

McDONALD CARANO

George F. Ogilvie III

Reply to Las Vegas

October 25, 2020

VIA ELECTRONIC MAIL

Philip R. Byrnes
Seth T. Floyd
City Attorney's Office
City of Las Vegas
495 South Main Street, 6th Floor
Las Vegas, NV 89101
pbyrnes@lasvegasnevada.gov
sfloyd@lasvegasnevada.gov

**Re: *Engagement for 180 Land Company, LLC, et al. v. City of Las Vegas
Case No. A-17-758528-J***

Dear Mr. Byrnes and Mr. Floyd,

McDonald Carano LLP ("the Firm") is pleased to continue its representation of the City of Las Vegas ("Client") with respect to Nevada law matters described below. Experience has shown the attorney client relationship works best when there is a formal, mutual understanding about fees, payment terms and the scope of services to be provided. This letter ("Agreement") constitutes the agreement relating to the services our firm has agreed to provide. The terms and conditions of our engagement are as follows:

I. Scope of Engagement

The scope of the Firm's engagement (the "Engagement") involves representing the Client in the inverse condemnation action brought on behalf of 180 Land Company, LLC in the Eighth Judicial District Court, Case No. A-17-758528-J. The services to be provided by the Firm in connection with the Engagement will encompass all services normally and reasonably associated with this type of Engagement that the Firm is requested and able to provide and that are consistent with the ethical obligations of the Firm and its attorneys.

The scope of this Engagement does not include any other types of legal work other than that described above. If Client requests our assistance with any matters other than described above, we may request a separate engagement letter for such work. If no separate engagement letter is executed, however, the terms and conditions set forth herein shall apply to all such work and remain binding on both of us.

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100 West Liberty Street • Tenth Floor • Reno, Nevada 89501 • P: 775.788.2000
2300 West Sahara Avenue • Suite 1200 • Las Vegas, Nevada 89102 • P: 702.873.4100



II. Personnel

I will be principally responsible for and actively involved in the Engagement. We anticipate the litigation team to consist of Amanda Yen, Christopher Molina and me (in addition to Client's separate engagement of Shute, Mihaly & Weinberger, LLP). Additional lawyers or paralegals may be involved as needed. Whenever appropriate and consistent with the proper representation of our clients, we use paralegals, investigators, junior attorneys and staff members in order to minimize the impact of the hourly rates of more senior attorneys. We believe that doing so enables us to economically and efficiently maintain the high quality of our legal representation.

III. Fees and Expenses

The rates for our services and other charges are set forth in the attached Schedule of Terms and Conditions. These rates reflect a discount from our standard rates. Our services will be rendered at the Firm's standard hourly rates for other personnel (such as paralegals and assistants) applicable at the time services are rendered. The time charges will be for all time actually expended. In addition to charges for legal services, we will be entitled to payment or reimbursement for disbursements and other charges incurred in performing services. We generally review our hourly rates annually and, if appropriate, adjust them effective January to reflect increases in seniority, experience and other relevant factors.

While we may estimate fees to assist Client in planning, such estimates are subject to change and are not binding unless otherwise expressly stated in writing. The City Manager previously approved a prior contract for this Engagement, the terms of which were not to exceed Forty-Nine Thousand Nine Hundred Ninety-Nine and 99/100 dollars (\$49,999). The City Council subsequently approved seven additional engagement agreements of One Hundred Thousand Dollars (\$100,000) each and an eighth additional engagement agreement of Three Hundred Fifty Thousand Dollars (\$350,000). This Agreement is submitted for approval by the Las Vegas City Council for an additional One Hundred Thousand Dollars (\$100,000) in fees and costs over and above the previously approved One Million One Hundred Thousand Dollars (\$1,100,000). The approval of this tenth contract is necessary due to the nature of the Engagement. We understand that additional approval will be needed should fees and costs exceed the amount of this tenth contract.

For this Engagement, we will waive any requirement for a retainer.

Our firm has always operated on the basis that we will deliver the best possible legal services in a timely fashion and at a reasonable price. In return, we request that upon receipt, Client

review our statements to determine if there are any questions or comments regarding them. If so, please call us.

IV. Conflict Waivers and Related Matters.

Attorneys owe duties of loyalty and of confidentiality to their clients. It is unavoidable that, from time to time, conflicts of interest develop between or among our clients, or between clients, or former clients, and prospective clients we wish to represent. In these circumstances, we are required, to disclose the conflicts to our clients, former clients and prospective clients and consult with them and to obtain the clients' or former clients' consents before we may proceed.

A. Waiver For "Permitted Adverse Representations"

The Firm represents a broad base of clients on a variety of matters. Absent an effective conflicts waiver, conflicts of interest may arise that could adversely affect Client's ability and the ability of other clients to choose the Firm as its counsel and preclude the Firm from representing Client or other clients in pending or future matters. Given that possibility, and desiring to be fair both to Client and other clients, this letter will confirm our mutual agreement that the Firm may represent other present or future clients on matters other than those for which it had been or is then engaged by Client, whether or not on a basis adverse to Client or any affiliate, including litigation, land use or entitlement applications and public hearings, appearances before Client's governing bodies on any matters, and legal or other proceedings or matters (referred to as "Permitted Adverse Representation"). Specific waivers are set forth in Part C below. Client agrees that it will not assert the Firm's representation of Client as a basis for disqualifying the Firm from representing another party in any Permitted Adverse Representation and agree that any Permitted Adverse Representation does not constitute a breach of duty. Before taking on any new Permitted Adverse Representation, the Firm must first obtain client approval, which approval shall not be unreasonably withheld.

B. Affiliates and Related Parties

Unless otherwise agreed to in writing, the Firm is only representing the Client named in this engagement letter and not the Client's relatives, affiliates, subsidiaries, partners, joint venturers, employees, directors, officers, shareholders, members, owners, agencies, departments, or divisions. Accordingly, the Firm may be adverse to these related parties or their legal interests, unless precluded by reason of the Rules of Professional Conduct. We anticipate, however, that in the course of our representation of the Client in this Engagement we may provide information or advice to the Client's directors, officers or employees in their corporate capacities.

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C. Specific Waivers

The Firm has represented and continues to represent Newland Real Estate Group, LLC and its related entities, CenturyLink, and XO Communications, Inc. and Nevada Museum of Art, Inc. in matters where the Client is the other party, or potentially an adverse party (the "Specific Parties"). Nevada Supreme Court Rule 1.7 provides that a lawyer shall not represent a client if the representation of that client will be directly adverse to another client unless such client consents in writing. We understand the Client and the Specific Parties have no objection to our Firm representing Client on the Engagement, in addition to the Firm's continued representation of the Specific Parties in matters adverse to the City. We do not believe an actual conflict of interest would arise under our Nevada Rules of Professional Conduct from representing the Client on the Engagement and representing the Specific Parties on other matters because our work for the Client in connection with the Engagement is not related to our work for the Specific Parties on other matters, nor are we representing other parties in the same transaction or litigation. However, we may have an actual concurrent conflict of interest in the future if any disputes arose between the Client and any of the Specific Parties, or if any adversarial proceeds or negotiations between the parties ensued. In any such case, we require the ability to continue to represent the Specific Parties, as "Permitted Adverse Representations," without disqualification by the Client based on any asserted conflicts of interest applicable to the Firm. We ask that you discuss this request with your counsel, and that based on the advice of your counsel, you agree at this time and at any such future time to waive any such conflicts. The Firm would not, in any case, represent the Client in any such matters. In accord with Nevada Supreme Court Rule 1.7, by its signatures below, the Client hereby consents to our Firm representing the Client in the Engagement and the Specific Parties in other matters, now and hereafter, that may be adverse to the Client, and waives any actual or potential conflicts arising from such representation and the Firm's continued representation of the Specific Parties.

Based upon the disclosure of the names of persons and entities potentially involved in this matter, we have not discovered any other actual or potential conflict that requires further action before undertaking our representation. Please advise us, at or before the time you return the signed copy of this letter, if you know of any other individuals or entities that may be involved in this matter. In addition, please inform us at once if you learn in the future of other persons or entities who may be involved so we can make a conflict of interest search with respect to them.

V. Other Terms.

The general terms and conditions of our representation are set forth in the attached schedule of General Terms and Conditions, which are incorporated into this agreement by reference. If this letter is satisfactory, please confirm your agreement to the terms of this engagement letter and

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attached schedule by signing this letter and returning it to us. If this letter does not accurately reflect your understanding of the terms of our agreement, please call me promptly so that we may discuss it further.

We recognize that you have the opportunity to obtain services from other firms, and very much appreciate that you have chosen our Firm. We will endeavor to represent you promptly and efficiently, and look forward to the opportunity of working with you.

Sincerely,

McDONALD CARANO LLP

/s/ George F. Ogilvie III

George F. Ogilvie III, Esq.

GFO/jj

**CLIENT'S AGREEMENT TO
TERMS AND CONDITIONS OF REPRESENTATION**

I hereby acknowledge that the City Council has had an adequate opportunity to review and understand the above **engagement letter and accompanying schedule of terms and conditions**, and that I am duly authorized by the City of Las Vegas as its Mayor to bind it and execute this Agreement on its behalf pursuant to Section 3.010 of the City's Charter. Therefore, the City of Las Vegas agrees to be legally bound by the terms, limitations and conditions, including without limitation the conflict waivers and dispute resolution procedures, set forth therein.

Date: _____, 2020.

APPROVED

CITY OF LAS VEGAS

By: _____
Carolyn G. Goodman, Mayor

ATTEST:

LuAnn D. Holmes, MMC
City Clerk

APPROVED AS TO FORM:

 10/29/20

Seth T. Floyd, Date
Deputy City Attorney

GENERAL TERMS AND CONDITIONS OF ENGAGEMENT

1. Engagement: City of Las Vegas adv. 180 Land Company, LLC, Case No. A-17-758528-J

2. Hourly Rates For Personnel

George Ogilvie (Partner): \$550
Amanda Yen (Partner): \$400
Christopher Molina (Associate): \$300
Other partners: \$400
Other associates: \$300

3. Billing Increments: We charge for our time in minimum units of 1/10 hours.

4. Costs and Expenses.

In-office photocopying	\$.25 per page
Mileage	Current IRS Rate
Computerized legal research	\$5.00 per minute

Clerical staff overtime necessary for extraordinary matters will be charged at 1.5 times the base hourly rate. The base hourly rates for clerical personnel presently range between \$15.00 and \$20.00.

5. Billing Statements; Carrying Charges. Billing statements will normally be rendered to Client on a monthly basis. Fees will generally be billed within thirty (30) days following the month in which the services are rendered, and disbursements and other charges will generally be billed within thirty (30) to sixty (60) days after they are incurred by us. Payment is due upon Client's receipt of our statement, and is not contingent upon the outcome or completion of a matter for which the firm has been engaged. The Firm does not extend credit to clients. If fees are not paid promptly (within 30 days of the date of invoice), a carrying charge of 1.5% per month (subject to adjustment from time to time as indicated in our billing statements) will be assessed on the unpaid balance of the statement from the date of invoice. Payments will be accepted by cash, check, money order, bank draft, wire transfer and credit card.

6. IOLTA Participation. The Firm will maintain and safeguard a trust account from which any interest earnings are forwarded to the IOLTA program run by the Nevada Law Foundation. Any interest earned on your trust fund balance will be forwarded to the program.

7. Rates Subject to Change. The rates on this schedule are subject to change on thirty (30) days written notice. If Client declines to pay any increased rates, we reserve the right to withdraw.

8. No Guarantees. We must emphasize that it is impossible to provide any promise or guarantee about the outcome of your representation. Nothing in this Agreement or any statements by our staff or attorneys constitute a promise or guarantee. Any comments about the outcome of your matter are expressions of opinion only.

9. Communication. During the course of our representation, we will endeavor to keep Client fully advised as to the status and progress of this matter and our recommendations as to an appropriate course of action in view of the facts, circumstances and issues involved. We will send copies of all material documents generated in connection with our representation, and I ask that you call the Firm, at any time, should Client wish to discuss the matter, our invoices or bills, or any other aspect of this representation. If, for some reason, I am not available, another attorney in this office will generally be available and familiar with the matter sufficiently to consult with Client as desired. Client agrees that all means of communication are, to some degree, susceptible to misdirection, delay or interception, and E-mail, facsimile transmissions and cellular telephone communications present special risks of inadvertent disclosure. However, in order to maximize speed, efficiency, and convenience of these methods of communication in this matter, Client consents to our use of E-mail, cellular phones, and facsimile transmissions communications in representing Client in this matter.

10. Fees Disputes. Under Nevada law, Client has the right to request arbitration of any fee dispute before a committee selected by the State Bar known as a "fee dispute" committee. By signing this Agreement, and unless otherwise agreed in writing by Client and Firm or unless otherwise decided by a Nevada court of competent jurisdiction on a motion for the award of fees, any dispute about the amount or payment of legal fees or costs in this Engagement shall be submitted for final and binding arbitration before the Fee Dispute Committee of the State Bar of Nevada ("Bar Arbitration"). Such Bar Arbitration shall determine only the issue of the amount of fees and charges properly chargeable to Client, and such Bar Arbitration shall have no effect on any claims for affirmative relief based on alleged professional malpractice, errors or omissions, breach of contract, breach of fiduciary duty, fraud or violation of any statute, which such claims shall be solely determined in a binding arbitration proceeding by a retired judge or justice without regard to the result of any Bar Arbitration.

11. Records and File Retention. All records and files will be retained and disposed of in compliance with our policy in effect from time to time. Subject to future changes, it is our current policy not to retain records for more than seven (7) years from the date the matter is closed. Upon prior written request, we will return records to Client prior to destruction. As it is not

administratively feasible to advise Client of record disposal, we recommend Client maintain its own files for reference. If Client has any questions concerning record retention, please contact us.

12. Client Responsibilities. Client agrees to cooperate with us, to keep us informed of all developments material to the Engagement (especially communication to or from other legal counsel, material undertakings, and agreements), to communicate and disclose fully all relevant matters relating to our Engagement, to abide by this agreement, and to advise the firm concerning any disputed fee or cost charged in this matter. Our firm will rely upon materials and matters provided and communicated to us by Client, its agents, and other representatives, as well as your representations to us that arise during the course of our representation of Client in this matter. The firm undertakes no obligation or duty of independent inquiry to confirm or verify such representations and matters. It is extremely important that Client provide us with complete and accurate information on a timely basis since our representation, analysis and advice to Client will be based upon such information, and could change if factual circumstances are different.

13. Termination. Client has a right at any time to terminate our services and representation upon written notice to the Firm, and we may also terminate our services upon written notice at any time for any reason. Client remains liable for all unpaid charges for services provided and expenses advanced or incurred prior to the date of termination or withdrawal. If Client does not meet its obligation of timely payments or deposits under this engagement letter, we reserve the right to suspend services and/or withdraw from representation on that basis alone, subject to any required judicial, administrative, or other approvals. In the event of termination, Client agrees to take all steps necessary to free us of any obligation to perform further, including the execution of any documents (including forms for substitution of counsel) necessary to complete our withdrawal. In addition, our representation will end at the earliest of (a) Client's termination of our representation; (b) our withdrawal or termination; or (c) unless we are engaged to represent Client in other matters, upon substantial completion of our work on the Engagement whether or not we send Client a letter to confirm the termination of our representation. Unless subsequently re-engaged, we undertake no further responsibility to advise Client concerning developments which may impact your matter and the legal representation we provided to Client. From time to time, we may provide Client general topical information concerning recent legal developments as a courtesy. These communications do not create an attorney client relationship nor should it be construed as legal advice or an opinion on specific situations. If Client does not wish to receive future law updates and alerts, please contact the Firm asking to be removed from the mailing list.

14. MERITAS. Our firm is a member of MERITAS ("Meritas") which is a network of over 185 independent commercial law firms located in major cities throughout the world. Meritas members are not engaged in the joint practice of law and do not share fees among themselves. Membership in Meritas gives us, and our clients, access to legal resources in other jurisdictions so

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that our clients' need for legal services can be handled virtually anywhere our clients conduct business. We will only utilize the services of another Meritas firm in this matter with Client's express knowledge and consent. Further information about Meritas can be obtained at the organization's website at www.meritas.org.

15. Governmental Affairs. In addition to the services already set forth in this engagement letter, the Firm may need to utilize the expertise of our Governmental Affairs Team to advance the objectives of Client's engagement with the Firm. Be advised that prior to requesting assistance from the Governmental Affairs Team Client will be counseled as to why this is necessary and/or advisable and be given an opportunity to elect their services. The fee for the members of our Governmental Affairs Team is included above and are in addition to fees for legal services.

16. Electronic Discovery Services. Lawsuits today involve the production of all available electronic information relating to the subject matter of the lawsuit, including documents, e-mails, text messages, photographs and other digital materials, commonly referred to as Electronically Stored Information ("ESI"), stored on servers, desktop computers, laptop computers, tablets and smart phones. Both Client and the opposing party will be required to produce all ESI as part of the discovery process. The production of ESI involves the collection, processing, review, analysis and production of all ESI relevant to the litigation, which can amount to thousands of documents. Many third-party vendors provide E-Discovery services to law firms and their clients. The Firm also provides E-Discovery services to its clients through our eDiscovery section, within our IT Department. Whether provided by the Firm or an outside provider, the Firm utilizes E-Discovery technology for keyword searching, deduplication and email threading to locate responsive and privileged documents in a more cost efficient and accelerated manner. Handling E-Discovery through the Firm can result in substantial savings to Client. The fees charged by the Firm are set forth on the term sheet attached hereto as Exhibit "A". If and when it becomes necessary to utilize E-Discovery services, the responsible Firm attorney handling your case will discuss this with you. If Client elects to use the Firm, a separate service agreement will be required to be executed by Client with the Firm to define the scope of the services and the cost of such services. In addition to the attorney's fees charged by the Firm, Client will be responsible for all costs and expenses relating to E-Discovery, whether provided by the Firm or an outside provider.

17. Written Advice Regarding Federal Tax Issues. Whenever we provide Client with written advice concerning the federal tax treatment of an item of income, gain, loss, deduction or credit, the existence or absence of a taxable transfer property, or the value of property for federal tax purposes, we are subject to stringent requirements imposed by the United States Treasury Department on all tax practitioners, including attorneys. These rules cover much more than formal legal opinions and may apply to any writing relating to any Internal Revenue code matter, including communications via e-mail and fax. If we fail to comply with these rules, we may (under

certain circumstances) be suspended or disbarred from practice before the Internal Revenue Service, be publicly censured or fined (to the extent that the Secretary of Treasury promulgates regulations requiring any such fines or penalties). Therefore, if during the course of this engagement, we provide written advice regarding any arrangement the principal purpose of which is the avoidance or evasion of any tax imposed by the Internal Revenue Code, such writing must comply with the rigorous standards of review and disclosure (including enhanced factual and legal due diligence) which are now required by the Treasury Department. If tax avoidance is not the principal purpose of an arrangement but is a significant purpose, our written advice must also adhere to the same rules, unless we include a prominent disclosure stating that the writing was not intended or written by us to be used, and it cannot be used by Client or anyone else for the purpose of avoiding taxpayer penalties. It is for this reason that certain written communications to Client, including emails and faxes, will contain the following disclosure statement: "Any Federal tax advice contained herein is not intended or written to be used, and cannot be used by Client or any other person, for the purpose of avoiding any penalties that may be imposed by the Internal Revenue Code. This disclosure is made in accordance with the rules of Treasury Department Circular 230 governing standards of practice before the Internal Revenue Service. Any written statement contained herein relating to any Federal tax transaction or matter may not be used by any person without our express prior written permission to support the promotion or marketing of or to recommend any Federal tax transaction(s) or matter(s) addressed herein. No advice contained herein may be relied upon or utilized by any person for any purpose except as expressly and affirmatively stated herein without the prior written consent in each instance of a partner of this firm."

18. Miscellaneous. This Agreement is governed by Nevada law and sets forth our entire agreement for rendering professional services. It can be amended or modified only in writing. Each party signing this Agreement is jointly and severally responsible for all obligations due us and represents that each has full authority to execute this Agreement so that it is binding. This Agreement may be signed in one or more counterparts and binds each party signing it whether or not any other proposed signatory ever executes it. If any provision of this Agreement or the application thereof is held invalid or unenforceable, the invalidity or unenforceability shall not affect other provisions or applications of this Agreement which can be given effect without such provisions or application, and to this end the provisions of this Agreement are declared to be severable. We are not advising Client with respect to this Agreement because we would have a conflict of interest in doing so. If Client wishes advice, Client should consult independent counsel of Client's choice.

Exhibit A

**McDonald Carano E-Discovery
 Schedule of Costs**

E-Discovery Service	Unit	Price
PROCESSING		
ESI (Electronically Stored Information) Processing (includes uncompressing, metadata extraction, OCR, image generation, deduplication, indexing, and analytics)	Per GB	\$100
STORAGE		
Monthly hosting (no charge for cases under 5 GB)	Per GB per month	\$0
Monthly hosting (for cases from 5–99 GB)	Per GB per month	\$15
Monthly hosting (for cases from 100–499 GB)	Per GB per month	\$12
Monthly hosting (for cases larger than 500 GB)	Per GB per month	\$10
PRODUCTIONS		
TIFF or PDF export (includes redactions and endorsements)	Per GB	\$250
Optical media, flash drives, FTP upload	Per item	\$0
External hard drive (for productions larger than 32 GB)	Per item	\$75