all work necessary to complete their obligation to the Consultant to allow the Consultant to complete their work.

**101.21.1. The City shall provide the Consultant with:**

Programmatic information, including a list for current and future needs and operational requirements including all committed facility schedules that impact design and/or construction.

- Project budget and the amount of the Construction Cost Budget.
- Project schedule.
- Any other information required to complete the work, as available, which is not in the Consultant’s Scope of Services.

**101.21.2. Access**

Access arrangements for the Consultant to enter upon public and private property as required to perform their services.

**101.21.3. Design review Comments**

Design Review Comments to be incorporated into the documents. Comment documentation may be provided as red-lined drawings, electronic format and/or hard copies.

**101.21.4. The City shall:**

- 101.21.4.a Acquire any required rights to the Project Site or air rights to adjacent sites as deemed necessary by the City.
- 101.21.4.b Designate a management team to review designs and submittals, and to work with the Consultant to achieve an acceptable, cost effective design.
- 101.21.4.c Provide and conduct all bidding activities, including printing and distribution of bid and constructions documents, except as specifically required to be provided by the Consultant.

**102 THE CONSULTANT’S RESPONSIBILITIES**

**102.1. CONSULTANT**

The Consultant shall be responsible for performing all work necessary to complete the following schedule of work, more fully described following:

**102.1.1. Responsibilities Specific to this Project for Various Phases**

**102.1.2. Programming and Conceptual Design Phase**

**102.1.3. Schematic Design and Master Planning Phase**

**102.1.4. Design Development Phase**

**102.1.5. Construction Document Phase**

**102.1.6. Bidding Phase**

**102.1.7. Construction Administration Phase**

**102.1.8. Post Construction Phase**

**103 RESPONSIBILITIES SPECIFIC TO THIS PROJECT FOR VARIOUS PHASES**

**103.1. SURVEY**

Professional Land Surveyor. All survey work performed for the tasks listed in this section shall be performed under the direct supervision of a Professional Land Surveyor (PLS) currently registered in the State of Nevada, excluding any aerial mapping or LiDAR scanning performed by a third-party vendor.

**103.1.1. Control Survey**

A control survey will be performed to establish adequate control for all topographic mapping necessary for the limits and purpose of the project. This will include all control panels/targets set for the purpose of aerial mapping or LiDAR scanning. Additional control points shall be established, if necessary, for eventual construction layout.

103.1.1.a **Horizontal Coordinate System.** The control survey shall utilize the official City of Las Vegas horizontal coordinate system defined as follows. The geodetic datum and current reference frame is NAD 83 (2011) epoch 2010.0 as determined by the reference stations that comprise the Las Vegas Valley Water District GPS network. The use of any other geodetic datum and reference frame will require approval of the City Surveyor. The mapping projection is the Nevada Coordinate Reference System (NCRS). The appropriate NCRS zone is dependent on the geographic location of the project and should be determined prior to any surveying activities. For more detailed information on the datum, GPS network and NCRS please visit the following webpage: [lasvegasnevada.gov/survey](http://lasvegasnevada.gov/survey).

103.1.1.b **Vertical Control.** The control survey shall utilize the official City of Las Vegas Vertical Control Network defined as follows. The vertical datum is NAVD88 as adjusted by the City in 28, referred to as the CLV 28 Adjustment. The Control Network is comprised of City of Las Vegas benchmarks. Only benchmarks with a published CLV 28 Adjustment elevation shall be used. For more detailed information on the benchmarks please visit the following webpage: [lasvegasnevada.gov/survey](http://lasvegasnevada.gov/survey). Large projects that extend more than one-half mile in any direction shall be tied to multiple benchmarks, with no portion of the project being more than one-half mile from a project benchmark.

103.1.1.c **Accuracy.** The control survey shall have an absolute horizontal accuracy of +/- 0.05 feet relative to the project coordinate system, which meets positional certainty requirements for High Urban Land Boundary Surveys per NAC 625.666. All points used to control aerial mapping, LiDAR scanning and traditional optical survey methods shall have an absolute vertical accuracy of +/- 0.05 feet (relative to the project benchmarks), as permitted by the positional certainty requirements for Control Surveys per NAC 625.666.

- 103.1.1.d **Survey Control Map.** A Survey Control Map plan sheet (or sheets) shall be prepared showing sufficient control points needed for construction, with horizontal coordinates and elevations annotated. The completed Survey Control Map shall be formatted as specific plan sheet(s) to be sealed by the PLS.
- 103.1.1.e **Topographic Survey.** Based on the project control survey a topographic survey of all surface features within the project limits will be performed to serve as the base model for all engineering design. The topographic survey will consist of two primary components, 2D planimetrics of all existing features and a 3D digital terrain model (DTM).
- 103.1.1.f **Planimetrics.** Content and Level of Detail. The planimetrics data shall all topographic features within the requested survey limits: curb widths, wall and fence type, wall widths, gate locations, ground surface types (e.g., concrete, asphalt, concrete pavers, grass, decorative rock, etc.), identification of all utility features (if possible), defined boundaries of all surface utilities larger than 2.5 feet in either direction (vaults, cabinets, etc.), building footprints (not envelopes), and complete pavement markings. These requirements also apply to any areas that aerial mapping has been authorized.
- 103.1.1.g **DTM Structure and Level of Detail.** The survey for the existing ground DTM shall include all gradebreaks (modeled as breaklines) within the survey limits, measured at minimum 50-foot intervals. The DTM shall also include spot elevations to determine all high and low points, and sufficient spot elevations to define relatively flat areas measured at minimum 50-foot grid intervals.
- 103.1.1.h **Deliverables.** The topographic survey files shall be incorporated into the first design submittal and include CAD files containing the survey planimetrics (2D linework and symbology) and existing ground DTM represented as a single Civil 3D surface. These files are to be prepared under the supervision of the project's Professional Land Surveyor.

## 103.2. COST ESTIMATES

### 103.2.1. *Preparation of Cost Estimate*

The Consultant shall prepare and provide a detailed Independent Construction Cost Estimate with each submittal. Independent estimates shall be prepared by an outside firm specializing in providing construction estimate services, and who is not a part of or an employee of the Consultant's firm. Provide unit costs, quantities and other estimating parameters for each component or work, reflecting current market conditions and costs. Reconcile each successive estimate to the one provided at the preceding submittal. Provide the estimate in the CSI UniFormat II style. Work with the City to reconcile the Consultant's estimates with the City's staff, consultants, and contractor's estimates. Should the Consultant and City disagree on the appropriate contingencies to include in the Construction Cost Estimate for market factor and escalation, the City's estimated factors will be used to determine the Construction Cost Estimate.

### 103.2.2. *Cost Estimate vs. Project Budget*

If at any time during the course of the Project it becomes evident that the Construction Cost Estimate exceeds the Construction Cost Budget, notify the City and propose design solutions that will bring the Project within the Construction Cost Budget. Execute approved solutions as required at no additional cost to the City.

## 103.3. GOVERNMENTAL AND AGENCY APPROVALS

### 103.3.1. *Progress and Final Documents*

Submit progress and final Construction Documents, applications, and other required documentation to all required utility companies, regulatory authorities and governmental agencies having jurisdiction over the Project at the earliest opportunity in the completion of the documents. Submitted documents shall be sealed and signed by the engineers and architects of record in the State of Nevada as required by the City, utility and governmental agency. During the progress of the design documents, conduct design review meetings with the utility and governmental agencies whenever allowed by their review processes. Coordinate and incorporate design review comments and corrections into the documents in an expeditious

manner, track the approval process and report status to the City Representative on no less than a weekly basis until approved, and notify the City in writing of any approval not given by a regulatory agency, noting the efforts made to secure such approval. Update the Construction Cost Estimate to account for revisions made.

**103.4. FEES**

Notify the City of any required utility, application, permit and review fees, which shall then be the responsibility of the City to pay.

**103.5. CAPITAL PROJECT MANAGEMENT SECTION NOT A REGULATORY AUTHORITY**

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, and Planning Department 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 does not speak or act for any regulatory authority, nor does any regulatory authority speak or act for the Capital Project Management Section. 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.

**103.6. APPROVAL**

The City shall give approval of documents prior to being submitted to any regulatory agency for permit review and approval.

**103.7. BUILD AMERICAN/BUY AMERICAN COMPLIANCE**

Consultant and subconsultants at all tiers shall:

**103.7.1.** The Grantee must comply with the requirements of the Build America, Buy America (BABA) Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, if applicable to the Grantee's infrastructure project. Pursuant to HUD's Notice, "Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" (88 FR 17001), any funds obligated by HUD on or after the applicable listed effective dates, are subject to BABA requirements, unless excepted by a waiver. **Verification**

**103.8. DESIGN DEVELOPMENT (DD) PHASE**

Upon authorization by the City to proceed with the Design Development Phase, the Consultant shall:

**103.8.1. Documents**

Based on the approved Schematic Design Submittal and any adjustments authorized by the City, the Consultant shall prepare the Design Development Documents consisting of the drawings, outline specifications and other documents establishing the size and character of the Project as to the architectural, mechanical and the electrical systems, materials and such other elements as may be appropriate. Incorporate requested changes into appropriate documents. All incorporated changes shall be fully coordinated within and between disciplines. Design Development documents shall minimally include the following:

**103.8.2. Drawings**

103.8.2.a Building data and code analyses

103.8.2.b Utility plans, including both on-site and off-site improvements

- 103.8.2.c Paving and grading plans, including both on-site and off-site improvements
- 103.8.2.d Planting plans
- 103.8.2.e Irrigation plans
- 103.8.2.f Site plans
- 103.8.2.g Floor plans, indicating the size of rooms and furniture arrangements
- 103.8.2.h Reflected ceiling plans
- 103.8.2.i Roof plans
- 103.8.2.j Building elevations
- 103.8.2.k Building and wall sections
- 103.8.2.l Finish schedules
- 103.8.2.m Foundation plans
- 103.8.2.n Framing plans
- 103.8.2.o Heating, ventilating and air conditioning (HVAC) plans
- 103.8.2.p Lighting plans
- 103.8.2.q Power plans

Any other drawings necessary to describe the Project sufficiently including theming and phasing, and to prepare an accurate cost estimate.

### **103.9. SPECIFICATIONS**

Prepare all sections required to be included in the Specifications for the completed Contract Documents. Include in the DD Phase Specifications submittal, "Part 1 – Section Includes" and completed "Part 2 – Products" for each section.

### **103.10. ESTIMATE**

Prepare a detailed Construction Cost Estimate.

### **103.11. VALUE ENGINEERING SESSION**

Upon reconciliation of the Consultant's Construction Cost Estimate to the Construction Cost Budget, the Consultant's design team, including all consultants from any contractual tier, shall participate in a Value Engineering Session with City personnel and consultants.

### **103.12. SUBMITTAL**

Prepare a formal Design Development Submittal to include all City approved Design Development Documents. Provide ten (10) copies of the final documents from this phase.

### **103.13. REVIEW**

The Consultant's design team shall participate in a Design Review Meeting in which the City will present and discuss comments generated during review of the Design Development Submittal. Comments regarding the Design Development Submittal shall be incorporated into the Construction Documents Submittal. The City shall give written approval of the final Design Development Submittal prior to the Consultant proceeding with the Construction Documents Phase.

#### **104 CONSTRUCTION DOCUMENTS (CD) PHASE**

Upon authorization by the City to proceed with the Construction Documents Phase, the Consultant shall:

##### **104.1. CONSTRUCTION DOCUMENTS**

Based on the approved Design Development Submittal, review comments and any further adjustments in the scope or quality of the Project or in the Construction Cost Budget authorized by the City, the Consultant shall prepare for review and approval by the City the plans, drawings, specifications, and other documents related to the Project (collectively the "Construction Documents"), including the General Conditions provided by the City, which set forth in detail the requirements for the construction of the Project. The Construction Documents shall be technically sound and in conformance with federal, state and local laws, and shall not violate or infringe upon any patent rights. The Consultant agrees to revise or correct any deficiency or error in the Construction Documents. The City's approval of the Construction Documents, or any portion thereof, shall not relieve the Consultant of responsibility for the professional and TECHNICAL ACCURACY OF SUCH DOCUMENTS.

##### **104.2. BID DOCUMENTS**

The Consultant shall assist the City in the preparation of the bidding documents, including but not necessarily limited to, the bid proposal form and the supplemental specifications (collectively the "Bid Documents"), which are to be included in the Contract between the City and Contractor. The Bid Documents and the Construction Documents together comprise the "Contract Documents."

##### **104.3. ESTIMATES**

Prepare and submit a detailed Construction Cost Estimate at the 50 percent, 90 percent, and 100 percent CD Submittals. Estimates must be prepared by an experienced professional construction estimator with a thorough knowledge of the local construction market. The Consultant shall advise the City of any adjustments to the Construction Cost Budget indicated by changes in the Construction Documents or resulting from a change in general market conditions.

##### **104.4. CONSTRUCTION SCHEDULE**

Estimator shall include with the 90 percent Construction Cost Estimate the number of calendar days required for the Contractor to complete the Work, to be used in the bid documents and construction contract.

##### **104.5. REVIEWS**

Respond to all design review comments prior to each successive submittal. Incorporate requested changes into appropriate documents. Fully coordinate all changes within and between disciplines. The Consultant's design team shall participate in design review meetings in which the City will present and discuss comments generated during review of the 50 percent and 90 percent CD Submittals.

##### **104.6. CONSTRUCTABILITY AND BIDABILITY REVIEWS**

Should the City conduct constructability and bidability reviews of the documents using City personnel, consultants, contractors or others, the Consultant shall meet, cooperate and coordinate with the reviewers, and promptly respond to and correct all deficiencies as directed by the City, at no additional cost to the City.

##### **104.7. CD SUBMITTALS**

Provide 90 percent and 100 percent final documents from this phase to the City for review and comment

**104.7.1. Prepare 90 percent Construction Documents, including the following:**

104.7.1.a General

1. Completed title sheets, abbreviations, legends and site plans.
2. Responses to 100 percent Design Development review comments and incorporation into the documents as required.
3. Reference of all applicable codes, Project data and design numbers for rated assemblies.

104.7.1.b Civil

1. Existing facilities plans showing all existing topography and improvements.
2. Utility distribution plans with sizes of all new and existing utilities.
3. Rough grading plans.
4. Finish paving and grading plans.
5. Horizontal control plans.
6. Details with references to the plans.

104.7.1.c Landscape

1. Landscaping plans denoting all materials and sizes.
2. Irrigation plans with sizing of all piping.
3. Details with references to the plans.

104.7.1.d Architectural

1. Floor plans with all dimensions and room finishes noted.
2. All door, window, hardware, and glazing schedules complete.
3. Roof and reflected ceiling plans that reflect coordination with structural, mechanical, and electrical systems.
4. All elevations and sections.
5. Enlarged plans of specific rooms or areas as needed to accurately portray the work.
6. Interior and exterior details.
7. All section and detail bubbles completed to indicate the location of the sections and details.

104.7.1.e Structural

1. Foundation plans including all dimensions.
2. Intermediate floor framing plans with complete section cuts and detail references.
3. Complete section and detail sheets.
4. Completed and detailed roof framing plans.
5. Final calculations required to meet this level of completion.

104.7.1.f Mechanical/Plumbing

1. All HVAC sizing (ducts and equipment).
2. All air flow quantities noted.
3. All mechanical equipment and fixture schedules completed.
4. All pipe sizes noted.
5. Cathodic protection requirements specified.
6. Completed riser diagrams.
7. All control diagrams shown and completed.
8. All details completed and referenced to the plans.
9. Final calculations required to meet this level of completion.

104.7.1.g Electrical

1. All power, lighting and auxiliary systems plans reflecting complete circuiting.
2. Required single line drawings.
3. Completed panel schedules.
4. Electrical room details showing equipment in plan and elevation.
5. All details completed and referenced to the plans.
6. Final calculations required to meet this level of completion.

104.7.1.h Specifications

1. Completed Project Specification sections (Parts 1, 2 and 3) for each discipline.
2. Final form technical specifications in CSI format.
1. Provide exterior light fixture cut sheets for review

**104.7.2. Prepare 100% Construction Documents, including the following:**

- 104.7.2.a Complete drawings, READY FOR BID stamped and signed by the architects and engineers of record registered in the State of Nevada.
- 104.7.2.b Complete specifications, READY FOR BID stamped and signed by the architects and engineers of record registered in the State of Nevada. All sections shall be accurately cross-referenced and Divisions 0 and 1 shall be correctly incorporated.
- 104.7.2.c Complete civil, structural, mechanical, plumbing, and electrical calculations, stamped and signed by the engineers of record registered in the State of Nevada.
1. The Consultant shall incorporate all requirements, specific directions, changes and corrections made by the City and regulatory authorities and agencies into the 100% Construction Documents Submittal. The Consultant shall provide the City a "Yellow Line" over "Red Line" corrections drawing check set or other quality control evidence confirming that all of the requirements, directions, changes and corrections have been incorporated into the documents.
  2. The City shall give written approval of the final, corrected, Construction Documents prior to the Consultant proceeding with submittals to the City Purchasing Division for bidding or negotiation. The Consultant shall not be responsible for reproduction costs of the Contract Documents submitted, except as specifically required in Exhibit "A" and Exhibit "B".

## **105 BIDDING PHASE**

### **105.1. INITIATING BID PROCESS**

With approval of the Construction Documents and of the latest Construction Cost Estimate, the City shall obtain bids or negotiated proposals and prepare the Construction Contract for the Project.

### **105.2. DELAY IN BIDDING**

If the Bidding or negotiation Phase has not commenced within 90 days after the Consultant submits the final, corrected Construction Documents incorporating all permit plan check comments and regulatory requirements to the City ready for bidding, the Construction Cost Budget may be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the City and the date on which proposals are sought.

### **105.3. BIDDING**

Upon authorization by the City to proceed with the bidding phase, the Consultant shall:

#### **105.3.1. Bid Questions**

While the Project is being advertised for bids, all questions concerning intent shall be referenced to the City for resolution. In the event that items requiring interpretation in the drawings or specifications are discovered during the bidding period, said items shall be analyzed by the Consultant for decisions by the City as to the proper procedure required. Corrective actions taken will be either in the form of an addendum prepared by the Consultant and issued by the City, or by a construction change directive issued after award of the Construction Contract. In either case, Consultant shall prepare all necessary documents at no additional cost to the City, and update the Construction Cost Estimate. All documents shall be prepared on 8-1/2" X 11" size paper unless otherwise approved in writing by the City.

#### **105.3.2. Addendum**

Addendum revisions shall be made on the appropriate CAD drawing or word-processing specification files, and then electronically clipped out for issuance in 8-1/2" X 11" format. Revisions shall be indicated and logged on each document. Consultant shall maintain a log of all revisions to the documents.

#### **105.3.3. Prebid Meetings**

Attend and participate in the Pre-bid meeting.

#### **105.3.4. Bid Evaluation**

Participate in bid evaluation and recommendations, when requested.

#### **105.3.5. Notice of Award.**

The City shall advise the Consultant of the award of the Construction Contract, and establish a Pre-Construction Conference.

## **106 CONSTRUCTION ADMINISTRATION PHASE**

### **106.1. COMMENCEMENT OF CONSTRUCTION PHASE**

The Construction Phase for the Project will commence with the City's issuance of the "Notice To Proceed" to the Contractor for the Project and, together with the Consultant's obligation to provide the services under Section 1 and, if applicable,

Section 2 shall terminate with the final payment to the Contractor or in the absence of the submission of a final certificate for payment or of such due date, sixty days after the date of Substantial Completion of the Project, whichever first occurs.

## **106.2. CONSTRUCTION PROJECT REPRESENTATIVE**

The individual designated as the City's Construction Project Representative is indicated in Exhibit "F" (Key Personnel List), or if no name is so indicated, the Consultant shall be notified in writing by the City as to the individual designated as the Construction Project Representative. The Construction Project Representative shall, during the Construction Phase, have complete authority to receive information, transmit instructions on behalf of the City Representative, to coordinate weekly construction site meetings and represent the City in the completion of the Project. The Construction Project Representative shall be responsible for writing and distributing minutes of construction meetings, or shall delegate such responsibilities to other consultants.

## **106.3. AUTHORIZATION TO PROCEED**

Upon authorization by the City to proceed with the construction phase, the Consultant shall:

### **106.3.1. Meetings**

Attend and participate in the Pre-Construction Conference with the Construction Contractor. The Consultant's construction administration team shall participate in periodic "Partnering Meetings" with the City and the Construction Contractor for discussion of shared goals, processes, and procedures during the construction process, which shall be attended by a Consultant team member who has high-level decision-making authority, and require the same in all subconsultant contracts. Attend and participate in Construction Progress Meetings, weekly or more frequently as requested by the City. Meeting dates, times, and place will be determined by the City.

### **106.3.2. Site Visits**

Visit the Project site at such intervals as are appropriate to the stage of construction for the Project or as otherwise agreed upon in writing by the parties hereto in order to become familiar with the progress and quality of the construction and to determine if the construction of the Project is proceeding in accordance with the Contract Documents. These visits shall average once a week throughout the period of the Construction Contract. In coordination with the Contractor's use of the site, Consultant shall have access to the site during construction of the Project.

### **106.3.3. Defective Work**

Advise the City of any defects or deficiencies in work by the Construction Contractor that the Consultant observes while visiting the site. The Consultant shall have authority to act on behalf of the City only to the extent provided in this Contract unless otherwise modified by written instrument. The Consultant shall have no authority to issue instructions on behalf of the City, or to deputize another to do so. Except as may otherwise be provided in the Contract Documents or when direct communications have been specially authorized, the Consultant and Contractor shall communicate through the City's representatives.

### **106.3.4. Payment Applications**

If requested by the City, the Consultant shall review each Application for Payment submitted by the Contractor based on the Consultant's observations of the progress of construction of the Project, and certify the amounts due there under. The Certification for Payment shall constitute a representation by the Consultant to the City, based on the Consultant's observations at the Project site and on the data comprising the Contractor's Application for Payment, that the construction of the Project has progressed to the point indicated in the Application and that, to the best of the Consultant's knowledge, information and belief, the quality of the construction of the Project is in accordance with the Contract Documents. The foregoing representations are subject to (i) an evaluation of the construction of the Project for conformance with the Contract Documents upon Substantial Completion of the Project, (ii) results of subsequent tests and inspections, (iii) minor deviations from the Contract Documents correctable prior to completion and (iv) specific qualifications expressed by the Consultant. The issuance of the Certificate for Payment shall further constitute a representation that the Contractor is

entitled to payment in the amount certified. However, the issuance of the Certificate for Payment shall not be a representation that the Consultant has (i) made exhaustive or continuous on-site inspections to check the quality or quantity of the construction of the Project, (ii) reviewed the construction means, methods, techniques, sequences or procedures, (iii) reviewed copies of requisitions received from subcontractors and material suppliers and other data requested by the City to substantiate the Contractor's right to payment or (iv) ascertained how or for what purpose the Contractor has used money previously paid by the City to the Contractor.

#### **106.3.5. Document Revisions**

During construction, promptly furnish all necessary additional drawings for supplementing, clarifying and correcting purposes. Revisions shall be made on the full size CAD drawing or complete word-processing specifications files, and then electronically clipped out for issuance. Revisions shall be indicated and logged on each document by clouding the affected area and delta revision symbol. The Consultant shall maintain a log of all revisions to the documents detailing the reference document and detail, title, revision delta with date, revision type, and a thorough description of the change. If the City should decide to bid the documents prior to completion of the permit plan check process, the Consultant shall promptly provide the Contractor with a log of revision detailing the variations between the bid set of documents and the permit issued set, in a format acceptable to the City and Contractor, immediately upon completion of the permit plan check process.

#### **106.3.6. Substitutions**

The Consultant's basic services shall include evaluations of any substitutions proposed during the construction period and performing the revisions to the Contract Documents required by such substitutions, including presentation to the City and other local agencies whenever required to obtain approval and/ or permits for construction of such substitution.

#### **106.3.7. Interpretations**

If requested by City, promptly render interpretations which may be necessary for the proper execution or progress of the construction of the Project and render written decisions on all claims, disputes and other matters in question between the City and the Contractor which relate to the execution or progress of the construction of the Project or the interpretation of the Contract Documents. All such interpretations and decisions of the Consultant shall be consistent with the intent of, and shall be reasonably inferable from, the Contract Documents and shall be in writing or the form of drawings.

#### **106.3.8. RFIs**

Promptly respond to Requests for Information (RFIs). The work shall address all RFIs submitted including without limitations Contractor errors, repairs, suggestions, fixes and alternate means of construction, field/site conditions, seemingly frivolous and out of scope requests, and issues relating to document errors and omissions. Determination of appropriate methods and means of construction remain the responsibility of the Contractor.

#### **106.3.9. Submittals**

Promptly review and approve submittals, samples and shop drawings for compliance with the Construction Documents. This work shall include submittals and shop drawings submitted for specified products and products submitted as a "substitution" or under an "or equal" under the Substitution requirements of Section 01600 provision of the specifications. A prompt turn-around time from receipt by the Consultant to dispatch by the Consultant as to cause no delay in the construction of the Project is mandatory for review and distribution. After three (3) submittals, if the same item has not been approved, the City shall be separately notified of such in writing.

#### **106.3.10. Construction Change Orders**

The City has a formal construction contract change order approval process. Proposed construction change orders are negotiated and reviewed by City Engineering and Construction Management staff (and the construction management consultant when one has been retained).

Consultant shall promptly review, comment on, approve, and sign Construction Change Orders and Construction Change Directives with supporting documentation and data as deemed necessary by the Consultant for the City's approval and

execution in accordance with the Contract Documents. Should the Consultant determine that a proposed Construction Change Order or Construction Change Directive is excessively priced, not a legitimate change in the scope of the Contractor's work, outside of the Consultant's scope of work, detrimental to the Consultant's design, uncoordinated with the Construction Documents, potentially harmful to public safety, or a violation of codes, laws and regulations, the Consultant shall so comment to the City in writing at the time of the required prompt proposal processing, and the Consultant's failure to comment at that time shall be construed as the Consultant's approval of the proposal.

Construction change orders are then reviewed for approval by the City Change Order Committee. Part of that approval process will be checking a box on the Change Order Tracking Form indicating the reason for the construction change order based on information available to the committee at that time. If the construction change order appears to relate to a consultant design deficiency then either the Reason Code box "E&O Value" or "E&O No Value" will be checked. "E&O" value will be checked if it appears the apparent design deficiency results in added cost to the project but all, or a substantial part, of that cost would have been incurred in the original bid if the deficiency did not exist. "E&O No Value" will be checked if it appears that little or no cost to the project would have occurred if the deficiency did not exist. The City may use this data, as well as any other relevant data, in exercising its rights under this Contract to seek compensation for Consultant errors and omissions.

The City will make reasonable efforts to copy all approved construction change orders (with the tracking form included) and construction change directives to the consultant in order to provide the consultant an opportunity to prevent similar instances from occurring on future projects, to allow the consultant to review the potential for similar instances to occur during the progress of this project (and to work with City and Contractor to minimize the potential for future financial impacts when possible regardless of the reason code box checked) and to give advance notice to Consultant to prepare for potential financial impacts to the Consultant and/or for the Consultant to provide documentation to the City as whether the appropriate reason code box has been checked.

#### **106.3.11. Substantial Completion**

Conduct observations to determine the date or dates of Substantial Completion and the date of final completion, and sign the Certificate of Substantial Completion.

#### **106.3.12. Punchlists**

Participate in the development and resolution of Punch Lists.

#### **106.3.13. Turn-Around Times and Consultant Resources**

The Consultant agrees to provide Construction Administration phase services in accordance with the following provisions, and shall require and provide response times from subconsultants to meet these provisions. The following provisions do not require or imply Consultant services in addition to those otherwise required by this Contract and do not authorize any Additional Services.

#### **106.3.14. RFIs and Submittals, Forwarding**

Forward RFIs and submittals requiring review or response by subconsultant(s) of the Consultant within 1 working day of receipt. (For example, receipt on Friday at 3 P.M. must be forwarded no later than 3 P.M. on Monday.)

#### **106.3.15. RFIs and Submittals, Reviewing**

For RFIs and submittals requiring review by or response from the Consultant, begin work on request within 1 working day of receipt (unless the City requests an immediate response) and diligently continue work, uninterrupted by other project commitments or work assignments, until review or response is completed and distributed.

#### **106.3.16. RFIs and Submittals, Maximum Turn-Around Times**

Unless an exception is requested by the Consultant and granted by the City for unusual items or issues requiring additional time, Consultant shall thoroughly and completely respond to RFIs within 5 calendar days and submittals within 10 calendar

days of receipt. Maximum turn-around times include any needed reviews by Consultant's subconsultants. Unless requested, do not provide partial responses. If request is unclear in any regard, review and respond to the maximum extent possible when requesting clarification and additional information.

**106.3.17. Project Delays**

Immediately provide additional support resources as needed to prevent potential and cure occurring construction delays (regardless of whether delay claim is submitted) related to Consultant services, at no additional cost to the City.

**107 POST CONSTRUCTION PHASE**

The Consultant shall provide the following scope of services:

**107.1. RECORDS**

Include Record Documents service only if required or desired for future work on the project; not the city standard service.

**107.2. RECORD DOCUMENTS**

Based upon the Consultant's knowledge of the changes in the Project during the Construction Phase and review of the Contractor's final record documents, prepare Record Documents for the Project. The Consultant shall review and approve the Contractor's final record documents for clarity and completeness, coordinate needed corrections, and drafting all final corrections and co-ordination items submitted by the Contractor using the software package AutoCAD. The Consultant shall prepare and submit one set of completed documents in electronic AutoCAD dwg format and one set of completed documents in electronic Adobe pdf format to the City.

**END OF EXHIBIT "A"**

## **EXHIBIT B REQUIRED SUBMITTALS**

### **108 GENERAL**

The Consultant shall provide the following submittals, delivered to the City unless noted otherwise. Reference the entire Contract and other Exhibits for additional submittals and requirements.

### **109 DESIGN DEVELOPMENT PHASE**

#### **109.1. DRAWINGS AND SPECIFICATIONS**

#### **109.2. CONSTRUCTION COST ESTIMATE**

### **110 CONSTRUCTION DOCUMENT PHASE**

#### **110.1. SUBMITTALS**

Construction Drawings and Specifications as described in the Scope of Services (Exhibit "A") 90%, and 100% completion, utilizing the City's standard cover sheet and title block, including Construction Cost Estimates with 90% submittals.

#### **110.2. BUILDING PERMIT APPLICATION**

#### **110.3. BUILDING DEPARTMENT REVIEW**

Building Department and Civil Land Development section of the Building Department, plan review permit applications.

#### **110.4. CONSTRUCTION DRAWINGS AND SPECIFICATIONS**

Construction Drawings and Specifications ready for issuance of all required permits and printing for bidding phase distribution, which incorporate all governmental, agency, and utility company design comments and corrections.

#### **110.5. TABLE OF CONTENTS**

Table of Contents listing each specification section, with print date indicated (if sections have different dates, individual dates must be indicated for each section).

#### **110.6. DRAWING LIST WITH SHEET TITLE AND ISSUE DATE FOR EACH SHEET.**

#### **110.7. SPECIFICATIONS CONTRIBUTING AUTHORS' STAMPS AND SIGNATURES.**

### **111 BIDDING PHASE**

#### **111.1. ALL BIDDING DOCUMENTS IN PDF FORMAT FOR POSTING ON NGEMNV.COM.**

#### **111.2. REQUESTED AND NECESSARY ADDENDA.**

### **112 CONSTRUCTION ADMINISTRATION PHASE**

#### **112.1. COPIES OF DRAWINGS**

If requested by the Contractor (including their subcontractors acting through the Contractor), provide the Contractor with copies of the drawings including the civil topography, survey, horizontal control, and other related design work produced by the Consultant under this Contract, in AutoCAD file format suitable for use by the Contractor for their intended use including field survey layout work for the Project. The Consultant shall make this a contractual obligation of their subconsultants. The Consultant may require the Contractor to sign a hold harmless Contract as a condition for releasing the electronic files.

### **113 POST CONSTRUCTION PHASE**

#### **113.1. FINAL RECORD DRAWINGS IN ELECTRONIC FORMAT.**

**END OF EXHIBIT "B"**

**EXHIBIT C  
 PERFORMANCE SCHEDULE**

**300 NOTICE TO PROCEED**

The start date for the Consultant’s scope of services shall be, without any further notice requirement, the date of this Contract signed by the parties. The Consultant shall perform the services required as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Scope of Service set forth in this Contract and the compensation to the Consultant for said Scope of Services is based upon the Consultant and the City each performing its responsibilities in a timely manner.

**301 PHASE SCHEDULE**

The maximum allowed time to complete each phase of the work is shown in the following table:

PHASE	CALENDAR DAYS TO COMPLETE	REMARKS
Design Development	21	
Construction Documents	21	See below for the permitting phase scope.
Bidding	00	City determined.
Construction	00	City determined.
Post Construction	00	City determined.
TOTAL	42	

**301.1. CITY REVIEW**

The City review periods shown in the table may occur over several periods during each phase or may occur at the conclusion of each phase. Unused review days may be carried forward for use in successive phases of the Project.

**301.2. CONSTRUCTION DOCUMENTS**

The Calendar Days to Complete for the Construction Documents phase shown in the table begins upon authorization to proceed for this phase and completes upon application acceptance of the submission to the Building Department and Land Development section of the Building Department for the building permit plan review process. The scope of services for the Construction Documents phase continues beyond the date of submission and includes the drawing and specification review activities, and completes when the documents incorporate the required revisions and comments received from all agencies required for approval of the design, and the bidding package is complete, ready for printing and distribution.

**302 DESIGN AND PERMITTING SCHEDULE DELAYS**

**302.1. CONSULTANT REVIEW OF SCOPE AND SCHEDULE**

The Consultant declares that they are experienced and knowledgeable with all governmental, agency, and utility company design approval processes, procedures, applications, fees, design standards, reviews, required corrective actions, and time schedules required for the Project, and that the schedule set forth for the Scope of Services is reasonable and achievable within these design approval parameters.

**302.2. DAMAGES**

Although it is acknowledged that neither the City nor the Consultant have full control over these design approval processes, the Consultant shall be responsible for any damages to the City resulting from their actions or lack of actions, including but not limited to their failure to make timely submittals, their failure to routinely follow-up on submittals, their failure to notify the City of anticipated delays and required design changes, and their failure to process and re-submit comments and corrections received in a timely manner.

**302.2.1. Local Conditions**

Specifically, the Consultant is aware of the following local conditions for timely processing of required design approvals:

- 302.2.1.a The Consultant hereby agrees to reimburse the City for any damages, delays, and additional costs associated with any avoidable delays the Consultant could or should have prevented or mitigated, and that a lack of familiarity with the local processes shall not provide relief from this responsibility.

**303 CONSTRUCTION SCHEDULE CHANGES**

**303.1. NO CHANGE IN FEE**

It is understood and agreed by the Consultant that, although the time required to construct the Project has yet to be estimated as of the date of this Contract, the Consultant is knowledgeable and experienced in determining the estimated Construction Time required to construct public works projects including this specific project type, and further that the Consultant has an advisory role in helping the City establish the Construction Time to be included in the construction contract, and therefore has the ability to determine the Consultant’s fixed fee for the Construction Phase scope of services regardless of how long it takes to construct the Project and that the Consultant assumes all risks for changes in their costs to perform the scope of services agreed to in this Contract due to the length of time it takes to construct the Project, excepting if the following occur with no cause being in any way the fault of the Consultant:

**303.2. SUSPENSION EXCEPTION**

The Consultant may be allowed an increase in fee for construction delays caused by the suspension of the Project as provided for in Section 10.01 Suspension of this Contract.

**303.3. 50% TIME EXTENSION EXCEPTION**

The Consultant’s fee for the Construction Phase may be adjusted due to the time required to construct the Project once the variation in “Construction Time” (as used within this Section, the time from the Contractor’s notice to proceed until Substantial Completion) exceeds a fifty percent increase from the Construction Time provided in the Contractor’s construction contract at award, with the Consultant absorbing any and all anticipated and unanticipated Consultant Construction Phase costs outside of the “Allowed Period” (as used within this Section, the Allowed Period is the time period beginning on the first day that the 50% increase is reached and ending at the close of business on the day preceding the date of Substantial Completion).

**303.3.1. Prior Written Approval Required**

If the Consultant intends to apply for additional compensation for services rendered during the Allowed Period, permission must be requested in writing and written approval granted by the City prior to providing any such services. Should the Consultant fail to request the required permission, the City is under no obligation to provide additional compensation for services performed during the Allowed Period. Should the City request in writing reduced or specific services during the Allowed Period, the Consultant shall provide the services and be compensated as an Additional Service. Should the Consultant request the required approval and the City fail to grant it, the Consultant is under no obligation to provide the required ongoing Construction Phase services during the Allowed Period excepting this does not relieve the Consultant’s obligation to provide punch list and other project close out tasks that are unrelated to the length of the construction schedule.

- 303.3.1.a The time extension may be the result of poor contractor performance, third party delays, added change order work, weather delays, or any other cause, excepting any event, issue, or delay being in any way the fault of the Consultant (whether the sole cause or a contributing concurrent cause) shall not count toward the measurement of the 50% extension time period. For example, should a 100 day construction contract time extend to 150 days, the 150th day would be eligible for a fee adjustment, excepting in this example the consultant was negligent in returning timely submittals resulting in a total of 10 days delay over the course of the construction, with the result that the first day of the Allowed Period would then be the 160th day.
- 303.3.1.b The Consultant shall submit Allowed Period timecard records for the City's review in determining eligible personnel, activities and hours, as well as any other requested records reasonable necessary for the City to make a determination.
- 303.3.1.c Eligible personnel may include the individuals and positions named in this Contract but not support personnel as defined in Exhibit "E".

**303.3.2. Eligible Activities**

Eligible Activities may include the tasks required in this Contract and conducted during the Allowed Period that would not have occurred except for the extended construction phase schedule such as attending weekly construction meetings, but not activities that would have been conducted regardless of the length of the construction schedule such as reviewing submittals, answering RFIs, and preparing punch lists of corrective work. Eligible activities must not benefit other projects in any way.

**303.3.3. 50% Extension**

Any approved 50% extension fee adjustments shall be considered an Additional Service and utilize the rates in Exhibit "E" unless otherwise agreed to by the parties to this Contract. Reimbursable Expenses shall not be included unless specifically authorized in writing by the City for the Allowed Period.

**303.3.4. Time Suspension**

Any time extension related to a suspension of the Project during construction shall not count toward the measurement of the 50% extension time period. The time period related to the suspension may be allowed a fee adjustment as provided for in Section 10.01 Suspension of this Contract instead.

**303.3.5. 50% Time Reduction Exception.**

Should the Contractor reach Substantial Completion in less than 50% of the awarded Construction Time, the Consultant's Construction Phase fee shall be reduced. Should the Project reach Substantial Completion in 50% of the awarded Construction Time to 100% of the awarded Construction Time, the Consultant's fee for the Construction Phase shall not be reduced due to the early completion.

- 303.3.5.a The cause of the reduction in time may be an efficient contractor, a generous awarded Construction Time, a change order scope reduction, a termination of the Project, or any other cause.
- 303.3.5.b The amount of the fee reduction for the Construction Phase shall be based on the percent of the awarded Construction Time used. For example, if an awarded Construction Time was 100 days and the project was terminated 10 days into the time, the Construction Phase fee would be reduced to 10% of the original fee.

**303.4. POST CONSTRUCTION.**

**No adjustments shall be made to the Post Construction Phase fee due to changes in construction schedules.**

**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 \$99,550. 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 BASED ON THE COMPLETION OF PHASES**

**401.1. FEE BREAKDOWN**

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).

PHASE	PERCENT of TOTAL	FIXED FEE	REMARKS
Design Development	%	\$32,750	
Construction Documents	%	\$36,700	
Bidding	%	\$2,500	
Construction	%	\$14,000	
Post Construction	%	\$3,600	Punch List
	<b>TOTAL</b>	<b>\$89,550</b>	

**401.2. PHASING**

The scope of work for each of the phases may be adjusted by the City Representative over the course of the Project, including establishing new services or the deletion of listed services. The cost of these adjustments shall be calculated utilizing the rates agreed to in this Contract to the extent they are applicable.

**401.3. AUTHORITY TO ADJUST PHASING SCOPE**

The City Representative shall have the authority to make such work scope adjustments to the services contained within Basic Services without processing this Contract for an amendment or additional services authorization, if (1) the revisions are documented and agreed to by the Consultant and City in writing prior to performance, (2) the Total Cost for Basic Services is not exceeded, and (3) the change(s) are within the scope of the Project.

**401.4. ALTERNATE PAYMENT METHOD FOR BASIC SERVICES**

At the City's discretion, the City may revise the payment for Basic Services for all or part of any phase from the method of payment based on completion of phases to instead a method based upon the Consultant's hourly rates. As part of this

change to an hourly rate, the City may add, delete, or modify the services to be performed. The City shall provide written notice to the Consultant prior to revising the payment method to hourly rates. Services for partially completed phases performed prior to the written notice shall be compensated based upon the percentage of completion of the phase.

**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 from the City 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 Exhibit "E" (Additional Compensation), or if no Additional Service fee has been established for the service, in accordance with the Consultant Hourly Rates established in Exhibit "E" (Additional 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" (Additional 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" (Additional Compensation) as allowed Reimbursable Expenses shall not be compensated without amendment to this Contract to allow them as Reimbursable Expenses.

**402.5. COST INCREASES**

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

ADDITIONAL SERVICES ALLOWANCE		COMMENTS
TOTAL NOT-TO-EXCEED COST	\$10,000	Additional Design and Construction Management Services

**END OF EXHIBIT "D"**

**EXHIBIT E**  
**ADDITIONAL 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.

<b>CLASSIFICATION</b>	<b>HOURLY RATE</b>
Principal	\$300
Architect III	\$250
Architectural Staff II	\$150
Administrative Assistant	\$100

**501 SUBCONSULTANT 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.

<b>Actus</b>	<b>RATE</b>	<b>UNIT</b>
Civil/Survey Principal	\$220	Per Hour
Senior Project Manager/Senior Engineer	\$185	Per Hour
Project Manager/Engineer	\$165	Per Hour
Senior Designer	\$140	Per Hour
Designer	\$135	Per Hour
Hydrologist I	\$135	Per Hour
Engineering Intern I	\$115	Per Hour
CAD Technician II	\$110	Per Hour
CAD Technician I	\$100	Per Hour
Senior Coordinator	\$105	Per Hour
Coordinator	\$90	Per Hour
Administrative	\$60	Per Hour
2 Man Survey Crew (non-prevailing wage)	\$180	Per Hour
<b>Revolution Engineering</b>	<b>RATE</b>	<b>UNIT</b>

President	\$350	Per Hour
Engineer of Record/Director	\$300	Per Hour
Design Engineer/Project Manager	\$250	Per Hour
Designer/Assistant Project Manager	\$200	Per Hour
Junior Designer	\$150	Per Hour
CADD/Revit Operator	\$100	Per Hour
Admin	\$85.	Per Hour
<b>SLA Land Architects</b>	<b>RATE</b>	<b>UNIT</b>
Principal	\$200	Per Hour
Project Manager	\$140	Per Hour
Landscape Architect	\$130	Per Hour
CADD/Designer	\$100	Per Hour
Administrative	\$70	Per Hour
<b>RJC Engineers, LLC</b>	<b>RATE</b>	<b>UNIT</b>
President/Principal	\$275	Per Hour
Licensed S.E.	\$240	Per Hour
Licensed P.E.	\$220	Per Hour
Senior Engineer	\$190	Per Hour
Project Manager	\$170	Per Hour
Project Engineer	\$150	Per Hour
Cad Manager	\$160	Per Hour
Senior Draftsperson	\$140	Per Hour
Draftsperson	\$120	Per Hour
Administration	\$80	Per Hour
<b>TERP</b>	<b>RATE</b>	<b>UNIT</b>
Principal	\$235	Per Hour
Senior Engineer	\$220	Per Hour
Senior Consultant	\$210	Per Hour
Senior Technician	\$185	Per Hour
Engineer	\$175	Per Hour
Consultant	\$160	Per Hour
Technician	\$150	Per Hour
CAD Operator	\$130	Per Hour
Admin	\$100	Per Hour

Intern	\$85	Per Hour
<b>Hall AEC</b>	<b>RATE</b>	<b>UNIT</b>
Senior Specifier	\$125	Per Hour
<b>O'Connor Construction Management</b>	<b>RATE</b>	<b>UNIT</b>
Director	\$270	Per Hour
Cost Estimating Manager	\$197	Per Hour
Senior Cost Estimator	\$187	Per Hour
Cost Estimator II	\$172	Per Hour
Cost Estimator I	\$162	Per Hour
Economist	\$200	Per Hour
Senior Risk Analyst	\$187	Per Hour

**502 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

**502.1. VALIDITY OF RATES**

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

**502.2. SUBCONSULTANT RATES**

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.

**502.3. 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.

**503 REIMBURSABLE EXPENSES**

**503.1. THE FOLLOWING REIMBURSABLE EXPENSES ARE ALLOWED:**

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

**503.2. REIMBURSEMENT FOR SUBCONSULTANT WORK**

For Reimbursable Expenses of the Consultant, the City shall compensate the Consultant at the actual direct costs incurred by the Consultant. The multiplier includes all compensation for overhead and profit.

**503.3. FIXED SUM REIMBURSABLES**

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.

**503.4. TRAVEL**

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

**503.5. SHOULD TRAVEL AND PER DIEM EXPENSES BE SO AUTHORIZED BY THE CITY:**

**503.5.1. 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.

**503.5.2. Per Diem**

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.

**503.5.3. Mileage**

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

**503.5.4. Example 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**

**600.1. CITY REPRESENTATIVE: MARK POTOKAR**

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

**600.1.1. CONSULTANT REPRESENTATIVE: Ryan Perdue**

**600.1.2. RESPONSIBLE IN CHARGE PERSON: Dwayne Eshenbaugh**

**600.1.3. IN CHARGE PERSON'S STATE OF NEVADA LICENSE NUMBER: 4681**

**600.2. CONSULTANT'S SUBCONSULTANTS**

The following subconsultants will be contracted with and utilized by the Consultant to work on the Project. Any changes or additions require City approval.

**600.2.1. CIVIL ENGINEER: Actus**

**600.2.2. STRUCTURAL ENGINEER: RJC Engineering**

**600.2.3. MECHANICAL ENGINEER: Revolution Engineering**

**600.2.4. ELECTRICAL ENGINEER: Revolution Engineering**

**600.2.5. LANDSCAPE DESIGN: SLA Land Architects**

**600.2.6. INDEPENDENT COST ESTIMATOR (NOT the Consultant): O'Connor Construction Management**

**600.2.7. SPECIFICATION WRITER: Hall AEC**

**600.2.8. ACCESSIBILITY: TERP Consulting**

**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	<b>Conceptual</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>			
	Conceptual				\$0.00	\$0.00			
2	<b>Schematic</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>			
	Schematic				\$0.00	\$0.00			
3	<b>Design Development</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>			
	Design Development				\$0.00	\$0.00			
4	<b>90% Construction Documents</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>			
	90% Construction Documents				\$0.00	\$0.00			
5	<b>100% Construction Documents</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>			
	100% Construction Documents				\$0.00	\$0.00			
6	<b>Bidding Phase</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>			
	Bidding Phase				\$0.00	\$0.00			
7	<b>Construction Phase</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>			
	Construction Phase		\$0.00		\$0.00	\$0.00			
8	<b>Post-Construction Phase</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>			
	Post-Construction Phase		\$0.00		\$0.00	\$0.00			
					\$0.00	\$0.00			
	<b>Not-to-Exceed Total Basic Services Fee</b>	<b>\$0.00</b>	<b>\$0.00</b>						

<b>Additional Services Allowance:</b>									
<b>ASR#</b>	<b>Total Additional Services</b>	\$0.00	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>			
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
<b>Basic Services:</b>	\$0.00	\$0.00	
<b>Authorized Additional Services:</b>	\$0.00	\$0.00	
<b>Unauthorized Additional Services Remaining:</b>		\$0.00	
<b>TOTAL AMOUNT OF INVOICE:</b>		<b>\$0.00</b>	

<b>Total PO Amount:</b>	<b>\$0.00</b>
<b>Total Contracted Amount:</b>	<b>\$0.00</b>
<b>Total Billed to Date:</b>	<b>\$0.00</b>
<b>PO Balance:</b>	<b>\$0.00</b>
<b>Contract Balance:</b>	<b>\$0.00</b>



**EXHIBIT “ H “**  
**Federal Requirements**

The Company hereby covenants and agrees to comply with all said Federal requirements, at all times during the term of this Contract, including without limitation the following:

- (a) **EQUAL EMPLOYMENT OPPORTUNITY (41 CFR 60-1.4(b)).** Applies to construction contracts in excess of \$10,000 which are funded in whole or in part with Federal funds.
- (b) **COPELAND ANTI-KICKBACK ACT (40 U.S.C. 3145),** as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”. Applies to construction contracts in excess of \$2,000 which are paid in whole or in part with Federal funds. The provisions of the Copeland AntiKickback Act do not apply to this Contract.
- (c) **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 3701-3708)** as supplemented by Department of Labor regulations (29 CFR Part 5). Applies to contracts in excess of \$100,000 that involve the employment of mechanics and laborers. The provisions of the Contract Work Hours and Safety Standards Act do not apply to this Contract.
- (d) **CLEAN AIR ACT (42 U.S.C. 7401-7671q.)** and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Applies to contracts and subcontracts awarded over \$150,000.

The Company shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- (e) **RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT.** Applies to persons, small business or nonprofit organizations awarded contracts for the performance of experimental, developmental, or research work which are funded in whole or in part with Federal funds.

The Company must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the City.

- (f) **SUSPENSION AND DEBARMENT**

This contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Company is required to verify that none of the Company’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The Company must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by the City. If it is later determined that the contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the City, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

The Company agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Company further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- (g) **BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (AS AMENDED)**  
Companies who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

**Appendix A, 44 C.F.R. Part 18 – Certification Regarding Lobbying**

The undersigned certifies, to the best of his or her knowledge and belief, that:

No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Company certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Company understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date

**END OF EXHIBIT " H "**