

**DESIGNATED SERVICES AGREEMENT  
FOR  
FACILITATOR / PARTNERING SERVICES**

THIS AGREEMENT is made and entered into this 7<sup>TH</sup> day of MARCH, 2007, by and between the CITY OF LAS VEGAS REDEVELOPMENT AGENCY, a public body within the State of Nevada (herein the "Agency") and **TOTAL QUALITY RESOURCES CORPORATION**, (herein the "Consultant").

**WITNESSETH:**

WHEREAS, the Agency intends to construct the **FIFTH STREET SCHOOL REHABILITATION - PHASE III** (herein the "Project"); and

WHEREAS, the Agency desires to retain the Consultant who will be responsible for providing **FACILITATOR / PARTNERING SERVICES** hereinafter set forth below; and

WHEREAS, the Consultant is properly licensed pursuant to Chapter 623, 623A, or 625 as required for the services to be provided, of the Nevada Revised Statutes within the State of Nevada, and posses the special knowledge, skills and expertise to perform the services hereinafter set forth within the time required under this Agreement.

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 Ten hereof:

**SECTION ONE  
CONSULTANT RESPONSIBILITIES**

**1.01 Description of Consultant's Services.** The Consultant hereby agrees to provide **FACILITATOR / PARTNERING SERVICES** set forth in **Exhibit "A"** (Scope of Services) and **Exhibit "B"** (Required Submittals) attached hereto.

**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 **FACILITATOR / PARTNERING SERVICES**

**1.03 Document Review.** The Consultant shall be responsible for reviewing each document prepared by the Consultant and its subconsultants including, without limitation, the 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 Agency'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 Agency'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 Agency 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 Agency 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 **RON PORTARO**, 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 **Exhibit "F"** (Key Personnel List) 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 Agency may terminate this Agreement for default as provided in Section 10.03 of this Agreement.

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

1.07 **Cooperation with the Agency.** The Consultant agrees that its officers, associates, employees and subconsultants 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 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 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 Agency's Representative. To prevent an unreasonable delay in the Project, the Agency'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 Agency 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 Agency 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 Agency shall assist the Consultant 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 this Agreement.

2.04 **Cooperation with Consultant.** The Agency 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 Agency shall provide access to the Consultant on to the Project site as may be required to perform the services under this Agreement.

## SECTION THREE CHANGES TO CONSULTANT'S SERVICES

3.01 **Requested Changes.** The Agency may at any time, by written order, make changes in the services to be performed by the Consultant under this Agreement.

3.02 **Adjustment of Compensation.** If the changes requested by the Agency cause an increase in the cost or time required for the Consultant to perform any of the services required hereunder, an equitable adjustment shall be made in the compensation to be paid to the Consultant under Section Seven, or in the time of performance under Section Eight, or both, and this Agreement 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 by the Consultant unless the Agency grants in writing a further period of time. If final payment is made to the Consultant, the Consultant waives any right to seek any equitable adjustment in compensation with respect to that change.

## SECTION FOUR ADDITIONAL SERVICES OF CONSULTANT

4.01 **Additional Services.** The Consultant shall provide the additional services described if, and only if, so requested in writing by the Agency. Payment for the additional services will be made to the Consultant in accordance with Section Seven of this Agreement.

4.02 **Attendance at Meetings or Public Hearings.** The Consultant shall notify the Agency in advance of any additional costs 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 FIVE SUBCONSULTANT AGREEMENT

**5.01 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 Agency for that portion of the services provided to the Agency 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 Agency. If the Agency has paid the Consultant for said subconsultant services, the subconsultant's only recourse is against the Consultant and not against the Agency, 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 Agency than that of the Consultant.

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

(iv). Unless otherwise approved in writing by the Agency'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 SIX TERM OF AGREEMENT

**6.01 Term.** This Agreement shall commence on the day it is approved by the Agency (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 Agency serves upon the Consultant a thirty (30) day written notice of termination pursuant to Section 10.02. The termination of this Agreement shall not release either party from any of its continuing obligations hereunder.

**6.02 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 SEVEN COMPENSATION AND TERMS OF PAYMENT

**7.01 General.** At the time of approval of this Agreement by the Agency, the Agency agrees to set aside sufficient funds to compensate the Consultant for Basic Services.

**7.02 Compensation: Basic Services.** For the services set forth in Exhibit "A", the Agency shall compensate the Consultant a fixed Fee in the amount as set forth in Exhibit "D" (Fee Breakdown), which shall be paid pursuant to monthly invoices.

**7.03 Compensation: Additional Services.** For any services not set forth in Exhibit "A" (Scope of Services), the Agency shall pay to the Consultant a sum based upon either a lump sum, or an hourly fee based upon the hourly fee schedule set forth in Exhibit "E" (Hourly Rate Schedule), provided prior approval for such services is given in writing by the Agency's Representative.

**7.04 Invoice.** The Consultant may invoice for approved and completed work on a monthly basis. The Agency 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 Agency 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 Agency 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 Agency. 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 Agency for an increase in fees, to reimburse the substantiated costs of late payments and extended schedule. Either option to remedy, with concurrence by Agency Staff, may be exercised by the Consultant.

**7.05**            **Right to Off-Set.** The Agency'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 Agency'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 Agency, the Consultant may file a claim pursuant to Section 10.20 of this Agreement.

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

## **SECTION EIGHT PERFORMANCE SCHEDULE**

**8.01**            **Performance Schedule.** The Consultant shall perform and complete the services required hereunder according to the schedule ("Performance Schedule") set forth in **Exhibit "C"**. The Consultant shall have in his possession a cellular phone from which he may be contacted or may contact Agency'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 Agency's Representative in writing of the reasons for the delay.

## **SECTION NINE AUDIT: ACCESS TO RECORDS**

**9.01**            **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 Agency. Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards, 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 Consultant will provide proper facilities for such access and inspection.

**9.02**            **Disclosure.** The Consultant agrees to the disclosure of the information and reports resulting from access to records pursuant to Section 9.01 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.

**9.03**            **Period of Maintenance.** The books, records and other documents under Sections 9.01 and 9.02 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.

**9.04**            **Subcontract Provisions.** The Consultant agrees to include Sections 9.01 through 9.03 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 TEN MISCELLANEOUS PROVISIONS

**10.01**            **Suspension.** The Agency may suspend performance by the Consultant under this Agreement for such period of time as the Agency, 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 Agency shall pay to the Consultant the amount of compensation, based on percentage of completion of the Project, earned until the effective date of suspension less all previous payments. The Consultant shall not provide any further services under this Agreement after the effective date of suspension until otherwise notified in writing by the Agency. In the event the Agency suspends performance by the Consultant for any cause other than the error or omission of the Consultant for an aggregate period in excess of thirty (30) days, the Consultant shall be entitled to an equitable adjustment of the compensation payable to the Consultant under this Agreement, including reimbursement to Consultant for additional costs occasioned as a result of such suspension of performance. In no event shall the Agency be liable to the Consultant for more than the percentage completed at the time of suspension.

**10.02**            **Termination.** The Agency 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 Agency 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 Agency 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.

**10.03**            **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 Agency, 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 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 Consultant hereunder, finish this Agreement by such means as the Agency may see fit, deduct from any balance due the Consultant the reasonable and necessary cost of finishing the work 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 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 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 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 Agency'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 Agency 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 Agency might have against the Consultant for failure to comply with any of the terms, conditions or covenants of this Agreement.

**10.04**            **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 Redevelopment Agency 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 Agency except as prohibited by law and the Agency 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 Agency. In the event of the completion or termination of this Agreement, the Agency 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 Agency's sole risk.

B. The Agency 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.

**10.05 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 Agency 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 Agency 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 Agency under this Agreement, and with respect to its Comprehensive General Liability Policy, to waive subrogation against the Agency, its officers, agents, servants and employees. 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 \$200,000 without the written approval of the Agency. Certificates indicating that such insurance is in effect shall be delivered to the Agency 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 Agency annually a Certificate of Insurance as evidence of such insurance.

**10.06 Indemnity.** Notwithstanding any of the insurance requirements set forth in Section 10.05, and not in lieu thereof, the Consultant shall defend, indemnify and hold the Agency, 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 Agency, 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 Agency, 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, the negligent act or omission of the Consultant, its subcontractors or agents, for and against which the Consultant is obligated to indemnify the Agency. If the Consultant shall fail to do so, the Agency shall have the right, but not the obligation, to defend the same and charge the direct and incidental costs of such defense (including attorney fees and court costs) against the Consultant which is proportionate to the liability of the Consultant.

**10.07**            **Assignment.** The Agency 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 Agency. Nothing contained herein shall be construed as creating any personal liability on the part of any officer or agent of the Agency.

**10.08**            **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 Consultant of any of its obligations hereunder.

**10.09**            **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 of Las Vegas Redevelopment Agency on August 4, 1999, (effective October 1, 1999), as amended by resolution 105-99 (adopted by the City of Las Vegas Redevelopment Agency 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 Agency in writing of any material change in the above disclosure on **Exhibit "G"** within fifteen (15) days of such change.

**10.10**            **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 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.

**10.11**            **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 Agency.

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

**10.13**            **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.

**10.14**            **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.

**10.15 Confidentiality.** The Consultant shall treat the information relating to each Project, which has been produced by the Consultant 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 Consultant shall also require subcontractors to comply with this requirement.

**10.16 Site Inspection.** The Consultant represents that it has visited the location of the Project and has satisfied itself as to the general condition thereof and that the Consultant's compensation as provided for in 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.

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

**10.18 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 AGENCY: Frank Trupiano  
Office of Architectural Services  
Department of Public Works  
CITY OF LAS VEGAS REDEVELOPMENT AGENCY  
400 Stewart Avenue  
Las Vegas, NV 89101

Phone: (702) 229-6535 Fax: (702) 384-4846

TO CONSULTANT: Ron Portaro  
**TOTAL QUALITY RESOURCES CORPORATION**  
6108 Iron Kettle Street  
Las Vegas, NV 89130

Phone: (702) 610-1919 Fax: (702) 655-1781

**10.19 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 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 Consultant, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

**10.20 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 Agency's Executive Director, whose decision shall be reduced to writing and mailed or otherwise furnished to the Consultant. The decision of the Agency's Executive Director 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 Agency's Executive Director a written request to appeal the decision. Upon receipt of such request, the Agency 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 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 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 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 Consultant are basic services, or services entitled to additional compensation, the Consultant agrees to notify the Agency 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 Agency the opportunity to monitor and verify the performance of the additional services and failure to provide the Agency 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 Agency 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 Agency 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 Agency from joining the Consultant as a party to any arbitration proceeding which the Agency 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 Agency, the Consultant shall not be entitled to any additional compensation from the Agency 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 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 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.

**10.21 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.

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

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

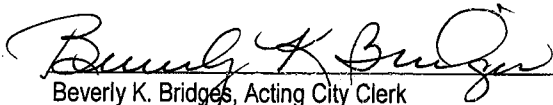
10.24 **Agreement Version.** This Agreement consists of the Agency's standard provisions updated as of January 12, 2001.

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

**CITY OF LAS VEGAS REDEVELOPMENT AGENCY**

By   
Oscar Goodman, Chairman

**ATTEST**

  
Beverly K. Bridges, Acting City Clerk

**CONSULTANT**

By   
Ron Portaro, Total Quality Resources Corporation

**APPROVED AS TO FORM**

 2/13/07  
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**

## **EXHIBIT "A"**

### **SCOPE OF SERVICES**

The Consultant shall facilitate a half day partnering session with the City of Las Vegas, City of Las Vegas Redevelopment Agency, the General Contractor and his Sub-contractors to promote cooperation and define individual team member responsibilities. On or about mid way through the construction duration, the Consultant shall facilitate a follow up partnering session with the same parties. In addition to the services to be provided within this Agreement and its Exhibits, the scope of services is additionally contained in the Consultant's Proposal titled "Proposal for Facilitation Services – Fifth Street School Rehabilitation – Phase III" included by reference as part of this Exhibit "A".

**REGULATORY AUTHORITIES.** The Consultant does hereby acknowledge, understand and agree that the Office of Architectural Services, acting as the Agency'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 Agency 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 Agency's representative acts in a capacity similar to that of a representative working for a private property owner which is to ensure that the Agency 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 Agency, and that the Consultant's interaction with each regulatory authority is to be conducted without assistance from the Agency.

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 Agency 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 of Las Vegas Redevelopment Agency, whichever occurs first.

Subject to any limitations stated in the Consultant's proposal, the specified investigation shall be completed and the logs and reports delivered to the Agency within Thirty (30) calendar days, barring circumstances beyond the Consultant's control that force a delay.

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

END OF EXHIBIT "C"



**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	\$175.00
Clerical	\$25.00

**ADDITIONAL SERVICES** None 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.

**REIMBURSABLE EXPENSES** None authorized or anticipated as of the date of this Agreement. For Reimbursable Expenses of the Consultant, the Agency 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**

**AGENCY PERSONNEL**

PROJECT MANAGER: Frank Trupiano

**CONSULTANT'S PROJECT STAFF**

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

PROJECT REPRESENTATIVE: Ron Portaro

**CONSULTANT'S SUBCONSULTANTS**

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

None.

END OF EXHIBIT "F"