

# CONSTRUCTION MANAGEMENT AGREEMENT FOR FIFTH STREET SCHOOL REHABILITATION - PHASE III

THIS AGREEMENT is made and entered into this 27<sup>TH</sup> day of February, 2007, by and between the CITY OF LAS VEGAS REDEVELOPMENT AGENCY, a public body within the State of Nevada (herein the "Agency"), and **HARRIS & ASSOCIATES** (herein the "Construction Manager").

## WITNESSETH:

WHEREAS, the Agency intends to construct **FIFTH STREET SCHOOL REHABILITATION - PHASE III** commonly known and referred to as the "Project"; and

WHEREAS, the Construction Manager is properly qualified and has the personnel and facilities necessary to perform the services hereinafter set forth within the required time; and

WHEREAS, with respect to the Project, the Agency intends to publicly bid and retain a qualified and licensed contractor (herein the "Contractor") to construct the Project having been engineered and designed by a professional engineer (herein the "Consultant"); and

WHEREAS, the Agency desires to retain the services of a qualified construction manager who will be responsible for providing the services requested by the Agency which may include, without limitation, review of documents (including submittals) prepared by the Contractor, contract administration, change order negotiations and execution, monitoring and documenting construction progress in connection with the 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 Eight hereof:

## SECTION ONE CONSTRUCTION MANAGER RESPONSIBILITIES

**1.01** **Scope of Services.** Acting as a fiduciary agent for the Agency, the Construction Manager hereby agrees to provide the services set forth in "Scope of Services", **Exhibit "A"**, and "Required Submittals", **Exhibit "B"**, and "Performance Schedule", **Exhibit "C"**, attached hereto, subject to the terms and conditions of this Agreement.

**1.02** **Additional Services.** The Construction Manager shall provide the services set forth in "Hourly Rate Schedule," **Exhibit "E"** attached hereto, if, and only if, so requested in writing by the Agency. Payment will be made to the Construction Manager for such services in accordance with Section 5.02.

**1.03** **Performance Standards.** In performing the services set forth in the Scope of Services, the Construction Manager shall follow practices consistent with generally accepted construction management standards.

**1.04** **Waiver.** The Agency's approval of any documents or services furnished by the Construction Manager shall not in any way relieve the Construction Manager of responsibility for the professional and technical accuracy of its documents and services. The Agency's review, approval, acceptance or payment for any of the Construction Manager's services shall not be construed to operate as a waiver of any rights enjoyed by the Agency under this Agreement or of any cause of action arising out of the performance of this Agreement. The Construction Manager shall remain liable in accordance with the terms of this Agreement and applicable law for the damages to the Agency caused by the Construction Manager's negligent act or omission in performance of this Agreement.

**1.05** **Construction Manager's Representative.** The Construction Manager's Representative is hereby designated as indicated in **Exhibit "F"**, "Key Personnel List", who shall be responsible for providing the services required under this Agreement. All of the services specified by this Agreement shall be performed by the Manager, or by the associates and employees identified in the Construction Manager's proposal provided that such associates and employees perform under the personal supervision of the Manager. All employees identified in the Construction Manager's cost proposal shall be subject to approval by the Agency's Representative. Should the Manager, or any associate or employee, be unable to complete his or her responsibility for any reason, the Construction Manager will replace the employee with a qualified person approved by the Agency. If the Construction Manager fails to make a required replacement within thirty (30) days, the Agency may terminate this Agreement for default as provided in Section 8.0.3.

1.06 **Correspondence Review.** The Construction Manager shall furnish the Agency's Representative copies of each correspondence sent to the Contractor or to any regulatory agencies.

1.07 **Cooperation with the Agency.** The Construction Manager agrees that its officers, associates, employees and subcontractors will cooperate with the Agency in providing the services under this Agreement and will be, with advance notice, available for consultation with the Agency at such reasonable times as to not conflict with the Agency's other responsibilities.

## SECTION TWO AGENCY RESPONSIBILITIES

2.01 **Agency's Representative.** The City of Las Vegas' Director of Public Works or his authorized representative is hereby designated as the Agency's Representative with respect to this Agreement. The Agency's Representative shall have complete authority to transmit instructions, receive information, interpret and define the Agency's policies and decisions with respect to the services of the Construction Manager.

2.02 **Cooperation with Construction Manager.** The Agency agrees that its officers and employees will cooperate with the Construction Manager in the performance of this Agreement and will be, with advance notice, available for consultation with the Construction Manager at such reasonable times as to not conflict with the Construction Manager's other responsibilities.

2.03 **Review of Construction Manager's Services and Documents.** The services to be performed by the Construction Manager shall be subject to periodic review by the Agency's Representative. The review comments of the Agency's Representative shall be reported in writing to the Construction Manager. To prevent an unreasonable delay in the construction of the Project, the Agency's Representative will endeavor to examine and comment in writing on the documents including, without limitation, change order requests, requests for information, memos to designer and letters of clarification by or to the Construction Manager, submitted to the Agency for comment within 10 working days of receipt of such documents.

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

## SECTION THREE CHANGES TO THE SCOPE OF SERVICES

3.01 **Requested Changes.** The Agency may at any time, by written order, make changes to the Scope of Services to be provided by the construction of the Project or the Scope of Services.

3.02 **Adjustment of Compensation.** If the changes requested by the Agency cause an increase in the cost or time required for the Construction Manager to perform any of the services required thereunder, an equitable adjustment shall be made in the compensation to be paid to the Construction Manager under Section Five and the Scope of Services 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 Construction Manager of written notification of the changes to the services to be provided under the Scope of Services unless the Agency grants in writing a further period of time before the date of final payment. If final payment is made to the Construction Manager, the Construction Manager waives any right to seek any equitable adjustment in compensation with respect to that change.

## SECTION FOUR TERM OF AGREEMENT

4.01 **Term.** This Agreement shall commence on the day in the first paragraph set forth above and shall remain in force and effect until the Project is completed (as evidence by the issuance of a Certificate of Completion) unless the Agency serves upon the Construction Manager a thirty (30) day written Notice of Termination pursuant to Section 8.02. The termination of this Agreement shall not release either party from any of its continuing obligations hereunder.

**4.02** *Disputes.* This Section shall not be construed to preclude the filing of any disputes arising out 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 this Agreement or the subject matter hereof, would otherwise accrue under the statutes of limitations or doctrines of law.

## SECTION FIVE COMPENSATION AND TERMS OF PAYMENT

**5.01** *General.* The Agency agrees to pay the Construction Manager as compensation for the services provided under Article 1 of this Agreement the amount of the fixed Fee set forth in **Exhibit "D"** (Fee and Man-hours Breakdown). In no event shall the total amount of compensation to be paid to the Construction Manager exceed the total fixed Fee set forth in **Exhibit "D"**, unless written authorization is given by the Agency.

**5.02** *Compensation.* Construction Manager estimate of the number of man-hours to be expended in the performance of this agreement is set forth in "Fee and Man-hours Breakdown", **Exhibit "D"**, attached hereto. The Agency shall pay the Construction Manager for the services actually performed under the Scope of Services the hourly rates set forth in "Hourly Rate Schedule", **Exhibit "E"**, attached hereto unless a different hourly rate has been approved by the Director of Public Works, or his designee.

**5.03** *Invoice.* An invoice shall be submitted to the Agency each month for the services provided during the previous month based upon the rates set forth in the "Fee Breakdown", **Exhibit "D"**, and the "Hourly Rate Schedule", **Exhibit "E"**. An original invoice and one copy to the Agency's Representative in the format acceptable to the Agency Representative, attached hereto shall be submitted to the Agency. Payment shall be due within sixty (60) days after the date of receipt and approval by the Agency's Representative of the monthly invoice, unless the amount set forth therein, or any portion thereof, is being disputed by the Agency in which case payment shall be made on the undisputed amount. Failure to pay the Construction Manager within this period may, if so requested by the Construction Manager, result in a penalty of one-half (½) percent per month being applied to the unpaid balance.

**5.04** *Right to Off-Set.* The Agency's Representative may subtract or off-set from any unpaid invoice received from the Construction Manager any damages, costs and expenses caused by, resulting from or arising out of, the negligent acts or omissions of the Construction Manager in the performance of the services under this Agreement including, without limitation, the lack of proper oversight and review of the documents prepared by the Consultant and/or the Contractor. The Agency's Representative shall provide a written statement to the Construction Manager of the damages, costs and expenses which have been subtracted from any payment to the Construction Manager along with appropriate documentation and receipts, if any, and a description of the negligent errors or deficiencies attributed to the Construction Manager.

**5.05** *Final Payment.* Upon completion by the Construction Manager of the services required under this Agreement, and upon acceptance of such services by the Agency, which acceptance will not be unreasonably withheld, the Construction Manager will, within sixty (60) days of the Agency's acceptance, be paid the balance of any money due for such services.

## SECTION SIX PROJECT SCHEDULE

**6.01** *Project Schedule.* If so required under the Scope of Services, the Construction Manager will obtain from the Contractor and furnish to the Agency's Representative a schedule for performance of the construction of the Project (herein the "Project Schedule") no later than thirty (30) days after the Contractor receives written notice to proceed from the Agency. The Construction Manager shall review the Project Schedule for compliance with the milestone requirements set forth in the construction documents and that the times allotted for each task are reasonable. The Construction Manager shall complete his review within ten (10) days of receipt of the Project Schedule. The Construction Manager shall monitor the progress of the Contractor against the Project Schedule and shall document and report the Contractor's progress to the Agency's Representative.

**6.02** *Revised Project Schedule.* If the Contractor's performance is delayed or the sequence of tasks changed, the Construction Manager shall notify the Agency's Representative in writing of the reasons for the delay or the change. The Construction Manager shall then require the Contractor to prepare a revised Project Schedule for submission to and approval by the Agency's Representative. The Construction Manager shall review the Project Schedule and monitor the Contractor's performance and completion of the work in accordance therewith.

## SECTION SEVEN AUDIT: ACCESS TO RECORDS

**7.01** *Records.* The Construction Manager shall maintain books, records and other documents directly pertinent to performance of the Scope of Services in accordance with generally accepted accounting principles and practices. The Construction Manager shall also maintain the

financial information and data used by the Construction Manager in the preparation or support of the invoices submitted to the Agency. Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the Agency, or its designated representative. The Agency, or its duly authorized representatives, shall have access to such books, records, and documents for the purpose of inspection, audit and copying. The Construction Manager will provide proper facilities for such access and inspection. Any negotiated hourly rates will not change due to an audit.

**7.02** **Disclosure.** The Construction Manager agrees to the disclosure of all information and reports resulting from access to records pursuant to Sections 7.01 above, to any of the agencies referred to in Section 7.01 above, provided that the Construction Manager 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 Construction Manager.

**7.03** **Period of Maintenance.** The books, records and other documents under Sections 7.01 and 7.02 above 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.

**7.04** **Subcontract Provisions.** The Construction Manager agrees to include Sections 7.01 through 7.03 in all its subcontracts directly related to performance of services specified in this Agreement which are in excess of \$10,000.

## SECTION EIGHT MISCELLANEOUS PROVISIONS

**8.01** **Suspension.** The Agency may suspend performance by the Construction Manager under a Scope of Services for such period of time as the Agency, in its sole discretion, may prescribe by providing written notice to the Construction Manager at least ten (10) working days prior to the effective date of the suspension. With such suspension, the Agency shall pay to the Construction Manager the amount of compensation, for the unpaid services rendered prior the effective date of suspension. The Construction Manager shall not provide any further services under the Scope of Services after the effective date of suspension until otherwise notified in writing by the Agency. In the event the Agency suspends performance by the Construction Manager for any cause other than the error or omission of the Construction Manager for an aggregate period in excess of thirty (30) days, the Construction Manager shall be entitled to an equitable adjustment of the compensation payable to the Construction Manager under the Scope of Services including reimbursement of the Construction Manager for additional costs occasioned as a result of such suspension of performance by the Agency.

**8.02** **Termination.** The Agency reserves the right to terminate this Agreement without cause or default on the part of the Construction Manager with ten (10) working days' prior written notification to the Construction Manager. Notification of the Construction Manager is deemed to have occurred on that date that the Agency 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 Agency agrees to pay to the Construction Manager the reasonable value for the services performed as of the date that notification of termination is received by the Construction Manager.

**8.03** **Default.** The occurrence of any of the following events shall constitute a default by the Construction Manager hereunder (hereinafter "Event of Default"):

A. If the Construction Manager shall default in the due observance and performance of any term, condition or covenant contained in this Agreement.

B. If the Construction Manager shall (a) voluntarily terminate operations or consent to the appointment of a receiver, trustee or liquidator of the Construction Manager 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 Construction Manager for the purpose of effecting any of the foregoing;

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

D. If the Construction Manager should, in the judgment of the Agency, neglect to prosecute the work hereunder properly and with proper dispatch in accordance with the time schedule set forth in Section Six of this Agreement, then, if any such Event of Default continues for three (3) working days after written notice to the Construction Manager, the Agency, 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 Construction Manager hereunder, finish this Agreement by such means as the Agency may see fit, deduct from any balance due the Construction Manager the reasonable and necessary cost of finishing this Agreement. If the Agency 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 Construction Manager and in the event the cost of finishing the Construction Manager's work exceeds the balance due the Construction Manager, such excess shall be paid by the Construction Manager to the Agency within five (5) days of invoicing by the Agency or (b) terminate this Agreement and all the obligations imposed hereunder, including the obligation of any further payment for the services of the Construction Manager 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 Construction Manager shall be computed and audited by the Agency's designated representative. The audit shall be made in accordance with generally accepted accounting principles and the Construction Manager shall pay all costs of such audit.

It is expressly agreed that the Agency reserves the right to off-set any and all claims made by the Construction Manager for payment of its Fee or the reimbursement of additional costs incurred hereunder, with any claims that the Agency might have against the Construction Manager for failure to comply with any of the terms and conditions of this Agreement.

**8.04** **Ownership of Documents.** Any and all plans, drawings, specifications, studies and other documents (including magnetic media) prepared or assembled by the Construction Manager or any of its subcontractors which are related to the performance of this Agreement are deemed to be the property of the Agency. In the event of completion or termination of this Agreement, the Agency reserves the right to require delivery of any and all plans, drawings, specifications, studies and other documents not in its possession. Any use of such completed documents for other projects and/or any use of incomplete documents without specific written authorization from the Construction Manager will be at the Agency's sole risk. The Construction Manager shall be entitled to a reproducible copy of such plans, drawings, specifications, studies and other documents furnished to the Agency.

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

A. **Employers Insurance Company of Nevada (EICON).** Such insurance shall protect the Construction Manager and the Agency from employee claims based on job-related sickness, disease, or accident.

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

C. **Professional Liability Insurance.** Such insurance shall protect the Construction Manager 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. **Comprehensive General Liability and Professional Liability Insurance.** The Comprehensive General Liability and Professional Liability Insurance Policies shall automatically include or be endorsed to cover the Construction Manager's contractual liability to the Agency, to waive subrogation against the Agency, its officers, agents, servants and employees and to provide that the Agency 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 \$100,000 without the written approval of the Agency.

F. **Period of Coverage.** Certificates indicating that such insurance is in effect shall be delivered to the Agency before any services are provided under this Agreement. 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 Construction Manager shall maintain coverage for the duration of this Agreement and for two years following completion of this Agreement. The Construction Manager shall provide the Agency annually a Certificate of Insurance as evidence of such insurance.

**8.06** **Indemnity.** Notwithstanding any of the insurance requirements required under Section 8.05, and not in lieu thereof, the Construction Manager shall defend, indemnify and hold the Agency, its officers, employees, and agents (herein the "Indemnitees") harmless from any and all claims, damages, losses, expenses, suits, actions, decrees, judgments, attorney fees and court costs (herein the "Claims") which the Indemnitees, or any of them, may suffer as a result of, by reason of, or in consequence of, the negligent acts or omissions of the Construction

Manager, its subcontractors, agents or anyone employed by the Construction Manager, its subcontractors or agents, in performing the terms, conditions or covenants of this Agreement.

As part of its obligation hereunder, the Construction Manager shall, at its own expense, defend the Indemnitees, 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 the negligent acts or omissions of the Construction Manager, its subcontractors or agents, for and against which the Construction Manager is obligated to indemnify the Indemnitees unless the Indemnitees, or any of them, elect to conduct their own defense which, in such case, shall not cause a waiver of the obligation of indemnification set forth herein. If the Construction Manager shall fail to do so, the Agency 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 Construction Manager which is proportionate to the liability of the Construction Manager.

**8.07** **Assignment.** The Agency and the Construction Manager 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 Construction Manager shall not assign, sublet or transfer any obligation or benefit under this Agreement without the written consent of the Agency. Nothing contained herein shall be construed as creating any personal liability on the part of any officer or agent of the Agency.

**8.08** **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 Agency or the failure of the Agency to perform any inspection hereunder, shall not constitute a final acceptance of the work or any part thereof and shall not release the Construction Manager of any of its obligations hereunder.

**8.09** **Construction Manager Warranties.** The Construction Manager hereby represents and warrants:

A. 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 and licensed to do business in the City of Las Vegas and the State of Nevada.

B. 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.

C. That it has, pursuant to the requirements of Resolution 79-99 (adopted by the Redevelopment Agency Board on August 4, 1999, and effective October 1, 1999), as amended by resolution 105-99 (adopted by Redevelopment Agency Board November 17, 1999), disclosed on the form attached hereto as **Exhibit "G"**, all of the principals, including partners, of the Construction Manager, as well as persons and entities holding more than a one percent (1%) interest in the Construction Manager or any principals of the Construction Manager. If the Construction Manager, its principals or partners, are required to provide disclosure under federal law (such as the Securities and Exchange Commission Act or the Employees 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 Construction Manager shall notify the Agency in writing of any material change in the above disclosure on **Exhibit "G"** within 15 days of such change.

**8.10** **Construction Manager Employees.** The Construction Manager shall be responsible for maintaining satisfactory standards of employee competency, conduct and integrity, and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. In the event the Construction Manager fails to remove any employee from the work of this Agreement whom the Agency deems incompetent, careless or insubordinate, or whose continued employment on the work is deemed by the Agency to be contrary to the public interest, the Agency reserves the right to require such removal as a condition for the continuation of this Agreement.

**8.11** **Independent Contractor.** It is hereby expressly agreed and understood that in the performance of the services required herein, the Construction Manager and any other person employed by him hereunder shall be deemed to be an independent contractor and not an agent or employee of the Agency.

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

**8.13** **Compliance with Laws.** The Construction Manager 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.

**8.14 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.

**8.15 Confidentiality.** The Construction Manager shall treat the information relating to the Project which has been produced by the Construction Manager or provided by the Agency as confidential and proprietary information of the Agency and shall not permit its release to other parties or make any public announcement or publicity release without the Agency's written authorization. The Construction Manager shall also require subcontractors and vendors to comply with this requirement.

**8.16 Site Inspection.** The Construction Manager represents that it has visited the location of the Project identified in the Scope of Services and has satisfied itself as to the general condition thereof and that the Construction Manager's compensation as provided for in the Agreement 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.

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

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

AGENCY:

Frank Trupiano  
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) 382-3232

CONSTRUCTION MANAGER:

James D. Morris  
HARRIS & ASSOCIATES  
2310 Paseo Del Prado, Suite A104  
Las Vegas, NV 89102

Phone: (702) 597-9410 Fax: (702) 597-9470

**8.19 Prohibition Against Contingent Fees.** The Construction Manager warrants that no person or entity has been employed or retained to solicit or secure this Agreement upon an 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 Agency shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the compensation to be paid to the Construction Manager, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

**8.20 Dispute Resolution**

A. Any Fee dispute arising under this Agreement which is not disposed of by mutual agreement between the parties shall be decided by the Agency's Executive Director, whose decision shall be reduced to writing and mailed or otherwise furnished to the Construction Manager. The decision of the Agency's Executive Director shall be final and conclusive unless, within thirty (30) days after the date on which the Construction Manager receives its copy of such decision, the Construction Manager mails or otherwise furnishes the Agency's Executive Director a written request to appeal the decision. Upon receipt of such request, the Agency and the Construction Manager 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 Agency 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 Construction Manager 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 Construction Manager shall proceed diligently with the performance of the work to be performed under this Agreement and in accordance with the Agency's Executive Director's decision.

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

B. 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, shall 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. No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, any additional person not a party to this Agreement except by written consent which contains a specific reference to this Agreement and which is signed by the Agency and the Construction Manager. 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 and any agreement to arbitrate with an additional person or persons duly consented to by the Agency and the Construction Manager shall be specifically enforceable under the prevailing arbitration law.

C. In the event that the Agency is named as a party to any arbitration action or commences an arbitration action against a party other than the Construction Manager, which arises out of, from, or is connected with the construction of the Project, or the performance of the Construction Manager under this Agreement, the Construction Manager 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 Construction Manager is conditioned upon the handling of such arbitration in accordance with arbitration rules of the Nevada Arbitration Association or the American Arbitration Association. None of the time provisions imposed under subsections D and E apply to the joinder rights provided herein in such a way as to preclude the Agency from joining the Construction Manager as a party to any arbitration proceeding which the Agency commences or is named as a party and which arises out of, or results from, the construction of the Project.

If the Construction Manager is named as an additional party by the Agency, the Construction Manager shall not be entitled to any additional compensation from the Agency as a result of preparing for, or participating in, the arbitration.

D. In order for the Construction Manager to be able to arbitrate any claim, dispute or other matter in question between the parties, written notice must be given to the Agency within sixty (60) days after the claim, dispute or other matter arises. In order for the Agency to be able to arbitrate any claim, dispute or other matter in question between the parties, written notice must be given to the Construction Manager 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. 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 Nevada Arbitration Association or the American 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. 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 Procedure.

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

H. 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 then existing. 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.

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

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

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

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

CITY OF LAS VEGAS REDEVELOPMENT AGENCY

Attest: By   
BEVERLY K. BRIDGES, CMC, Acting Secretary

By   
Oscar Goodman, Chairman

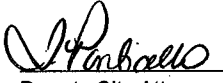
CONSTRUCTION MANAGER

By  For  
James D. Morris, Harris & Associates

~~ATTEST~~

~~Barbara Jo Ronemus, Secretary~~

APPROVED AS TO FORM

 2/6/07  
Deputy City Attorney Date

## **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 "A"

### SCOPE OF SERVICES

#### ARTICLE 1: GENERAL

##### 1.1 PURPOSE

1.1.1 The services covered by this agreement are for the purpose of administering the Construction Contract for the Project per Section 01 30 00 of the Construction Contract Project Manual, throughout the construction of the Project.

1.1.2 The Scope of Service set forth in this Exhibit and the compensation to the Construction Manager for said Scope of Services is based upon the Construction Manager and the Agency each performing its responsibilities in a timely manner.

##### 1.2 SCOPE OF SERVICES

1.2.1 This scope is to be considered preliminary and may be altered as this Project develops. Alterations of scope will not impact Fee amounts unless increased scope or workload is encountered by the Construction Manager. If increased scope or workload is encountered, the Construction Manager shall notify the Agency in writing, and an adjusted fee will be negotiated prior to any work.

##### 1.3 GENERAL REQUIREMENTS

1.3.1 The Construction Manager's work shall, to the extent possible, be prepared using Expedition software by Primavera, same version as the Agency is currently using. Where Expedition capabilities are limited, provide documents in the following software formats: AutoCAD 2000, Microsoft Office 2000 and Microsoft Project 2000, or more recent versions.

1.3.2 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. The Agency will 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 sender. The Construction Manager shall remove the unwanted programs or the unwanted programs or data and further verify the integrity of the electronic submittal. The Construction Manager shall bear the expense of correction, checking and resubmittal and shall not be released from submittal requirements per the agreement.

1.3.3 All work shall be in full compliance with applicable codes, ordinances and other regulatory conditions.

1.3.4 No disclaimers are allowed on any document submittals.

#### ARTICLE 2: THE AGENCY'S RESPONSIBILITIES

2.1 The Agency will be responsible for performing all work necessary to complete their obligation to the Construction Manager to allow the Construction Manager to complete their work.

2.2 The Agency shall provide the Construction Manager with:

2.2.1 Any other information required to complete the work, as available, which is not in the Construction Manager's Scope of Services.

2.2.2 The full use of any on site facilities that the Contractor is obligated to provide for the Agency's use, including a conditioned and furnished field office with phone, fax, desk, table, storage cabinet, plan rack, filing cabinet, bookshelves, chairs, tackboard, wastebasket, parking space(s), access to sanitary facilities and drinking fountain, if so indicated in the Contract Documents for the Project. It is the Construction Manager's duty to review the documents for such information and to determine and include in the total Fee, any field office requirements that the Contractor is not providing.

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

2.2.4 A management team to review submittals, and to work with the Construction Manager to achieve an acceptable, cost effective Project.

## ARTICLE 3: THE CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

3.1.1 Pre-Construction Services

3.1.2 Construction Management and Contract Administration

3.1.3 Project Close-Out

3.1.4 Table of Responsibilities

### 3.2 PRE-CONSTRUCTION SERVICES

3.2.1 **Plan and Specification Review.** The Construction Manager shall:

3.2.1.1 Perform a review of the Plans and Specifications.

3.2.1.2 Perform a follow-up review of the geotechnical report.

3.2.1.3 Review the Contractor's Dust Permit for Construction Contract compliance.

3.2.1.4 Review the Contractor's Dust Mitigation Plan for Construction Contract compliance.

3.2.1.5 Review the Contractor's Storm Water Permit for Construction Contract compliance.

3.2.1.6 Forward any comments to the Agency Project Manager.

3.2.2 **Pre-Construction Meetings.** The Construction Manager's team shall:

3.2.2.1 Participate in periodic "Partnering Meetings" with the Agency 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. Meeting dates, times, and place will be determined by the Agency.

3.2.2.2 Organize and hold the pre-construction conference in accordance with Section 01 30 00 of the Construction Contract Project Manual.

3.2.2.3 Be responsible for taking and issuing the Pre-Construction Meeting Minutes to the Agency Project Manager and Contractor.

3.2.2.4 Be responsible for making any adjustments to the Meeting Minutes as may be deemed reasonable.

3.2.2.5 Organize and hold a Site Mobilization Meeting in accordance with Section 01 30 00 of the Construction Contract Project Manual.

3.2.2.6 Be responsible for the taking of and issuance of any Site Mobilization Meeting Minutes, if necessary.

3.2.2.7 Generate all Meeting Minutes in Expedition and forward to the Contractor, Agency Project Manager and Architect for review and record.

3.2.3 **Pre-Construction Schedules.** The Construction Manager shall:

3.2.3.1 Receive from the Contractor, all Schedules including Schedule of Values.

3.2.3.2 Review and provide to the Agency Project Manager and the Architect comments and recommendations on the Contractor's Preliminary Guaranteed Progress Schedule in accordance with Section 01330 of the Construction Contract Project Manual.

3.2.3.3 Review any revision to the Preliminary Progress Schedule in accordance with Section 01330 of the Construction Contract Project Manual and forward all comments and recommendations to the Agency Project Manager and the Architect for review.

3.2.3.4 Review and comment on the Contractor's Post Construction Contract Award Schedule of Values in accordance with Section 01 29 00 of the Construction Contract Project Manual. The Construction Manager will forward all comments and recommendations to the Agency Project Manager and the Architect for review.

3.2.4 **Pre-Construction Condition Photos.** The Construction Manager shall:

3.2.4.1 Coordinate and execute the photographing of the existing Project conditions prior to the commencement of construction.

3.2.4.2 Develop a pre-construction photo log with related comments and shall provide a copy to the Agency Project Manager.

3.2.4.3 Along with the "Existing Condition" Photo Log, the Construction Manager shall provide a detailed condition summary for review by the Agency Project Manager and the Architect.

### 3.3 CONSTRUCTION MANAGEMENT AND CONTRACT ADMINISTRATION

3.3.1 **General.** Provide full service Construction Contract Administration during the construction phase of the Project. The Construction Manager shall provide staff and documentation to ensure compliance with the Contract Documents.

3.3.2 **Project Field Office.** The Construction Manager shall:

3.3.1.2 Develop and issue a list of telephone numbers, including emergency numbers for use by the Agency Project Manager, Construction Manager and Contractor personnel.

3.3.1.3 Ensure public information is provided in the field office as required by law and the Agency.

**3.3.1.4** Except as specifically provided by the Agency or Contractor (reference **Agency's Responsibilities** in Exhibit "A"), provide a complete and ready to use conditioned and furnished field office including:

**3.3.1.4.1** An on site computer system and printer to manage the Project, which may be of a portable design and removed when the Construction Manager is not on site.

**3.3.1.4.2** A suitable copy machine and fax machine with dedicated phone line.

**3.3.1.4.3** A field office phone and cell phone.

**3.3.1.4.4** Furniture including a plan table and file cabinet.

**3.3.1.5** Make the Construction Manager's field office available for use by the Agency's personnel, special inspectors, testing consultants, and other consultants when they are providing services on site. Provide a chair and writing surface for such use by others when needed, which may be the Construction Manager's desk or table. A separate dedicated desk or work area is not required.

**3.3.2 Photographs.** The Construction Manager shall:

**3.3.2.1** Be responsible for thoroughly photographing the progress of construction throughout the duration of the Project. Photos will be taken daily, each business day, to show both activity and the lack of activity. This includes but is not limited to providing the Agency a monthly progress summary showing a pictorial representation of work completed during each month. All photos will be taken with either a 35 mm camera or a digital camera (not a mixture of both formats) showing the picture's date imprinted on the face of each photo and a written description of location taken, work shown or lack of work shown, problem or defect demonstrated, or other purpose of the photo.

**3.3.3 Daily Reports (Contractor & Construction Manager).** The Construction Manager shall:

**3.3.3.1** Be responsible for producing, in Expedition and separate from the Contractor, a report for each day describing the events which took place, including any relevant conversations, construction conflicts and site meetings.

**3.3.3.2** Ensure that the Contractor develops its own daily report and will obtain such reports for the Construction Manager field office and Agency record daily.

**3.3.3.3** Ensure that the Construction Manager's and Contractor's daily reports include all of the items required in the Contract Documents, including: the weather conditions, name of contractors on site and number of workers for each, deliveries, equipment, accidents and safety issues, inspections and tests conducted, construction activities, and work completed. The Construction Manager shall immediately notify the Agency of any safety concerns.

**3.3.3.4** When Construction Manager determines that any of the Contractor's daily reports are inaccurate, incomplete or contain potential claim information, the Construction Manager will generate a response, in Expedition, detailing any concerns and requested changes and will forward these documents to the Agency Project Manager for review and approval.

**3.3.4 Payment Application (Review & Approval).** The Construction Manager shall:

**3.3.4.1** Review all applications for payment to ensure that all invoices reflect actual work completed in accordance with the Contract Documents.

**3.3.4.2** Verify that all submittals required from the Contractor with each Application for Payment are attached. Request any items from the Contractor that are required but have not been provided and hold application until all required items are provided.

**3.3.4.3** In regard to each payment application, issue a recommendation (approval or denial) to the Agency Project Manager providing written response as to why in accordance with the NRS. The Agency Project Manager will then have the responsible charge of either forwarding the application for payment or rejecting it accordingly.

**3.3.5 Prevailing Wage Records.** The Construction Manager shall:

**3.3.5.1** Forward all prevailing wage records to the Agency for review, approval and record. The Construction Manager will maintain an additional file of the Contractor's prevailing wage records for each progress payment application.

**3.3.5.2** Notify the Agency Project Manager of any reported prevailing wage violations.

**3.3.6 Project Construction Schedules (Weekly, Monthly & Revisions).** The Construction Manager shall:

**3.3.6.1** In accordance with Section 01330 of the Construction Contract Project Manual, ensure that the Contractor develops and submits schedules for each progress meeting whenever any of the conditions referenced are encountered.

**3.3.6.2** Thoroughly review the Contractor's Baseline Schedule to ensure that such schedule complies with the Construction Contract requirements. Furthermore, the Construction Manager shall utilize its Construction and Claims experience to ensure that the Contractor's Baseline Schedule adequately depicts all of the significant work activities with reasonable timelines.

**3.3.6.3** Review all monthly progress schedules for Construction Contract compliance. In addition, the Construction Manager will thoroughly review each progress schedule to ensure that all changes are represented reasonably.

**3.3.6.4** Generate a response, which either approves or rejects the Contractor's monthly progress schedules and provide written explanation to the Agency Project Manager for review and approval.

**3.3.6.5** Maintain an as-built schedule on site and update it monthly to accurately represent completed work, plus the Contractor's latest schedule for future work. Provide these schedules to the Agency Project Manager each month.

**3.3.7 Signatures.** Under no circumstances shall the Construction Manager sign or initial any paperwork generated by the Contractor, including verifications of work completed or quantities removed or delivered. All such work verifications and other Contractor paperwork issues shall be noted

in the Construction Manager's Daily Reports. The exception to this policy is the receipt of documents, samples, drawings, and similar items received from the Contractor, which may be signed as received.

**3.3.8 Substitutions.** The Construction Manager shall:

**3.3.8.1** Receive all requests for substitutions from the Contractor and review them for Construction Contract compliance, log them into Expedition, reject or forward them to the Agency Project Manager and Architect for review and approval.

**3.3.8.2** In the event Substitution Requests are submitted after the allowable time period, and the Contractor has not provided evidence that the product is no longer available through no fault of the Contractor, the Construction Manager will forward a written notice of rejection to the Agency Project Manager for review and approval.

**3.3.9 Shop Drawings/Submittals.** The Construction Manager shall:

**3.3.9.1** Prepare a Master List of all contractually required submittals and forward copies to the field office and Agency Project Manager and the Architect for record.

**3.3.9.2** Receive all Submittals from the Contractor and review each for Construction Contract compliance. In the event the submittal is received in a manner contrary to the Construction Contract requirements, the Construction Manager will forward a notice of rejection to the Contractor, Architect and the Agency Project Manager for review and record.

**3.3.9.3** Develop a Submittal Log in Expedition showing each submittal, the date received, date forwarded to the Architect, number of days with the Architect, date returned, Architect's response, and the date returned to Contractor.

**3.3.9.4** All submittals that are received in accordance with the Construction Contract requirements will be logged into Expedition and forwarded to the Architect for review and approval or rejection.

**3.3.9.5** Re-Submittals will be handled in the same manner as Submittals.

**3.3.9.6** Forward all Submittals to the Agency Project Manager.

**3.3.10 RFI'S.** The Construction Manager shall:

**3.3.10.1** Create and maintain in Expedition a Request For Information (RFI) Log.

**3.3.10.2** Develop an RFI Log in Expedition that shows the date each RFI was received, the content of the RFI, the date forwarded to the Architect and Agency Project Manager, the date returned, the number of days with the Architect, and the response and the date returned to the Contractor.

**3.3.10.3** Receive all RFIs from the Contractor and log them into Expedition and coordinate the reply for each.

**3.3.10.4** Answer RFIs that can easily be answered without a constructive change to the Construction Contract and forwarded to the Agency Project Manager for review and approval.

**3.3.10.5** Immediately notify the Agency Project Manager whenever the Construction Manager determines that an RFI is frivolous and unwarranted.

**3.3.10.6** Forward all RFIs to the Agency Project Manager for review and response.

**3.3.10.7** All responses to RFIs will be routed through the Construction Manager who will log them into Expedition.

**3.3.11 Change Orders.** The Construction Manager shall:

**3.3.11.1** Create a Change Order Request (COR) log in Expedition.

**3.3.11.2** Receive and log all Contractor submitted CORs accordingly.

**3.3.11.3** Review all CORs and forward them to the Agency Project Manager and Architect. The Construction Manager will generate a summary of the events/circumstances surrounding the COR that includes the Construction Manager's recommendation regarding each matter.

**3.3.11.4** Assist in the negotiations of all Change Order pricing.

**3.3.11.5** Draft rejections of CORs as deemed appropriate and forward them to the Agency Project Manager for review and approval.

**3.3.11.6** In the event a change is required but pricing is unable to be mutually agreed upon, the Construction Manager will draft a Construction Contract Change Directive to the Contractor and will forward copies to the Agency Project Manager and Architect for review and approval.

**3.3.11.7** Coordinate and seek the signatures for approval from the Agency Project Manager, Architect and Contractor for all change orders that have obtained a mutually agreed upon price.

**3.3.12 Field Directives.** The Construction Manager shall:

**3.3.12.1** Issue Field Directives for emergencies and items that require immediate response.

**3.3.13 Coordinate Project Progress Meetings/Participate in Partnering Meetings.** The Construction Manager shall:

**3.3.13.1** Coordinate and execute all progress meetings in accordance with Section 01 30 00.

**3.3.13.2** Take and draft all Progress Meeting Minutes and distribute copies to the Agency Project Manager, Architect and Contractor for review and approval.

**3.3.13.3** Make any reasonable and merited adjustments to the meeting minutes when requested by the Contractor and Architect within the time specified.

**3.3.13.4** Participate in any partnering meetings and draft minutes from such with copies forwarded to the Agency Project Manager for review and approval.

- 3.3.14 Notices of Non Compliance.** The Construction Manager shall:
- 3.3.14.1** Issue Notices of Non-Compliance for any work activity that is not in compliance with the Contract Documents and forward copies to the Agency Project Manager and Architect.
- 3.3.15 Notices of Potential Claim.** The Construction Manager shall:
- 3.3.15.1** Forward any and all Notices of Potential Claim to the Agency Project Manager and Architect for review and record.
- 3.3.15.2** Develop a summary of events and submit it with the Notices of Potential Claim.
- 3.3.15.3** Draft a response to any Notices of Potential Claim and forward to the Agency Project Manager for review and approval.
- 3.3.16 Quality Control – (Inspections & Material Testing contracted and paid by the Agency).** The Construction Manager shall:
- 3.3.16.1** Assist in, be aware of the Contractor's schedule of, and note in the daily report on the Contractor's coordination with the on site quality inspections, special inspections, and material testing services proved by the Agency's consultants.
- 3.3.16.2** Review and respond to all inspections and test results with the Contractor and forward copies of each to the Agency Project Manager and Architect for review and approval.
- 3.3.16.3** Have a representative on-site at all times during construction to ensure that all construction activities are performed in accordance with the Contract Documents.
- 3.3.17 Public Information.** The Construction Manager shall:
- 3.3.17.1** Refer all public inquiries to the Agency Project Manager.
- 3.3.18 Project Documentation Control.** The Construction Manager shall:
- 3.3.18.1** Develop a system in Expedition for logging all correspondence received and generated.
- 3.3.18.2** Maintain a complete set of as-built drawings for the Project, independent of the Contractor's as-built drawing set.
- 3.3.19 Reporting.** The Construction Manager shall:
- 3.3.19.1** Prepare a monthly progress and summary report and submit it to the Agency with the monthly payment request. Reference **Exhibit "B"**.
- 3.3.19.2** Phone the Agency Project Manager each day activity is occurring on site or outstanding issues remain unresolved, to update the Agency on the Project status.
- 3.3.20 Traffic Control.** The Construction Manager shall:
- 3.3.20.1** Monitor and respond to all traffic control issues.
- 3.3.20.2** Review any traffic control plans submitted by the Contractor and forward them to the Agency with recommendations.
- 3.3.21 Punchlists and Substantial Completion.** The Construction Manager shall:
- 3.3.21.1** Upon receiving a Notice of Substantial Completion request from the Contractor, the Construction Manager will coordinate and participate in the walk through with the Agency Project Manager, Architect and Contractor.
- 3.3.21.2** Collect from the Contractor and forward the Certificate of Occupancy to the Agency Project Manager and file a copy in the Project records. The Certificate of Occupancy is a minimum prerequisite to requesting the Substantial Completion walk through.
- 3.3.21.3** Develop in Expedition a punchlist generated from the walk through and forward it to the Agency Project Manager and Architect for review and approval prior to forwarding to the Contractor.
- 3.3.21.4** Upon a finding by the Agency Project Manager that the Project is Substantially Complete, the Construction Manager will prepare in Expedition and issue a Certificate of Substantial Completion for signature by the Agency Project Manager and Architect. Copies will be forwarded to the Agency Project Manager and Architect for record.
- 3.3.21.5** Observe and verify that all punchlist items are completed in accordance with the Construction Contract requirements.
- 3.3.21.6** Upon proper completion of the punchlist items, the Construction Manager will assist in ensuring that the Agency Project Manager is properly and promptly notified to allow for Contractor payment.
- 3.3.21.7** If requested by the Agency Project Manager, assist the building occupants in coordinating their move in, Project re-keying, utility services and building system maintenance contracts.

## **3.4 PROJECT CLOSEOUT**

- 3.4.1 General.** Provide a complete record of Project documentation to the Agency Project Manager for Project closeout.
- 3.4.1 Final Quantities and Payment.** The Construction Manager shall:
- 3.4.1.1** Determine the final quantities for unit price items and forward a summary to the Agency Project Manager and Architect for review and record.
- 3.4.1.2** To facilitate Final Payment to the Contractor, the Construction Manager will collect the required affidavits and related documents and will issue them to the Agency Project Manager.
- 3.4.1.3** Obtain the Final Payment approval from the Agency Project Manager.

3.4.2 **Equipment Verification.** The Construction Manager shall:

3.4.2.1 Upon completion of the Project, the Construction Manager will ensure that all equipment is demonstrated by the Contractor (to the Agency) to be operational in accordance with the Construction Contract requirements.

3.4.2.2 Ensure that all related equipment manuals are accounted for and delivered to the Agency Project Manager.

3.4.2.3 Verify that all spare parts and materials are provided and/or accounted for in accordance with the Construction Contract requirements.

3.4.3 **Final Report and Delivery of Project Documentation.** The Construction Manager shall:

3.4.1.1 Prepare a final Project report and forward to the Agency Project Manager.

3.4.1.2 Place and label Project files in containers and deliver to the Agency Project Manager.

3.4.1.3 Provide the Agency Project Manager with a complete and final as-built set of drawings.

### 3.5 TABLE OF RESPONSIBILITIES

3.5.1 The following Table of Responsibilities further describes the Construction Manager's responsibilities, duties, and services as well as the general process in regard to his relationship to the Agency and other third parties working on the Project, and is hereby made a part of this Exhibit.

3.5.2 The Table is subject to change at the Agency's discretion. If such change is merely an increase or decrease in the level of responsibility of the listed tasks, the total Fee shall not be adjusted for such change.

END OF EXHIBIT "A", TABLE OF RESPONSIBILITIES FOLLOWS

<b>Table of Responsibilities</b> (WITH an outside Construction Manager & Commissioning) 11/09/06	OAS Project Manager	OAS Designer	CS Construction Project Rep	Prime Consultant	General Contractor	Construction Manager - Administrator	Commissioning Project Rep
1 = Principal Responsibility [(1) desired but not essential] 2 = Participatory Responsibility 3 = Observation - = No Participation <i>This is not a complete list of responsibilities.</i>							
<b>PRE-DESIGN PHASE</b>							
<b>Pre-Design Phase QA Checklist</b>	1	2	-	-	-	-	-
<b>DESIGN PHASE</b>							
<b>Design Phase QA Checklist</b>	1	2	-	-	-	-	-
Conduct Kick-off and periodic design meetings	1	2	-	2	-	-	2
Provide meeting minutes (PM's choice)	1		-		-	-	-
Photos of the Site/Existing Facilities/Off-sites as needed for design	1	2	-	2	-	-	-
Code Compliance	2	2	-		-	-	2
<b>Drawing Review Sets</b> , conduct client & city staff review meetings	1	2	2	2	-	2	2
Drawings & Spec, provide latest Design & Bid set on the Office Plan Rack	2		-	-	-	-	-
Drawings & Spec, provide photocopy of Permit set for the Office Plan Rack & Contractor for As-Built	-	-		-	-	2	-
<b>PERMITTING PHASE</b>							
<b>Permitting Phase QA Checklist</b>	1	2	-	-	-	-	-
<b>BIDDING PHASE</b>							
<b>Bidding Phase QA Checklist</b>	1	2	-	-	-	-	-
<b>CONSTRUCTION PHASE</b>							
<b>Construction Phase QA Checklist</b>	-	-		-	-	-	-
Pre-Construction and Daily Photos	-	-	2	-	1		2
Ceremonial Events, Photos & Attendance	1	2	2	3	2	2	-
<b>Schedules</b> , review and comment on initial guaranteed, monthly progress, & corrective submittals	-	-		-	-	2	-

<b>Schedule of Values</b> , review initial submittal	-	-	1	3	2	2	-
<b>Daily Reports</b> , fill out OAS daily in Expedition, collect and review contractor's daily reports	-	-	2	-	-	2	1
<b>Payment Applications</b> , for <b>Construction, Construction Mgmt, Special Inspection &amp; Testing, Facilitators, Commissioning</b> , review, approve, write withholding notification letters	-	-	1	-	-	2	-
Payment Applications, <b>Architect/Prime Consultant Contract</b> , review, approve	1	-	-	-	-	-	-
<b>Prevailing Wage Records</b> , collect, maintain and make available	-	-	1	-	2	2	-
<b>Substitution Requests</b> , log in Expedition, reply with "too-late" rejection notices	-	-	2	-	-	-	-
Substitution Requests, review & approve	1	-	2	-	-	2	2
<b>Shop Drawings &amp; Submittals</b> , prepare master list for project in Expedition, contractor contact	-	-	2	-	1	-	-
Shop Drawings & Submittals, log in Expedition, verify with specs	-	-	-	-	-	-	-
Shop Drawings & Submittals, review & stamp	-	-	3	-	-	3	2
<b>RFI</b> , log in Expedition, contractor contact	-	-	2	-	-	-	-
RFI, Interpret Drawings & Specs, issue Notice of Clarification	-	-	2	-	-	2	2
<b>Change Order Requests</b> , log in Expedition, review, negotiate, prepare, issue	-	-	1	2	2	-	2
Change Orders, required signatures	-	-	1	-	1	-	-
<b>Construction Change Directive</b> , prepare and issue in Expedition, follow up as Change Order or close	-	-	1	2	-	-	2
Construction Change Directive, required signatures	-	-	1	-	(1)	-	-
<b>Claim</b> , log Notice of Claim in Expedition, track, investigate, decide validity, answer with Claim Action	-	-	1	2	-	-	-
<b>Meetings</b> , Pre-Con, Progress, type & distribute Meeting Minutes	-	-	1	2	2	-	2
<b>Notice of Non-compliance</b> , issue	-	-	2	2	-	-	2
Inspect for Code Compliance (Bldg Dept. has prime responsibility)	-	-	3	2	2	3	2
Review Construction for compliance to Drawings & Specs	-	-	1	-	1	-	1
<b>As-Built Drawing Set</b> , review and verify that contractor is maintaining	-	-	3	3	-	-	3
<b>Special Inspections &amp; Material Testing</b> , Coordinate and call for	-	-	2	-	1	2	1
Review and comment on testing reports	-	-	1	-	-	-	1
Demonstrate Equipment Operation	-	-	1	-	1	-	1
Notify & Support Owner Move-in	1	-	2	-	2	2	-
<b>CLOSE-OUT PHASE</b>							
Close-Out Phase <b>QA Checklist</b> , responsible for overall completion	2	-	2	-	-	-	-
1-2. Certificate of Occupancy, Punch List	-	3	1	-	1	-	2
3. Certificate of Substantial Completion, Turnover Memo, Re-keying	-	3	1	2	2	2	-
Certificate of Substantial Completion, required signatures	-	-	1	-	(1)	-	-
4. Utilities (accounts, NPC easement, water "Turn On" & "Bill of Sale")	3	3	-	-	-	2	-
5. Opening Event & Signage	1	2	2	3	3	2	-
6. Final Construction Payment (O&M manuals, spare parts, as-builts), approve	-	-	1	-	2	2	2
7-9. Other Construction Contracts and Misc Costs, Final Consultant Payments, Records	1	2	2	-	-	2	-
<b>Warranty Follow-up</b> , send out Project Warranty Review and Evaluation Questionnaire letter	3	-	-	-	-	-	-
Warranty Follow-up, conduct 10 month review on-site, handle trouble calls	-	-	1	-	2	-	-

## **EXHIBIT "B"**

### **REQUIRED SUBMITTALS**

#### **ARTICLE 1: GENERAL**

1.1 The Construction Manager shall provide the following submittals, delivered to the Agency unless noted otherwise. Reference the entire Agreement and other Exhibits for additional Construction Manager submittals and requirements, and documents to be forwarded from the Contractor.

#### **ARTICLE 2: CONSTRUCTION PHASE – MONTHLY INVOICES**

2.1 Together with the Construction Manager's monthly invoice for services, provide copies of the following documents for the period covered by the invoice:

2.1.1 A monthly progress and summary report.

2.1.2 The Construction Manager's Daily Reports, with original signature of the Construction Manager.

2.1.3 The Construction Manager's daily photographs, labeled and dated.

2.1.4 Current As-Built Schedule of construction progress and future construction schedule, in both paper and Microsoft Project electronic file format.

2.1.5 Electronic copy of the Expedition database containing all Project documents generated to date.

#### **ARTICLE 3: CLOSE-OUT PHASE – FINAL PAYMENT**

3.1 Together with the Construction Manager's invoice for final payment, or upon termination of this Agreement for any reason, provide:

3.1.1 A final Project summary report.

3.1.2 All original documents including photographs and negatives, or printed copies and electronic files if digital, relating to the Project produced during the term of this Agreement. Provide electronic files of all documents that are electronically produced or stored. Organize and label all documents in containers.

END OF EXHIBIT "B"

## EXHIBIT "C"

### PERFORMANCE SCHEDULE

#### ARTICLE 1: GENERAL

1.1 The time schedule for performance of the Construction Manager's work begins with the date of this Agreement and runs the length of time that the Contractor has by Construction Contract to reach Substantial Completion plus a reasonable time after that for punch list and document close-out of the Project.

1.2 The current estimated construction cost of this Project is \$8,200,000.00.

#### ARTICLE 2: LATE COMPLETION

2.1 The Construction Manager's total Fee for the Scope of Services is based on actual man hours to complete the scope of services.

2.2 An anticipated date of 270 calendar days for the Contractor to achieve Substantial Completion of the Project.

2.3 If any of the proceeding completion schedules are exceeded, the Construction Manager shall be compensated for any additional costs required due to the delay as an Additional Service, which shall be agreed to in writing prior to rendering the Additional Services.

END OF EXHIBIT "C"

**EXHIBIT "D"**

**FEE BREAKDOWN**

<b>MONTH</b>	<b>FEE</b>
January	
February	
March	<b>\$14,880.00</b>
April	<b>\$31,992.00</b>
May	<b>\$31,000.00</b>
June	<b>\$42,705.60</b>
July	<b>\$43,697.60</b>
August	<b>\$42,705.60</b>
September	<b>\$45,136.00</b>
October	<b>\$32,984.00</b>
November	<b>\$28,024.00</b>
December	<b>\$31,992.00</b>
Close-Out	<b>\$19,840.00</b>
<b>TOTAL</b>	<b>\$364,956.80</b>

**ARTICLE 1: INVOICING**

- 1.1 Invoices shall be submitted monthly and reflect the monthly rates shown above.
- 1.2 None of these monthly invoices shall affect the prompt payment for authorized Additional Services and Reimbursable Expenses as completed.

**ARTICLE 2: ON-SITE HOURS**

**2.1 Construction through Substantial Completion Phase**

2.1.1 The Construction Manager on-site hours shall average forty (40) hours per week and the Administrative Assistant hours shall average twenty (20) hours per week over the construction term, from Contractor's initial on-site staging through Substantial Completion. The Construction Manager shall determine how and when to expend the combined average sixty (60) hours per week over the construction term.

2.1.2 The Construction Manager shall utilize all reasonable means in timely completing the required Scope of Services (**Exhibit "A"**). The parties to this Agreement understand that there may be periods during the term of this Agreement when the workload can not be reasonably or properly handled by the Construction Manager within the hours and personnel shown herein. If this should occur, the Construction Manager shall immediately notify the Agency Project Manager of the situation.

**2.2 Project Close-Out Phase**

2.2.1 The Project Close Out Fee shown above is based on 30 days at three quarter-time staffing for the Construction Manager and half-time staffing for the Administrative Assistant, to be billed on actual hours incurred over the closeout period. This Fee is a Not To Exceed amount. In the event the Close Out hours required justifiably exceeds the Not To Exceed Fee, after written approval from the Agency, the Fee may be adjusted based on Additional Services as set forth in **Exhibit "E"**.

2.2.2 After Substantial Completion, the Construction Manager shall expend sufficient on-site hours to fulfill the obligations of the Agreement subject to the limitations in hours and the Not to Exceed Close Out Fee shown above.

END OF EXHIBIT "D"

## EXHIBIT "E"

### HOURLY RATE SCHEDULE

#### ARTICLE 1: CONSTRUCTION MANAGER'S HOURLY RATES

- 1.1 The following hourly rates are to be used as the basis for negotiation of Additional Services as required, except that if the Additional Services are due to an extension of the construction schedule, the monthly rates shown on Exhibit "D" shall be the rate basis rather than the hourly rates shown here. Rates are valid for the duration of the Project and include salary costs, overhead, administration and profit.

CLASSIFICATION	HOURLY RATE
Project Director	\$186.00
Project Manager	\$173.60
Construction Manager	\$124.00
Historical Architect	\$151.90
Senior Inspector	\$117.80
Inspector	\$87.64
Administrative	\$62.00

#### ARTICLE 2: ADDITIONAL SERVICES

- 2.1 No Additional Services are authorized as of the date of this Agreement. . For Additional Services of sub-consultants, the Agency shall compensate the Consultant a multiple of **one and one tenth** (1.10) times the amounts billed to the Consultant for such services. Future written Additional Service Authorizations may be issued by the Agency.
- 2.1.1 Extension of time to the Construction Contract beyond that indicated in Exhibit "C" (Performance Schedule), shall be based on the weekly rate.
- 2.1.2 Additional Services not related to an extension of time but rather to a change in scope of services shall be based on hourly rates of the individuals.

#### ARTICLE 3: REIMBURSABLE EXPENSES

- 3.1 None authorized or anticipated as of the date of this Agreement. Should any Reimbursable Expenses be authorized, they shall be billed at actual cost without overhead multiplier. Should the following expenses be authorized in writing, they will be considered a Reimbursable Expense:
- 3.1.1 Except as otherwise provided for in this Agreement: reproduction costs beyond normal office paperwork and submittals required in Exhibit "B", travel costs outside the greater Las Vegas Area, and additional insurance premiums.

END OF EXHIBIT "E"

**EXHIBIT "F"**

**KEY PERSONNEL LIST**

**AGENCY PERSONNEL**

PROJECT MANAGER: Frank Trupiano

PROJECT REPRESENTATIVE: Carson West

**CONSTRUCTION MANAGER'S PROJECT STAFF**

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

ON-SITE PROJECT REPRESENTATIVE: Pat Skrabanek

CONSTRUCTION MANAGER:

**CONSTRUCTION MANAGER'S SUBCONSULTANTS**

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

CIVIL ENGINEER:

STRUCTURAL ENGINEER:

MECHANICAL ENGINEER:

ELECTRICAL ENGINEER:

LANDSCAPE DESIGN:

COST ESTIMATOR:

GEOTECHNICAL ENGINEER:

LAND SURVEYOR:

END OF EXHIBIT "F"

**EXHIBIT "G"**

**CERTIFICATE  
DISCLOSURE OF OWNERSHIP/PRINCIPALS**

**1. Definitions**

"Agency" means the City of Las Vegas Redevelopment Agency.

"Redevelopment Agency Board" means the governing body of the City of Las Vegas Redevelopment Agency.

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

"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**

RA 4-99

In accordance with Resolution ~~79-99~~ and ~~105-99~~ adopted by the Redevelopment Agency Board, Contracting Entities seeking to enter into certain contracts or agreements with the City of Las Vegas Redevelopment Agency 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 Agency and the Contracting Entity. Upon execution of such contract or agreement, the Contracting Entity is under a continuing obligation to notify the Agency 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 Agency of any material change may result, at the option of the Agency, in a default termination (in whole or in part) of the contract or agreement, and/or a withholding of payments due the Contracting Entity.

Block 1	Contracting Entity
Name	Harris & Associates
Address	2310 Paseo Del Prado, Suite A104 Las Vegas, NV 89102
Telephone	702-597-9410
EIN or DUNS	94-2385238

Block 2	Description
Subject Matter of Contract/Agreement:	Fifth Street School Rehabilitation Phase III Construction Management Services
RFP #:	

Block 3	Type of Business
<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)**

<b>Block 4</b>		<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.			
	<b>FULL NAME/TITLE</b>	<b>BUSINESS ADDRESS</b>	<b>BUSINESS PHONE</b>
1.	L. Carl Harris	120 Mason Circle – Concord, CA 94520	1-925-827-4900
2.	Guy A. Erickson	120 Mason Circle – Concord, CA 94520	1-925-827-4900
3.	Jeffrey M. Cooper	120 Mason Circle – Concord, CA 94520	1-925-827-4900
4.	Neil M. McCosker	120 Mason Circle – Concord, CA 94520	1-925-827-4900
5.	James L. Parnley	120 Mason Circle – Concord, CA 94520	1-925-827-4900
6.	Vernon A. Phillips	120 Mason Circle – Concord, CA 94520	1-925-827-4900
7.	Marian Foss	120 Mason Circle – Concord, CA 94520	1-925-827-4900
8.	Robert Guletz	120 Mason Circle – Concord, CA 94520	1-925-827-4900
9.	Gregory G. Ow	120 Mason Circle – Concord, CA 94520	1-925-827-4900
10.	Brian A. Danley	120 Mason Circle – Concord, CA 94520	1-925-827-4900
11.	James D. Morris	120 Mason Circle – Concord, CA 94520	1-925-827-4900
12.	Byron G. Tobey	120 Mason Circle – Concord, CA 94520	1-925-827-4900
13.	Larry G. Timmer	120 Mason Circle – Concord, CA 94520	1-925-827-4900
14.	Steven E. Roberts	120 Mason Circle – Concord, CA 94520	1-925-827-4900
15.	Russell A. Moore	120 Mason Circle – Concord, CA 94520	1-925-827-4900
16.	David T. Seevers	120 Mason Circle – Concord, CA 94520	1-925-827-4900
17.	Edward A. Kozlowski	120 Mason Circle – Concord, CA 94520	1-925-827-4900
18.	James R. Guerrero	120 Mason Circle – Concord, CA 94520	1-925-827-4900
19.	Isaac C. Dee	120 Mason Circle – Concord, CA 94520	1-925-827-4900
20.	Jules P. Feher	120 Mason Circle – Concord, CA 94520	1-925-827-4900

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: \_\_\_\_\_

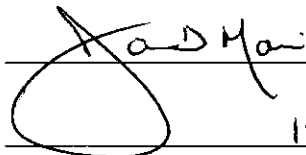
**Block 5**     **Disclosure of Ownership and Principals - Alternate**

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: \_\_\_\_\_

Date of Attached Document: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

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  
 1-24-07  
 \_\_\_\_\_  
 Date

Subscribed and sworn to before me this 24th day of

January, 2007.

C. Laffoon  
 \_\_\_\_\_  
 Notary Public

