

**BLANKET SERVICES AGREEMENT**  
**FOR**  
**CONSTRUCTABILITY REVIEWS, VALUE ENGINEERING, CPM SCHEDULING,**  
**AND CHANGE ORDER REVIEW AND ANALYSIS**

THIS AGREEMENT is made and entered into this 12<sup>TH</sup> day of July, 2006, by and between the CITY OF LAS VEGAS, a municipal corporation within the State of Nevada (herein the "City") and **O.CONNOR CONSTRUCTION MANAGEMENT INC.**, (herein the "Consultant").

**WITNESSETH:**

WHEREAS, the City intends to construct **VARIOUS PROJECTS** (herein individually and collectively the "Project" and "Projects," respectively) which may be known or unknown to the City at the time of the execution of this Agreement; and

WHEREAS, with respect to each Project, the City desires to retain the Consultant who will be responsible for providing **CONSTRUCTABILITY REVIEWS, VALUE ENGINEERING, CPM SCHEDULING, AND CHANGE ORDER REVIEW AND ANALYSIS** hereinafter set forth below; and

WHEREAS, the Consultant is properly licensed as required for the services to be provided in accordance with the Nevada Revised Statutes within the State of Nevada, and posses the special knowledge, skills, expertise, personnel, facilities and equipment to perform the services hereinafter set forth within the time required under this Agreement; and

WHEREAS, the parties hereto intend with the execution of this Agreement to give to the City the flexibility and ability to determine what services are to be provided by the Consultant on a project by project basis through the issuance of a Project Task Order (herein defined in Section 3.01) thereby eliminating the need of executing separate agreements with the Consultant for each Project.

NOW, THEREFORE, in consideration of the above premises, the parties hereto agree to the following terms, conditions and covenants set forth in Sections One through Eleven hereof:

**SECTION ONE**  
**CONSULTANT RESPONSIBILITIES**

**1.01**        **Description of Consultant's Services.** For each Project Task Order approved and executed by the City, the Consultant hereby agrees to provide the services set forth therein subject to the terms and conditions of this Agreement. The services anticipated to be included in each Project Task Order are included in **Exhibit "A"** (Scope of Services) and **Exhibit "B"** (Required Submittals) attached hereto. Each Project Task Order will detail the specific terms and services to be provided, including any variations from the Exhibits attached to this Agreement.

**1.02**        **Performance Standards.** In performing the services set forth in this Agreement, the Consultant shall follow practices consistent with generally accepted standards in the profession for **CONSTRUCTABILITY REVIEWS, VALUE ENGINEERING, CPM SCHEDULING, AND CHANGE ORDER REVIEW AND ANALYSIS**

**1.03**        **Document Review.** If so assigned by the Project Task Order, the Consultant shall be responsible for reviewing each document prepared by the Consultant and its subconsultants including, without limitation, plans, drawings and specifications for the purpose of ensuring that such documents are technically sound, in conformance with applicable federal, state and local statutes, codes, ordinances and other regulations, and do not violate or infringe upon any patent rights.

**1.04** **Waiver.** 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 Agreement or of any cause of action arising out of the performance of this Agreement. The Consultant shall remain liable in accordance with the terms of this Agreement and applicable law for the damages to the City caused by the Consultant's negligent act or omission committed in the performance of this Agreement.

**1.05** **Designation of Consultant's Representative.** The Consultant's Representative is hereby designated as **JUSTIN PETERSON**, who shall be responsible for the services required under this Agreement. The services specified by this Agreement shall be performed by the personnel identified in each Project Task Order provided that such associates and employees perform under the personal supervision of the Consultant's Representative. If the Consultant fails to make a required replacement within thirty (30) days, the City may terminate this Agreement for default as provided in the Section entitled "Default" of this Agreement.

**1.06** **Correspondence Review.** The Consultant shall furnish the City's Representative copies of each correspondence, if any, sent to the Contractor, regulatory agencies and other third parties to this Agreement, for approval and review prior to the mailing such correspondence.

**1.07** **Cooperation with the City.** The Consultant agrees that its officers, associates, employees and subconsultants will cooperate with the City in providing the services under this Agreement 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.

## **SECTION TWO CITY RESPONSIBILITIES**

**2.01** **City Representative.** The Director of Public Works or his authorized representative is hereby designated **SAMUEL D. TOLMAN** as the City's Representative with respect to this Agreement. The City's 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.

**2.02** **Review of Consultant's Services and Documents.** The services to be performed by the Consultant shall be subject to periodic review by the City's Representative. To prevent an unreasonable delay in the Project, the City's Representative will endeavor to examine and comment in writing on the documents including, without limitation, the plans, drawings, specifications, test results, evaluations, and reports furnished by the Consultant within twenty-one (21) days of receipt of such documents.

**2.03** **Access to Records.** 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, other documents related to the services required under this Agreement. 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 Agreement.

**2.04** **Cooperation with Consultant.** The City agrees that its officers and employees will cooperate with the Consultant in the performance of this Agreement 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 Agreement.

## **SECTION THREE PROJECT TASK ORDER**

**3.01** **Definition.** A "Project Task Order" refers to that document which sets forth the specific services to be provided by the Consultant in connection with a particular Project.

**3.02** **Issuance.** If so requested by the City, the Consultant shall prepare a Project Task Order setting further the services to be provided in connection with a particular Project. The Project Task Order shall be prepared substantially in conformance with the form attached hereto as Exhibit "H." The Project Task Order shall be submitted to the City for review and comment prior to finalization. Based upon such review and comment, the Consultant shall prepare, execute and submit the final Project Task Order to the City Representative to be executed on behalf of the City. Each executed Project Task Order shall be attached hereto as Exhibit "H" with the appropriate numerical sequence (e.g., H-1, H-2, H-3, etc.) and shall become a part of this Agreement.

## SECTION FOUR CHANGES TO PROJECT TASK ORDER

**4.01**            **Requested Changes.** The City may at any time, by written order, make changes in the services to be performed by the Consultant under the Project Task Order.

**4.02**            **Adjustment of Compensation.** If such changes cause an increase in the cost or time required for the Consultant to perform any of the services required there under, an equitable adjustment shall be made in the compensation to be paid to the Consultant under the Project Task Order and the Project Task Order shall be modified in writing accordingly. Any 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 changes to the services to be provided under the Project Task Order unless the City grants in writing a further period of time before the date of final payment under the Project Task Order. If final payment is made to the Consultant under the Project Task Order, the Consultant waives any right to seek any equitable adjustment in compensation with respect to that Project Task Order.

## SECTION FIVE ADDITIONAL SERVICES OF CONSULTANT

**5.01**            **Additional Services.** The Consultant shall provide only those additional services described in the Project Task Order and only if so requested in writing by the City. Payment will be in accordance with Sections 8.0.2 and 8.0.3 for the additional services rendered in connection with the Project Task Order.

**5.02**            **Attendance at Meetings or Public Hearings.** The Consultant shall notify the City in advance of any additional service cost, which 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 Agreement.

## SECTION SIX SUBCONSULTANT AGREEMENT

**6.01**            **Subconsultant Provisions.** In the event that the Consultant enters into an agreement with a subconsultant for the performance of any of its obligations hereunder, the following provisions shall be included in each subconsultant agreement:

(i).            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 to the subconsultant for payment of the subconsultant services until payment has been made by the City. If the City has paid the Consultant for said 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.

(ii).           The subconsultant shall have no more rights against the City than that of the Consultant.

(iii).           The subconsultant agrees to be bound by all the terms, conditions and obligation of this Agreement unless the City has approved any deviation, change or modification in writing.

(iv).           Unless otherwise approved in writing by the City's 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 as provided in this Agreement.

## SECTION SEVEN TERM OF AGREEMENT

**7.01**            **Term.** This Agreement shall commence on the day it is approved by the City (which shall be inserted in the first paragraph set forth above) and shall remain in force and effect until the Project is completed unless the City serves upon the Consultant a thirty (30) day written Notice of Termination pursuant to Section 11.02. The termination of this Agreement shall not release either party from any of its continuing obligations hereunder.

**7.02**            **Disputes.** This Section shall not be construed to preclude the filing of any dispute arising out of the performance of this Agreement 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 Agreement or in connection with the subject matter hereof, would otherwise accrue under the statutes of limitation or doctrines of law.

## SECTION EIGHT COMPENSATION AND TERMS OF PAYMENT

**8.01**            **General.** At the time of approval of this Agreement by the City, the City agrees to set aside **\$100,000.00** in total for the performance of the Project Task Orders authorized pursuant to this Agreement. In no event shall the total payments to the Consultant for the services provided under the aggregate of all of the Project Task Orders exceed the aforementioned amount appropriated by the City.

**8.02**            **Compensation.** For the services set forth in each Project Task Order, the City shall compensate the Consultant a fee in the amount as set forth in each Project Task Order, which shall be paid pursuant to monthly invoices.

**8.03**            **Invoice.** The Consultant may invoice for approved and completed work on a monthly basis. The City Representative will notify the Consultant of any problems regarding payment of the invoice within (14) days of the received invoice. If no notification or response is received from the City Representative, within the stated period of time, the Consultant shall expect prompt payment of the submitted invoice, within a period of (60) days. If the payment period exceeds sixty, (60) days, the Consultant will contact the City Representative to resolve any problem or delay. If the resolution of any delay is not satisfactory to the Consultant, the Consultant may submit a seven (7) day written notice to the City. If payment is not received within the seven (7) day period, the Consultant may submit a request for approval of the following remedies: 1. Defer progress on the Project, until such time as payment is received and re-adjust the Project schedule accordingly. 2. The Consultant may petition the City for an increase in fees, to reimburse the substantiated costs of late payments and extended schedule. Either option to remedy, with concurrence by City Staff, may be exercised by the Consultant.

**8.04**            **Retainage.** Upon approval, the City shall pay to the Consultant ninety-five percent (95%) of the amount of the monthly invoice with the remaining **five percent (5%)** being retained for the purpose set forth in Section 8.05 of this Agreement. The percentage of retainage may be increased as provided in Section 9.02 of this Agreement.

**8.05**            **Right to Off-Set.** The City's Representative may subtract or offset from any unpaid invoice from the Consultant 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 Agreement including, without limitation, any error or deficiency in the report or other documents prepared by the Consultant. The City's Representative shall provide a written statement to the Consultant of the damages, costs and expenses which have been subtracted from any payment to the Consultant along with appropriate documentation and receipts, if any, and a description of the errors or deficiencies attributed to the Consultant. If the Consultant disputes the right or amount of the deduction made by the City, the Consultant may file a claim pursuant to Section 11.20 of this Agreement.

**8.06**            **Final Payment and Release of Retainage.** Upon completion by the Consultant of the services required under each Project Task Order, and acceptance of such services 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, including the retained percentages.

## SECTION NINE PERFORMANCE SCHEDULE

**9.01**            **Performance Schedule.** The Consultant shall perform and complete the services required in each Project Task Order according to the schedule (Performance Schedule) set forth in each Project Task Order. The Consultant shall have in his possession a cellular phone from which he may be contacted or may contact City's Representative while onsite. If the performance of services is delayed or submittals are not delivered in the time period as outlined in **Exhibit "C"**, the Consultant shall notify the City's Representative in writing of the reasons for the delay. The Consultant shall then prepare a revised Performance Schedule for submission to and approval by the City's Representative.

**9.02**            **Increase in Retainage.** If the Consultant is delayed by conditions within its control, as determined by the City after consultation with the Consultant, the City shall have the right to increase the amount of the retainage up to **ten percent (10%)** until such time as the Consultant has complied with the Performance Schedule or presented an acceptable plan for such compliance.

## SECTION TEN AUDIT: ACCESS TO RECORDS

**10.01**           **Records.** The Consultant shall maintain books, records and other documents directly pertinent to performance of this

Agreement in accordance with generally accepted accounting principles and practices. The Consultant shall also maintain the financial information and data used by the Consultant in the preparation or support of 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. Any negotiated hourly rates shall not be revised due to an audit.

**10.02**            **Disclosure.** The Consultant agrees to the disclosure of the information and reports resulting from access to records pursuant to Section 10.01 of this Agreement above provided that the Consultant is 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 written comments, if any, of the Consultant.

**10.03**            **Period of Maintenance.** The books, records and other documents under Sections 10.01 and 10.02 of this Agreement shall be maintained for three (3) years after the date of the final payment for the services under this Agreement. In addition, those records and other documents which relate to any arbitration, litigation or the settlement of any claim arising out of this Agreement, 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.

**10.04**            **Subcontract Provisions.** The Consultant agrees to include Sections 10.01 through 10.03 of this Agreement in all its subcontracts directly related to performance of services specified in this Agreement which are in excess of \$10,000.

## **SECTION ELEVEN MISCELLANEOUS PROVISIONS**

**11.01**            **Suspension.** The City may suspend performance by the Consultant under a Project Task Order for such period of time as the City, in its sole discretion, may prescribe by providing written notice to the Consultant at least three (3) business days prior to the effective date of the suspension. With such suspension, the City shall pay to the Consultant the amount of compensation, based on percentage of completion of the Project Task Order, earned until the effective date of suspension less all previous payments. The Consultant shall not provide any further services under the Project Task Order after the effective date of suspension until otherwise notified in writing by the City. In the event the City suspends performance by the Consultant under a Project Task Order for any cause other than the error or omission of the Consultant for an aggregate period in excess of thirty (30) days, and resumes continuation of the Project Task Order performance by the Consultant, the Consultant shall be entitled to an equitable adjustment of the compensation payable to the Consultant under the Project Task Order, including reimbursement to Consultant for additional costs occasioned as a result of such suspension of performance. Should the Project Task Order not resume performance after such suspension, the City shall not be liable to the Consultant for more than the percentage of the Project Task Order completed at the time of suspension.

**11.02**            **Termination.** The City reserves the right to terminate this Agreement without cause or default on the part of the Consultant with ten (10) days' prior written notification to the Consultant. Notification of the Consultant is deemed to have occurred on the date that the City either (i) faxes a copy of the notice to the Consultant to the fax number provided in the Section entitled "Notice" of the Agreement, or (ii) deposits written notification with the United States Postal Service, postage prepaid, and addressed to the party and location contained in the Section entitled "Notice" of the Agreement. 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.

**11.03**            **Default.** The occurrence of any of the following events shall constitute a default by the Consultant hereunder (herein "Event of Default"):

(i).            If the Consultant shall default in the due observance and performance of any term, condition or covenant contained in this Agreement.

(ii).            If the Consultant shall (a) voluntarily terminate operations or consent to the appointment of a receiver, trustee or liquidator of the Consultant for all or a substantial portion of its assets, (b) be adjudicated bankrupt or insolvent or file a voluntary petition in bankruptcy, or admit in writing to the inability to pay its debts as they become due, (c) make a general assignment for the benefit of creditors, (d) file a petition or answer seeking reorganization or an arrangement with creditors or take advantage of any insolvency law, or (e) if action shall be taken by the Consultant for the purpose of effecting any of the foregoing;

(iii).            If any warrant, execution or other writ shall be issued or levied upon any property or assets of the Consultant and shall continue unvacated and in effect for a period of thirty (30) days; or

(iv). If the Consultant should in the judgment of the City, fails to provide the services hereunder properly and with proper dispatch in accordance with the time schedule set forth in Section Eight of this Agreement, then, if any such Event of Default continues for five (5) days after written notice to the Consultant, the City, may, without prejudice to any other remedy it may have at law or in equity, (a) terminate this Agreement, suspend payment of all pending invoices otherwise due to the Consultant hereunder, finish this Agreement by such means as the City may see fit, deduct from any balance due the Consultant the reasonable and necessary cost of finishing the work if the City cannot complete the performance of this Agreement with the remaining funds originally set aside and budget for this Project and paying the excess, if any, to the Consultant and in the event the cost of finishing the Consultant's work exceeds the balance due the Consultant, such excess shall be paid by the Consultant to the City within five (5) days of invoicing by the City or (b) terminate this Agreement and all 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 as of the date of receipt of the notice of termination. The costs and expenses of completing this Agreement of the Consultant shall be computed and audited by the City's designated Representative. The audit shall be made in accordance with generally accepted accounting principles and the Consultant shall pay all costs of such audit.

It is expressly agreed that the City reserves the right to offset any and all claims made by the Consultant for payment of its Fees or the reimbursement of additional costs incurred hereunder, with any claims that the City might have against the Consultant for failure to comply with any of the terms, conditions or covenants of this Agreement.

**11.04 Ownership of Documents.**

A. The Construction Documents and other documents prepared by the Consultant for this Project are instruments of the Consultant's service for use by the City of Las Vegas with respect to this Project and, unless otherwise provided, the Consultant shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including copyright. However, the documents prepared as instruments of service are the property of the City except as prohibited by law and the City shall have unlimited access to such documents. The reports, plans, design concepts, information, data, and similar documents which are given, prepared or assembled by the Consultant or any consultants and subcontractors under this Agreement shall not be made available to any individual or organization without the prior written consent of the City. In the event of the completion or termination of this Agreement, the City reserves the right to require delivery of any and all test results, evaluations, reports, drawings, specifications, studies and documents not in its possession and to engage a new consultant to recreate such documents. Any use of incomplete documents and any use of completed documents for other projects, without the specific written authorization from the Consultant, shall be at the City's sole risk.

B. The City retains contractual rights to all design concepts developed by the Consultant.

C. 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 in derogation of the Consultant's reserved rights.

**11.05 Insurance.** The Consultant shall procure and maintain, at its own expense, during the entire term of the Agreement, the following insurances:

A. **Workmen's Compensation Insurance.** Such insurance shall protect the Consultant and the City from employee claims based on job-related sickness, disease, or accident.

B. **Comprehensive General Liability Insurance.** Such insurance shall protect the Consultant, its agents and vehicles used to provide the services required under this Agreement from claims of personal injury (including death) and property damage. Such coverage shall be in a minimum amount of \$1,000,000 for the period of time covered by this Agreement. The Consultant's general liability insurance policies shall be endorsed to include the City as an additional insured.

C. **Professional Liability Insurance (Errors and Omissions Coverage).** Such 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 Agreement.

D. **Cancellation or Modification of Coverage.** The Consultant's Comprehensive General Liability and Professional Liability Insurance Policies shall automatically include or be endorsed to cover the Consultant's contractual liability to the City under this Agreement, and with respect to its Comprehensive General Liability Policy, to waive subrogation against the City, its officers, agents, servants and employees. To provide that the City will be given thirty (30) days' notice in writing of any cancellation of, or material change in, the policies.

E. **Certificates and Endorsements.** The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer and licensed by the State of Nevada. All deductibles and self-insured retentions shall be fully disclosed in the Certificate of Insurance. No deductible or self-insured retention may exceed \$200,000 without the written approval of the City. Certificates

indicating that such insurance is in effect shall be delivered to the City before any services are provided under this Agreement.

**F. 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 date of this Agreement and the Certificate of Insurance shall state that coverage is "claims made" and the retroactive date. Upon availability, the Consultant shall maintain coverage for the duration of this Agreement and for two years following completion of this Agreement. The Consultant shall provide the City annually a Certificate of Insurance as evidence of such insurance.

**11.06 Indemnity.** Notwithstanding any of the insurance requirements set forth in Section 11.05, and not in lieu thereof, the Consultant shall protect, indemnify and hold the City, its officers and employees, harmless from any and all claims, damages, losses, expenses, suits, actions, decrees, judgments, arbitration awards, attorney fees and court costs (collectively herein the "Claims") which the City, its officers or employees may suffer as a result of, by reason of, or as a consequence of, the negligent acts or omissions of the Consultant, its subcontractors, agents or anyone employed by the Consultant, its subcontractors or agents, in the performance of this Agreement.

As part of its obligation hereunder, the Consultant shall, at its own expense, defend the City, its officers and employees, against the Claims which may be brought against them, or any of them, as a result of, by reason of, or as a consequence of, any negligent act or omission of the Consultant, its subcontractors or agents, for and against which the Consultant is obligated to indemnify the City. If the Consultant shall fail to do so, the City shall have the right, but not the obligation, to defend the same and charge all direct and incidental costs of such defense (including attorney fees and court costs) against the Consultant.

**11.07 Assignment.** The City and the Consultant each bind itself and its partners, successors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement, except the Consultant shall not assign, sublet or transfer any obligation or benefit under this Agreement 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.

**11.08 Waiver.** No consent or waiver, express or implied, by either party to this Agreement, 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.

**11.09 Consultant Warranties.** The Consultant hereby represents and warrants:

(i). That it is financially solvent, able to pay its debts as they mature, and is possessed of sufficient working capital to complete this Agreement; that it is able to furnish the plant, tools, materials, supplies, equipment and labor, and is experienced in and competent to perform the services contemplated by this Agreement, and that it is qualified to provide such services and is authorized to do business in the State of Nevada.

(ii). That it holds a license, permit or other special license to perform the services included in this Agreement, as required by law, or employs or works under the general supervision of the holder of such license, permit or special license.

(iii). That it is Year 2000 compliant which means that to the extent the performance of this Agreement is dependent upon the Consultant's computer operations, such computers will continue functioning without interruption, and will continue to accurately process data and information necessary to the performance of this Agreement.

(iv). That the Consultant has, pursuant to the requirements of Resolution 79-99 adopted by the 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), disclosed on the form attached hereto as **Exhibit "G"** (Disclosure of Ownership/Principals) all of the principals, including partners, of the Consultant, as well as all persons and entities holding more than a one percent (1%) interest in the Consultant or any principals of the Consultant. If the Consultant, or its principals or partners, are required to provide disclosure under federal law (such as Securities and Exchange Commission or the Employee Retirement Income Act) and current copies of such federal disclosures are attached to **Exhibit "G"**, the requirements of this Section shall be deemed satisfied. During the term of this Agreement, the Consultant shall notify the City in writing of any material change in the above disclosure on **Exhibit "G"** within fifteen (15) days of such change.

**11.10 Consultant's Employees.** 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 Agreement 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 Agreement.

**11.11 Independent Contractor.** 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.

**11.12 Applicable Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Nevada.

**11.13 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 Agreement 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.

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

**11.15 Confidentiality.** The Consultant shall treat the information relating to each Project, the Consultant which has been produced by the Consultant or provided by the City as confidential and proprietary 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 subcontractors to comply with this requirement.

**11.16 Site Inspection.** The Consultant represents that, prior to signing each Project Task Order, it has visited the location of the Project represented in each Project Task Order and has satisfied itself as to the general condition thereof and that the Consultant's compensation as provided for in the Project Task Order 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.

**11.17 Modification.** All modification or amendments to this Agreement are null and void unless reduced in writing and signed by the parties hereto.

**11.18 Notice.** Any notice required to be given hereunder shall be deemed to have been given when (i) received by the party to whom it is directed by personal service, or (ii) deposited with the United States Postal Service addressed as follows:

TO CITY: Samuel D. Tolman  
Office of Architectural Services  
Department of Public Works  
CITY OF LAS VEGAS  
400 Stewart Avenue  
Las Vegas, NV 89101  
  
Phone: (702) 229-6535 Fax: (702) 384-4846

TO CONSULTANT: Justin Peterson  
O.CONNOR CONSTRUCTION MANAGEMENT INC.  
250 Pilot Road, Ste 210  
Las Vegas, NV 89119  
  
Phone: (702) 896-6926 Fax: (702) 8963433

**11.19 Prohibition Against Contingent Fees.** The Consultant warrants that no person or entity has been employed or retained to solicit or secure this Agreement 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 Agreement 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.

**11.20 Dispute Resolution.**

**A. Fee Disputes.** Any Fee dispute arising under this Agreement which is not disposed of by mutual agreement between the parties shall be decided by the City Manager, whose decision shall be reduced to writing and mailed or otherwise furnished to the Consultant. The decision of the City Manager 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 the City Manager a written request to appeal the decision. Upon receipt of such request, the City and the Consultant shall come to an agreement as to the appointment of an arbitrator for purposes of hearing the appeal. If the parties cannot reach such an agreement, then each party shall select an arbitrator for purposes of the appeal, and the two shall select a third arbitrator within 20 days of their appointment. If the selected arbitrators are unable to agree upon the third arbitrator, the third arbitrator shall be selected by the American Arbitration Association or the Nevada Arbitration Association, whichever is designated by the City for such selection. The decision of the arbitrator, or arbitrators, as the case may be for the determination of any such appeal, shall be final and conclusive. The Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending the final decision of a dispute hereunder, the Consultant shall proceed diligently with the performance of the work to be performed under this Agreement and in accordance with the City Manager's decision.

If, during the performance of this Agreement, a dispute arises between the parties as to whether the services provided by the Consultant are basic services, or services entitled to additional compensation, the Consultant agrees to notify the City prior to providing such services of the Consultant's intent to seek additional compensation as provided in this Section. Such notice shall be for the purpose of affording the City the opportunity to monitor and verify the performance of the additional services and failure to provide the City with such notice shall constitute a waiver of such claim.

**B. Non-Fee disputes.** All non-Fee claims, disputes and other matters in question between the parties to this Agreement arising out of or relating to the performance of this Agreement or the breach thereof, may, upon the agreement of the parties, be decided by arbitration in accordance with the arbitration rules of the Nevada Arbitration Association or the American Arbitration Association then existing unless the parties mutually agree otherwise. Any arbitration arising out of or relating to this Agreement may include, by consolidation, joinder or in any other manner, any additional person not a party to this Agreement if so requested by either party to this Agreement. Any consent to arbitration involving an additional person or persons shall not constitute consent to arbitration of any dispute not described therein. This agreement to arbitrate with an additional person or persons, and any decision resulting therefrom, shall be binding and enforceable under the prevailing arbitration laws of the State of Nevada

**C. Right of Joinder.** In the event the City is named as a party to any arbitration action, or commences an arbitration action against a party other than the Consultant, which action arises out of, results from or is connected with the construction of the Project or the performance of the Consultant's services hereunder (such as, without limitation, any arbitration action between the City and the Contractor awarded the contract to construct the Project), the Consultant agrees and irrevocably consents to be joined as a party in the arbitration proceeding and to be bound by any decision resulting therefrom. Any joinder of the Consultant hereunder is conditioned upon the handling of such arbitration in accordance with the arbitration rules of the Nevada Arbitration Association or the American Arbitration Association. None of the time provisions imposed under Subsection C and D of this Section apply to the joinder rights provided herein in such a way as to preclude the City from joining the Consultant as a party to any arbitration proceeding which the City commences or is named as a party and which arises out of, results from or is connected with the construction of the Project.

If the Consultant is named as an additional party by the City, the Consultant shall not be entitled to any additional compensation from the City as a result of preparing for, and participating in the arbitration.

**D. Notice of Claim.** In order for the Consultant to be able to arbitrate any claim, dispute or other matter in question between the parties, written notice must be given to the City within sixty (60) days after the claim, dispute or other matter arises. In order for the City to be able to arbitrate any claim, dispute or other matter in question between the parties, written notice must be given to the Consultant within sixty (60) days after the claim, dispute or other matter arises. The purpose of such notification is to place the other party on notice so that proper measures can be taken to properly defend against such claim, dispute or other matter, and the failure to give such notice shall preclude the party desiring arbitration from subsequently arbitrating that particular claim, dispute or other matter.

**E. Arbitration of Claim.** The filing of the aforementioned written notice shall preserve that party's right to arbitration, but shall not obligate the party to proceed with arbitration. In the event that either party desires to proceed with the arbitration of any claim, dispute, or other matter with respect to which such notice has been given, a written demand for arbitration shall be filed in writing with the other party and with the American Arbitration Association or the Nevada Arbitration Association within sixty (60) days after the filing of the Certificate of Substantial Completion with respect to the Project, and the failure to make such demand shall forever bar such claim, dispute or other matter from being arbitrated.

**F. Discovery.** In the event of arbitration, it is agreed by the parties hereto that all means of discovery including, but

not limited to, depositions and interrogatories will be afforded to the parties involved in the arbitration, and the appointed arbitrator shall have all authority to impose sanctions against either party for failing to comply with the rules of discovery provided under the Nevada Rules of Civil Procedure.

**G. Award Final.** The award rendered by the arbitrator shall be final, and judgment may be entered upon its accordance with applicable law in any court having jurisdiction thereof.

**H. Mediation.** By mutual written consent, in addition to and prior to arbitration, the parties may endeavor to settle disputes by mediation in accordance with the mediation rules of the Nevada Arbitration Association or the American Arbitration Association or as agreed by the parties. The sixty (60) day requirement for notice of arbitration shall be tolled between the dates of: (1) either party's receipt of a written request for mediation from the other party hereto; and (2) the requesting party's receipt of a written rejection of its request, or if not rejected, completion of the mediation itself.

**11.21 Attorney Fees.** The prevailing party in any litigation or arbitration brought to enforce the provisions of this Agreement shall be entitled to reasonable attorney fees and costs.


**11.22 Calendar Day.** All references in this Agreement to days are to calendar days unless otherwise indicated.

**11.23 Exhibits.** All exhibits referenced in this Agreement are hereby incorporated as a part of this Agreement.


**11.24 Agreement Version.** This Agreement consists of the City's standard provisions updated as of January 12, 2001.

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

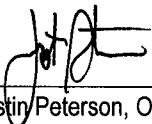
**CITY OF LAS VEGAS**

By   
Oscar Goodman, Mayor

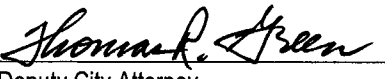
**ATTEST**

  
Barbara Jo Ronemus, City Clerk

**CONSULTANT**

By  6/21/06  
Justin Peterson, O.Connor Construction Management Inc.

**APPROVED AS TO FORM**

 6/14/06  
Deputy City Attorney Date  
Thomas R. Green

## **LIST OF EXHIBITS**

Any conflicts between the proceeding Agreement and the following Exhibits shall be governed by the Agreement.

**EXHIBIT “ A ” SCOPE OF SERVICES**

**EXHIBIT “ B ” REQUIRED SUBMITTALS**

**EXHIBIT “ C ” PERFORMANCE SCHEDULE**

**EXHIBIT “ D ” FEE BREAKDOWN**

**EXHIBIT “ E ” HOURLY RATE SCHEDULE**

**EXHIBIT “ F ” KEY PERSONNEL LIST**

**EXHIBIT “ G ” DISCLOSURE OF OWNERSHIP/PRINCIPALS**

**EXHIBIT “ H ” PROJECT TASK ORDER**

## **EXHIBIT "A"**

### **SCOPE OF SERVICES**

Constructability reviews, value engineering, CPM scheduling, and change order review and analysis for various projects delineated by Task Order.

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

END OF EXHIBIT "A"

**EXHIBIT "B"**

**REQUIRED SUBMITTALS**

All reports shall be on white paper, 8-1/2 x 11 inches, suitable for photocopying and bound in booklet form.

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

END OF EXHIBIT "B"

## **EXHIBIT "C"**

### **PERFORMANCE SCHEDULE**

The start date for the Consultant's scope of services shall be, without any further notice requirement, the date of this Agreement or the date that this Agreement is approved by the City Council, whichever occurs first.

Each Task Order will have a performance schedule of the work in calendar days, barring circumstances beyond the Consultant's control that force a delay.

Site access is hereby provided to the Consultant by the City for the scope of services contained in this Agreement. The City either has title to the property and the right of entry, or the City has secured permission from the present owner and tenant for entry to the property.

END OF EXHIBIT "C"

**EXHIBIT "D"**

**FEE BREAKDOWN AS SET FORTH IN EACH TASK ORDER NOT TO EXCEED AN  
ACCUMULATIVE TOTAL OF \$100,000.00**

END OF EXHIBIT "D"

**EXHIBIT "E"**

**HOURLY RATE SCHEDULE**

**CONSULTANT HOURLY RATES**

The following hourly rates are to be used as the basis for negotiation of Additional Services as required. These labor rates are valid for the duration of the contract and include salary costs, overhead, administration and profit.

<b>CLASSIFICATION</b>	<b>HOURLY RATE</b>
Principal	\$180
Senior Project Manager	\$135
Project Manager	\$120

**ADDITIONAL SERVICES** None authorized or anticipated as of the date of this Agreement. For Additional Services of sub-consultants, the City shall compensate the Consultant a multiple of one and one tenth (1.10) times the amounts billed to the Consultant for such services.

**REIMBURSABLE EXPENSES** None authorized or anticipated as of the date of this Agreement. For Reimbursable Expenses of the Consultant, the City shall compensate the Consultant a multiple of one and one tenth (1.10) times the actual direct costs incurred by the Consultant. The multiplier includes all compensation for overhead and profit.

END OF EXHIBIT "E"

## EXHIBIT "F"

### KEY PERSONNEL LIST

#### CITY PERSONNEL

PROJECT MANAGER: **Samuel D. Tolman** May vary per project

PROJECT REPRESENTATIVE: Varies per project

#### CONSULTANT'S PROJECT STAFF

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

PROJECT REPRESENTATIVE: Justin Peterson

PROJECT MANAGER: Varies per project

#### CONSULTANT'S SUBCONSULTANTS

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

None.

END OF EXHIBIT "F"

**EXHIBIT "G"**

**CERTIFICATE**  
**DISCLOSURE OF OWNERSHIP/PRINCIPALS**

**1. Definitions**

"City" means the City of Las Vegas.

"City Council" means the governing body of the City of Las Vegas.

"Contracting Entity" means the individual, partnership, or corporation seeking to enter into a contract or agreement with the City of Las Vegas.

"Principal" means, for each type of business organization, the following: (a) sole proprietorship – the owner of the business; (b) corporation – the directors and officers of the corporation; but not any branch managers of offices which are a part of the corporation; (c) partnership – the general partner and limited partners; (d) limited liability company – the managing member as well as all the other members.

**2. Policy**

In accordance with Resolution 79-99 and 105-99 adopted by the City Council, Contracting Entities seeking to enter into certain contracts or agreements with the City of Las Vegas must disclose information regarding ownership interests and principals. Such disclosure generally is required in conjunction with a Request for Proposals (RFP). In other cases, such disclosure must be made prior to the execution of a contract or agreement.

**3. Instructions**

The disclosure required by the Resolutions referenced above shall be made through the completion and execution of this Certificate. The Contracting Entity shall complete Block 1, Block 2, and Block 3. The Contracting Entity shall complete either Block 4 or its alternate in Block 5. Specific information, which must be provided, is highlighted. An Officer or other official authorized to contractually bind the Contracting Entity shall sign and date the Certificate, and such signing shall be notarized.

**4. Incorporation**

This Certificate shall be incorporated into the resulting contract or agreement, if any, between the City and the Contracting Entity. Upon execution of such contract or agreement, the Contracting Entity is under a continuing obligation to notify the City in writing of any material changes to the information in this Certificate. This notification shall be made within fifteen (15) days of the change. Failure to notify the City of any material change may result, at the option of the City, in a default termination (in whole or in part) of the contract or agreement, and/or a withholding of payments due the Contracting Entity.

<b>Block 1</b>	<b><u>Contracting Entity</u></b>
O'Connor Construction Management Inc	
Name	
250 Pilot Road, Suite 210, Las Vegas, NV 89119	
702-896-6926	
EIN or DUNS	

<b>Block 2</b>	<b><u>Description</u></b>
Constructability reviews, value engineering, CPM scheduling, and change order review and analysis	
RFP #:	

<b>Block 3</b>	<b><u>Type of Business</u></b>		
<input type="checkbox"/> Individual	<input type="checkbox"/> Partnership	<input type="checkbox"/> Limited Liability Company	<input checked="" type="checkbox"/> Corporation

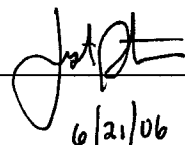
**CERTIFICATE – DISCLOSURE OF OWNERSHIP/PRINCIPALS  
(CONTINUED)**

Block 4		<b>Disclosure of Ownership and Principals</b>	
In the space below, the Contracting Entity must disclose all principals (including partners) of the Contracting Entity, as well as persons or entities holding more than one-percent (1%) ownership interest in the Contracting Entity.			
	FULL NAME/TITLE	BUSINESS ADDRESS	BUSINESS PHONE
1.	Christine O'Connor, Past President	8851 Research Dr. Irvine, CA 92618	949-476-2094
2.	Fred Saldana, President	8851 Research Dr., Irvine, CA 92618	949-476-2094
3.	Justin Peterson, Vice President	250 Pilot Road, Suite 210 Las Vegas, NV 89119	702-896-6926
4.	Tom Hodges, Vice President	7011 Koll Center Pkwy, Suite 250, Pleasanton, CA 94566	925-426-1578
5.			
6.			
7.			
8.			
9.			
10.			

The Contracting Entity shall continue the above list on a sheet of paper entitled "Disclosure of Principals – Continuation" until full and complete disclosure is made. If continuation sheets are attached, please indicate the number of sheets: \_\_\_\_\_

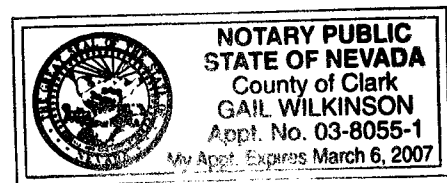
Block 5		<b>Disclosure of Ownership and Principals - Alternate</b>	
If the Contracting Entity, or its principals or partners, are required to provide disclosure (of persons or entities holding an ownership interest) under federal law (such as disclosure required by the Securities and Exchange Commission or the Employee Retirement Income Act), a copy of such disclosure may be attached to this Certificate in lieu of providing the information set forth in Block 4 above. A description of such disclosure documents must be included below.			
Name of Attached Document: _____		Number of Pages: _____	
Date of Attached Document: _____			

I certify, under penalty of perjury, that all the information provided in this Certificate is current, complete, and accurate. I further certify that I am an individual authorized to contractually bind the above named Contracting Entity.

  
 \_\_\_\_\_  
 Name  
 6/21/06  
 \_\_\_\_\_  
 Date

Subscribed and sworn to before me this 21<sup>st</sup> day of

June, 2006.  
Gail Wilkinson  
 Notary Public



**EXHIBIT "H"**

**PROJECT TASK ORDER**

Number H- \_\_\_\_

Blanket Agreement Project Name:	Various Projects
Blanket Agreement Date:	
Blanket Agreement Maximum Not-to-Exceed Fee:	\$100,000.00
Total Aggregate Fee Commitments prior to this Task Order:	
Consultant's Business Name:	O.Connor Construction Management Inc.

Whereas the City and Consultant have signed a Blanket Agreement for the Consultant to provide professional services described in the Agreement for the above named project(s), containing a not-to-exceed maximum aggregate fee that has not been fully utilized, and the City desires to utilize the Blanket Agreement to provide services for the following particular specific Project:

This Task Order Project Name:
Location:
Description:
Estimated Construction Cost:

The parties do hereby agree to the follow terms and conditions for this Project Task Order:

**Section A - Scope of Services:** Unchanged from the description included in Exhibit "A" of the Agreement, except as follows: No exceptions.

ADDITIONAL SERVICES: None authorized or anticipated as of the date of this Project Task Order. For Additional Services of sub-consultants, the City shall compensate the Consultant a multiple of one and one tenth (1.10) times the amounts billed to the Consultant for such services.

REIMBURSABLE EXPENSES: None authorized or anticipated as of the date of this Project Task Order. For Reimbursable Expenses of the Consultant, the City shall compensate the Consultant a multiple of one and one tenth (1.10) times the actual direct costs incurred by the Consultant. The multiplier includes all compensation for overhead and profit.

**Section B - Required Submittals:** Unchanged from the description included in Exhibit "B" of the Agreement, except as follows: No exceptions.

**Section C - Performance Schedule:** Unchanged from the description included in Exhibit "C" of the Agreement, except as follows:

1. The start date for the Consultant's scope of services shall be, without any further notice requirement, the date of this Project Task Order.
2. The maximum allowed time to complete each portion of the work is a follows:

BY PHASE	CALENDAR DAYS TO COMPLETE	REMARKS
Programming and Conceptual Design	00	Includes 2 week City review period.
Schematic Design	00	Includes 2 week City review period.
Design Development	00	Includes 1 week City review period.
Construction Documents	00	City review is concurrent with drawings. See notes below for definition of the Days for this phase.
Bidding		City determined.
Construction		City determined.
Post Construction		City determined.
<b>TOTAL</b>	<b>0</b>	

BY TASK:

**Section D – Fee Breakdown:**

**FIXED FEE:** The fixed fee for the Consultant Scope of Services for this Project Task Order is \_\_\_\_\_, which shall be earned and paid according to the following breakdown:

BY PHASE	PERCENT	FEE	REMARKS
Programming and Conceptual Design		\$0.00	
Schematic Design		\$0.00	
Design Development		\$0.00	
Construction Documents		\$0.00	
Bidding		\$0.00	
Construction		\$0.00	[The combined Fee for Construction and Post Construction phases shall not be less than 20% of the total Fee.]
Post Construction		\$0.00	
	<b>TOTAL</b>		

BY MAN-HOUR BREAKDOWN PER TASK:

**HOURLY BASIS WITH NOT TO EXCEED AMOUNT:** Consultant services shall be compensated based on hourly rates, with a maximum amount of compensation for this Task Order of \_\_\_\_\_, which shall be earned and paid according to the following breakdown:

BY MAN-HOUR BREAKDOWN PER TASK:

**Section E – Hourly Rate Schedule:** Unchanged from the description included in Exhibit "E" of the Agreement, except as follows: No exceptions.

**Section F – Key Personnel List:** Unchanged from the description included in Exhibit "F" of the Agreement, except as follows: No exceptions.

**Section G – Disclosure:** Unchanged since signing Exhibit "G" of the Agreement.

Upon execution hereof, this Project Task Order shall be attached to the Blanket Agreement.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

By: \_\_\_\_\_  
Consultant

By: \_\_\_\_\_  
City