

# Interlocal Contract Regarding Governmental Taxation and Finance Consulting Services

CMTS 141-08-IGR-0004

**THIS INTERLOCAL CONTRACT** is being entered into effective the 9<sup>th</sup> day of Jan., 2008, by and between the City of Henderson ("Henderson") and City of Las Vegas ("Las Vegas"), both of which are municipal corporations of the State of Nevada (alternately and collectively referred to as the "Parties").

## WITNESSETH

**WHEREAS**, NRS 277.180 (1) authorizes any one or more public agencies to contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform; and

**WHEREAS**, the Parties desire to retain the services of a qualified consultant to provide to them advice on governmental taxation, finance, insurance, and redevelopment issues prior to and during the 2009 legislative session; and

**NOW THEREFORE**, for and in consideration of the premises, mutual promises and agreements that are hereinafter contained, and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### SECTION A – Contract Form

This Contract is an interlocal agreement setting forth the responsibilities and obligations of the Parties with respect to retaining the services of a qualified consultant to provide consulting services on various taxation, finance, insurance, and redevelopment issues which may affect the Parties during the 2009 legislative session.

### SECTION B – Basic Terms

#### B-1 Definitions

The following definitions apply to this Contract:

- (a) "Effective Date" means the date that the last Party executes this Contract which date shall be inserted into the first paragraph above.
- (b) "City Council" means the governing bodies of the Cities of Henderson and Las Vegas.
- (c) "Consultant" means the company retained by the Agent to provide governmental taxation, finance, insurance and redevelopment services for the benefit of the Parties.

(d) "Contract" means this document, consisting of Sections A through D, and any attachments hereto which are binding and effective only upon execution by the authorized representative of each Party.

(e) "Legislative Session" means the period of time during which the Nevada State Legislature is in formal session during the 2009 Legislative year.

(f) "Special Session" means a meeting of the Nevada State Legislature convened on the call of the Governor and restricted to the subjects stated in the Governor's proclamation.

(g) "Project Manager" means the representative designated by Henderson and approved by Las Vegas who will be responsible for the day to day coordination of the performance by the Consultant under this Contract.

(h) "Agent" means Henderson who will be responsible for retaining the Consultant and for overseeing the Consultant's performance under a contract for consulting services.

(i) "Fiscal Agent" means the City of Henderson or its designated representative who will be responsible for the review, processing and coordination of the payments and billing associated with the resulting consultant contract.

(j) "Manager Representative" means the designated representative who will be the liaison between the City Managers Office and the Project Manager, Agent and Consultant.

## **B-2 Contract Type**

This Contract provides a lump sum fee for the services provided by a Consultant, payable pursuant to a monthly invoice with reimbursement for specific expenses authorized by the Project Manager.

## **B-3 Fee and Reimbursable Expenses**

Henderson agrees to pay the Consultant for the consulting services performed under this Contract subject to the limits of the fee and reimbursable expenses set forth below:

<u>Item No.</u>	<u>Description</u>	<u>Amount</u>
1.	Consulting Fee	\$169,100 (Effective December 1, 2007 through – June 30, 2009, including any subsequent Special Sessions)
2.	Reimbursable Expenses	Not to exceed \$16,900

Each Party agrees to pay one half of the above consulting fee and reimbursable expenses which is not to exceed \$186,000 for the term of the contract.

#### **B-4 Reimbursable Expenses**

(a) Reasonable travel expenses will be paid when services are performed on behalf of the Parties. The Consultant will be required to acknowledge that reimbursement is subject to certain limitations. The Parties agree to reimburse the accommodations, travel and entertainment costs subject to the limitation set forth above in Section B-3 if the Project Manager determines that the costs are reasonably related to accomplishment of this Contract. Consultant generally shall coordinate all expenses in advance with the Project Manager.

(b) The Parties will reimburse other reasonable expenses of the Consultant if authorized by the Project Manager, provided the expenses are within the limit set forth in Section B-3 are directly related to performance of the Consultant's contract. The Cities will not reimburse expenses that are included in Consultant's overhead accounts, in accordance with the Consultant's normal accounting practices.

(c) During the Legislative Session, or any Special Sessions, the Parties agree that the Consultant will reimburse reasonable air travel and a housing stipend.

(d) The limit stated for reimbursable expenses in B-3 above is the maximum amount, which the Consultant may claim for reimbursement during the entire period of performance of the Consultant's contract, including any Special Sessions or extensions thereof.

#### **B-5 Performance Period**

This Contract shall commence as of the Effective Date and remain in force and effect until completion of the Consultant's contract and final payment has been made to the Consultant by Henderson unless otherwise terminated earlier pursuant to Sections D-4 or D-5. The Project Manager is hereby authorized to extend the term of the Consultant's contract on a month to month basis provided there is no additional cost to the Parties, if the Project Manager in its discretion, deems it necessary to complete the Consultant's work thereunder. In no event shall the term of the Consultant's contract be extended beyond December 31, 2009.

#### **B-6 Invoices**

Henderson agrees to obtain a detailed invoice from the Consultant for payments due for services provided to the Parties. All invoices should include any additional information required by the Fiscal Agent to substantiate charges. Upon reconciliation of all errors, corrections, credits and disputes, payment to Consultant will be made in full within thirty (30) calendar days.

### **SECTION C – Responsibilities of Parties**

#### **C-1 Henderson's Agent and Fiscal Agent**

The Parties agree that Henderson will act as the Agent and Fiscal Agent for purposes of this Contract. Henderson, as the Agent on behalf of the Parties, agrees to enter into a consulting contract with the Consultant substantially in the form and substance of Attachment "A" attached hereto.

**C-2 Henderson's Project Manager**

Henderson will designate a Project Manager subject to approval by Las Vegas for this Contract within fifteen (15) days after the Effective Date of this Contract. Henderson will provide written notice to the Consultant of any subsequent change in the person acting as the Project Manager. The Project Manager will be Consultant's principal point of contact for the Parties regarding any matters relating to this Contract. The Project Manager will provide all general direction to Consultant regarding performance of the Consultant's contract. The Project Manager will act as the primary interface between the Parties and the Consultant, will provide guidance regarding the Parties' goals and policies, and will coordinate all travel requirements. The Project Manager is not authorized to waive or change any material terms of this Contract or the Consultant's contract.

**C-3 Las Vegas: Reimbursement.** Subject to the limitations set forth in Section B-3 (Fee and Reimbursable Expenses) Las Vegas agrees to reimburse Henderson for half of the consulting fee and reimbursable expenses paid by Henderson to the Consultant. Payment shall be made pursuant to a monthly invoice submitted to Las Vegas for payments made by Henderson to the Consultant for the prior month. Payment will be made by Las Vegas within thirty (30) days of receipt of the invoice.

**SECTION D – MISCELLANEOUS CLAUSES**

**D-1 Legal Notice**

(a) All notices, legal or otherwise, required pursuant to the terms and conditions of this Contract shall be in writing, unless an emergency situation dictates otherwise. Any notice required to be given under the terms of this Contract shall be deemed to have been given when received by the party to whom it is directed by personal service, hand delivery, facsimile with confirmation of transmission, or U.S. mail via certified mail-return receipt requested at the following addresses:

FOR LAS VEGAS:

Douglas Selby, City Manager  
City of Las Vegas  
8<sup>th</sup> Floor  
400 Stewart Avenue  
Las Vegas, Nevada 89101

FOR HENDERSON:

Mary Kay Peck, City Manager  
City of Henderson  
240 Water Street  
P.O. Box 95050 MSC 141  
Henderson, Nevada 89009-5050

(b) An original signed copy, via U.S. mail, shall follow facsimile transmissions.

## **D-2 Order of Precedence**

In the event of a conflict between the specific language set forth in Sections B through D of this Contract and any attachment hereto, the specific language in Sections B through D shall prevail. Any exception to this order of precedence will be addressed through specific language elsewhere in Sections B through d.

## **D-3 Disputes**

In the event of a dispute arising under this Contract between the Parties, the Parties shall attempt to amicably resolve the matter through escalating levels of management. Any Dispute that cannot be informally resolved shall be litigated rather than submitted to arbitration. The laws of the State of Nevada shall govern this Contract, and venue for any litigation shall be in the Eighth Judicial District Court of the State of Nevada in Clark County, Nevada.

## **D-4 Termination for Convenience**

Each Party shall have the right at any time to terminate further performance of this Contract for any reason whatsoever (including for no stated reason). Such termination shall be implemented by written notice from the terminating Party to the other Party, specifying the extent and effective date of the termination, provided, however, that such termination shall not become effective unless and until Henderson terminates its contract with the Consultant. Henderson agrees that in the event the right of termination for convenience is exercised by either Party, Henderson will with due diligence proceed to terminate its contract with the Consultant. The Parties agree that the Consultant may submit a written request for incurred costs for services performed through the date of termination of the Consultant's contract, and that the Consultant shall be obligated under the Consultant's contract to provide any substantiating documentation requested by the Parties. Each Party's sole liability in the event of a termination for convenience as provided herein is for payment of the costs for services requested by the Parties and actually performed by the Consultant.

## **D-5 Termination for Default**

Either party may, by written notice of default to the other party, terminate this Contract in whole or in part if such party fails to perform any of the material provisions of this Contract, provided such party does not cure the failure within ten (10) calendar days (or more if authorized by the notifying party) after notice specifying the failure is sent to the non-performing party.

## **D-6 Waiver**

Waiver of any of the terms of this Contract shall not be valid unless it is in writing signed by each Party. The failure to enforce any of the provisions of this contract, or to require performance of any of the provisions herein, shall not in any way be construed as a waiver of such provisions or to affect the validity of any part of this contract, or to affect the right of the parties to thereafter enforce each and every provision of this contract. Waiver of any breach of this contract shall not be held to be a waiver of any other or subsequent breach of this contract.

#### **D-7 Independent Contractor**

In the performance of services under the Consultant's Contract, the Parties agree that the Consultant, and any other person employed by the Consultant, shall be deemed to be an independent contractor and not an agent or employee of either of the Parties. The Consultant shall be liable for the actions of any person, organization or corporations with which the Consultant subcontracts to fulfill the obligations under the Consultant's contract. The Parties agree to hold the Consultant as the sole party responsible for the performance of the Consultant's Contract. The Consultant shall maintain complete control over its employees and all of its subcontractors. Nothing contained in the Consultant's contract or any subcontract entered into by the Consultant, shall create a partnership, joint venture or agency. No party shall have the right to obligate or bind the other party in any manner to any third party.

#### **D-8 Severability**

The invalidity, illegality or unenforceability of any provision of this Contract, or the occurrence of any event rendering any portion or provision of this Contract void, shall in no way affect the validity or enforceability of any other portion or provision of this Contract. Any void provision shall be deemed severed from this Contract, and the balance of this Contract shall be construed and enforced as if this Contract did not contain the particular portion or provision held to be void. The parties further agree to amend this Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this clause shall not prevent this entire contract from being void should a provision which is of the essence of this Contract be determined void.

#### **D-9 Modification/Amendment**

This Contract shall not be modified or amended except by the express written agreement of the parties, signed by a duly authorized representative for each party. Any other attempt to modify or amend this Contract shall be null and void, and may not be relied upon by either party.

#### **D-10 Section and Paragraph Headings**

The section and paragraph headings appearing in this contract are inserted for the purpose of convenience and ready reference. They do not purport to define, limit or extend the scope or intent of the language of the sections and paragraphs to which they pertain.

#### **D-11 Conflict of Interest (City Officials)**

(a) Any official of either Party, who is authorized in such capacity and on behalf of the Parties to negotiate, make, accept or approve, or take part in negotiating, making, accepting or approving this Contract, payments under this Contract, or work under this Contract, shall not be directly or indirectly interested personally in this Contract or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of, or for the Parties or its member governing bodies, who is authorized in such capacity and on behalf of the Parties to exercise any legislative, executive, supervisory or other similar functions in connection with this Contract, shall become directly or indirectly interested personally in this Contract or in any part hereto, any material supply contract, subcontract, insurance contract, or any other contract pertaining to this Contract.

(b) Each party represents that it is unaware of any financial or economic interest of any public officer or employee of the Parties relating to this Contract. Notwithstanding any other provision of this Contract, if such interest becomes known, either Party may immediately terminate this Contract for default or convenience, based on the culpability of the Parties.

**D-12 Integration**

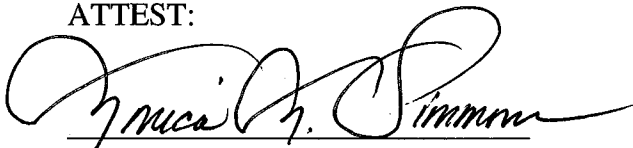
This Contract represents the entire and integrated agreement between the Parties. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be executed by their duly authorized representatives.

CITIES:

ATTEST:

CITY OF HENDERSON



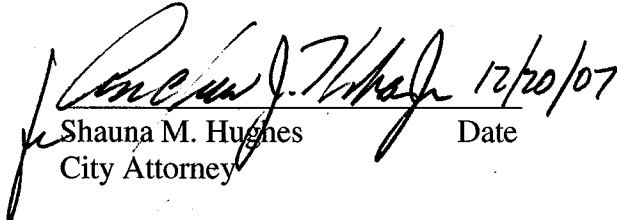
Monica Martinez Simmons, City Clerk



By: James B. Gibson, Mayor Date

**COUNCIL ACTION**

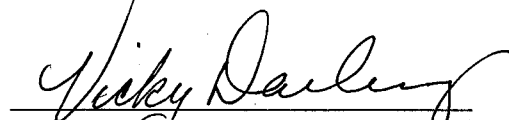
APPROVED AS TO FORM: JAN 8 2008



12/20/07  
Shauna M. Hughes Date  
City Attorney

ATTEST:

CITY OF LAS VEGAS

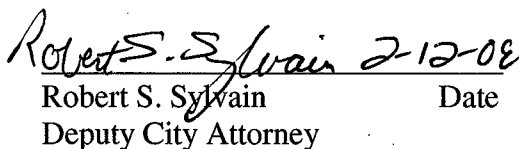


~~Beverly K. Bridges, City Clerk~~ Vicky Darling  
Chief Deputy City Clerk



Oscar B. Goodman, Mayor Date

APPROVED AS TO FORM:



2-12-08  
Robert S. Sylvain Date  
Deputy City Attorney

**Attachment "A"**  
**Contract For**  
**Governmental Taxation and Financial Consulting Services**

THIS CONTRACT is entered into effective the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, on behalf of the City of Henderson and City of Las Vegas, municipal corporations and political subdivisions of the State of Nevada, (hereinafter "Cities"), by and through their agent, the City of Henderson having its principal office at 240 Water Street, Henderson, Nevada 89015 and PML Consulting LLC (hereinafter "Consultant), a Nevada Limited Liability Company, having its' principal office at 935 South Moapa Valley Boulevard, Overton, Nevada 89040.

**SECTION A – Contract Form**

This Contract retains Consultant for the purpose of providing consulting services on various governmental taxation, financial, insurance, and redevelopment issues which may affect the Cities during the 2009 Legislative Session.

**SECTION B – Basic Terms**

**B-1 Definitions**

The following definitions apply to this Contract:

- (a) "Award Date" means the date that Henderson executes this document.
- (b) "Cities" means the cities of Henderson and Las Vegas.
- (c) "City Council" means the governing body of each City.
- (d) "Contract" means this document, consisting of Sections A through E, and any attachments which are binding and effective only upon execution by the Cities' Agent and Consultant.
- (e) "Effective Date" means December 1, 2007, which date shall be inserted into the first paragraph of this Contract.
- (f) "Legislative Session" means the period of time during which the Nevada State Legislature is in formal session during the 2009 Legislative year.
- (g) "Special Session" means a meeting of the Nevada State Legislature convened on the call of the Governor and restricted to the subjects stated in the Governor's proclamation.
- (h) "Project Manager" means the designated staff representative from Henderson who is responsible for overseeing and coordinating of contract performance and Consultant.

(i) "Manager Representative" means the representative designated by each Party who is the liaison between the City Managers, the Project Manager and Consultant.

## **B-2 Contract Type**

This Contract provides for the payment of the consulting fee for services rendered by Consultant, with reimbursement for specific expenses as authorized by the Project Manager (not to exceed ten percent (10%) of the consulting fee).

## **B-3 Prices/Costs**

(a) The Cities will pay Consultant for services performed as follows:

<u>Item No.</u>	<u>Description</u>	<u>Amount</u>
1.	Consulting Fee	\$169,100 (December 1, 2007 through June 30, 2009, including any subsequent Special Sessions)
2.	Reimbursable Expenses	Not to exceed \$16,900

(b) The consulting fee is to be paid in nineteen (19) equal monthly payments along with reimbursable expenses incurred for the prior month. A written monthly invoice from Consultant shall be submitted pursuant to Section B-7 below.

## **B-4 Reimbursable Expenses**

(a) Reasonable travel expenses will be paid when services are performed on behalf of the Cities. Consultant acknowledges that reimbursement is subject to certain limitations. Henderson agrees to reimburse accommodations, travel and entertainment costs if the Project Manager determines that the costs are reasonably related to accomplishment of this Contract. Consultant generally shall coordinate all expenses in advance with the Project Manager and the Fiscal Agent.

(b) The Project Manager will reimburse other reasonable expenses of the Consultant, provided such expenses have been previously authorized and are directly related to performance of this Contract. The Project Manager will not reimburse expenses that are included in Consultant's overhead accounts, in accordance with Consultant's normal accounting practices.

(c) During the Legislative Session, or any Special Sessions, the Cities will reimburse reasonable air travel and a housing stipend.

(d) The Estimate stated for Reimbursable Expenses in B-3 above is the maximum amount, which Consultant may claim for reimbursement during the entire term of this Contract, including any Special Sessions.

## **B-5 Performance Period**

The Parties intend to make this Contract retroactive to the Effective Date in order to compensate the Consultant for services provided for the benefit of the Cities prior to the Award Date. The period of performance shall be from the Effective Date through June 30, 2009, including any Special Sessions or extension of this Contract necessary to allow Consultant to complete post legislative session impact analysis of tax related issues and present such analysis, reports and recommendations Consultant deems appropriate to the respective members of the Cities. The Project Manager is hereby authorized to extend the term of this Contract on a month to month basis at no additional cost to the Cities if the Project Manager, in his or her discretion, deems it necessary to complete Consultant's work under this Contract, provided however, that in no event shall the term of this Contract be extended beyond December 31, 2009.

## **B-6 Invoices**

Consultant shall submit a detailed monthly invoice to the following person for payments due for the services provided to the Cities:

Steve Hanson, Finance Director  
City of Henderson  
P.O. Box 95050  
Henderson, Nevada 89009-5050

All invoices should include any additional information required by the Finance Director or the Project Manager to substantiate the charges contained in the invoice. Upon reconciliation of all errors, corrections, credits and disputes, payment to Consultant will be made in full within thirty (30) calendar days.

## **SECTION C – Statement of Work**

### **C-1 Scope of Services**

(a) Consultant shall provide all personnel and materials required to perform the governmental taxation and finance consulting services set forth in Subsections (b) through (g) of this Section.

(b) Consultant shall, at all times during the term of this Contract, act as an advocate of the Cities' interests in matters relating to governmental taxation, finance, insurance and redevelopment issues effecting the Cities.

(c) Consultant shall provide a daily presence at the Nevada State Legislature during the 2009 Legislative Session. Consultant shall communicate with members of the Nevada State Legislature and legislative staff on behalf of the Cities. Consultant shall attend committee hearings and public functions specifically associated with the interests of the Cities, and shall promote the interests of the Cities at these forums.

(d) Consultant shall represent or support the Cities on various public committees dealing with governmental taxation, finance, insurance and redevelopment issues affecting the Cities.

(e) Consultant shall provide advice, analysis and reports on governmental taxation, finance, insurance and redevelopment issues affecting the Cities.

(f) Consultant shall perform other related services, if so requested by the Project Manager.

(g) Consultant shall notify each Manager Representative and the Project Manager of any absence that may affect the performance of this Contract.

## **C-2 Exclusivity of Services**

As a material condition of this Contract performance, it is understood and agreed that Consultant will perform governmental taxation, finance, insurance and redevelopment consulting services exclusively for the Cities, and will not represent any other client. At the sole option of the Cities, the Project Manager may provide a written waiver to this representation exclusivity on a case-by-case basis. Such waiver must be requested in writing by Consultant, and will be granted only if there is no conflict with Cities interests, as determined by the Project Manager.

## **C-3 Deliverables**

(a) Consultant shall provide at a minimum a monthly report that details specific activities undertaken by Consultant on behalf on the Cities. The report should include a description of services/activities performed, expected or actual results of the activity undertaken, and future projected activities. Consultant shall provide this report by the 15<sup>th</sup> of the month following the month being reported.

(b) During the Legislative Session, including any subsequent Special Sessions, Consultant shall provide on a regular basis, at a minimum once per week, an oral report of activities to representatives of the Cities.

(c) At the conclusion of the 2009 Legislative Session, or any subsequent Special Sessions, Consultant shall provide a written summary report and, upon request, shall give an oral presentation of this report to the City Councils of the Cities.

(d) During the interim period when the Legislature is not in session, Consultant shall provide on a regular basis, at a minimum once monthly, an oral report of activities to representatives of Cities.

(e) Consultant shall provide other reports or analyses when requested by the Project Manager. The Project Manager will establish reasonable completion dates for these tasks.

(f) Consultant shall prepare and file all required lobbyist activity reports with the Legislative Counsel Bureau pursuant to the Nevada Lobbying Disclosure Act (NRS 218.900 to 218.444 inclusive) with copies to the Project Manager.

(g) Consultant shall be responsible for delivering all of the Deliverables required herein to the Project Manager in a timely manner.

## **SECTION D – Special Clauses**

### **D-1 Project Manager**

Henderson will designate a Project Manager and an alternate Project Manager for this Contract within fifteen (15) days of the Award Date. Henderson will provide written notice of these appointments to Consultant, and will provide notice of any subsequent changes. The Project Manager will be Consultant's principal point of contact for the Cities regarding any matters relating to this Contract. The Project Manager will provide all general direction to Consultant regarding this Contract performance. The Project Manager will act as the primary interface between the Cities and Consultant, will provide guidance regarding the Cities' goals and policies, and will coordinate all travel requirements. The Project Manager is not authorized to waive or change any material terms of this Contract.

### **D-2 Warranty – Service**

Consultant warrants that the services shall be performed in full conformity with this Contract, with the professional skill and care that would be exercised by those who perform similar services in the commercial marketplace, and in accordance with accepted industry practice. In the event of a breach of this warranty and/or in the event of non-performance and/or failure of Consultant to perform the services in accordance with this Contract, Consultant shall, at no cost to the Cities, re-perform the services so that the services conform to the warranty.

### **D-3 Legal Notice**

(a) All legal notices required pursuant to the terms and conditions of this Contract shall be in writing, unless an emergency situation dictates otherwise. Any notice required to be given under the terms of this Contract shall be deemed to have been given when received by the party to whom it is directed by personal service, hand delivery, facsimile with confirmation of transmission, or U.S. mail via certified mail-return receipt requested at the following addresses:

**FOR CONSULTANT:**

PML Consulting LLC  
935 South Moapa Valley Boulevard  
Overton, Nevada 89040  
Fax Number: (702) 397-6741

**FOR HENDERSON:**

Henderson Management Representative  
Mary Kay Peck, AICP, City Manager  
City of Henderson  
240 Water Street  
P.O. Box 95050 MSC 141  
Henderson, Nevada 89009-5050  
Fax Number: (702) 267-2081

**PROJECT MANAGER:**

Project Manager

Terri Barber  
Intergovernmental Relations Director  
City of Henderson  
240 Water Street  
P.O. Box 95050 MSC 141  
Henderson, Nevada 89009-5050  
Fax Number: (702) 267-2081

(b) Consultant shall notify the Project Manager in writing of any change in his information as stated above.

(c) An original signed copy, via U.S. mail, shall follow facsimile transmissions.

#### **D-4 Licenses/Registrations**

During the entire performance period of this Contract, Consultant shall maintain all federal, state and local licenses and registrations applicable to the work performed under this Contract.

#### **D-5 Intellectual Property Rights**

All deliverables produced under this Contract, as well as all data, notes and documentation collected on behalf of the Cities, is the exclusively the property of the Cities, and shall not be used by the Consultant for its individual purposes outside the Cities; nor can it be used to the detriment of the Cities.

#### **D-6 Order of Precedence**

In the event of a conflict between the specific language set forth in Sections B through E of this Contract and any Attachment or Exhibit set forth in Section F, the specific language in Sections B through E shall prevail. Any exception to this order of precedence will be addressed through specific language elsewhere in Sections B through E.

### **SECTION E – General Clauses**

#### **E-1 Disputes**

In the event of a dispute arising under this Contract between Consultant and Henderson, the parties shall attempt to amicably resolve the matter through escalating levels of management. Disputes that cannot be informally resolved shall be litigated rather than submitted to arbitration. The laws of the State of Nevada shall govern this Contract, and venue for any litigation shall be in the State District Court in Las Vegas, Nevada.

#### **E-2 Notice of Delay**

(a) Should the timely performance of this Contract be jeopardized by the non-availability of Cities-provided personnel, data or equipment, Consultant immediately shall notify the Project Manager in writing of the facts and circumstances that are contributing to such delay.

Upon receipt of this notification, the Project Manager will advise Consultant in writing of the action which will be taken to remedy the situation.

(b) Consultant shall advise the Project Manager in writing of an impending failure to meet established milestones or delivery dates based on Consultant's failure to perform. Notice shall be provided as soon as Consultant is aware of the situation; however, such notice shall not relieve Consultant from any existing obligations regarding performance or delivery.

### **E-3 Termination for Convenience**

Henderson shall have the right at any time to terminate further performance of this Contract, in whole or in part, for any reason. Such termination shall be effected by written notice from the Project Manager to Consultant, specifying the extent and effective date of the termination. On the effective date of the termination, Consultant shall terminate all work and take all reasonable actions to mitigate expenses. Consultant shall submit a written request for incurred costs for services performed through the date of termination, and shall provide any substantiating documentation requested by Henderson. In the event of such termination, the Fiscal Agent agrees to pay Consultant within thirty (30) calendar days after receipt of a correct, adequately documented written request. The Cities' sole liability under a Termination for Convenience is payment of costs for services requested by Henderson and actually performed by Consultant.

### **E-4 Termination for Default**

(a) Henderson, through its Project Manager, may, by written notice of default to Consultant, terminate this Contract in whole or in part if Consultant fails to:

- (1) Perform services or deliver any required Deliverables (including software and/or documentation) within the time specified in this Contract or any extension;
- (2) Make progress so as to endanger performance of this Contract; or
- (3) Perform any of the other provisions of this Contract.

(b) Henderson's right to terminate this Contract under (a)(2) and (a)(3) above may be exercised if Consultant does not cure such failure within ten (10) calendar days (or more if authorized by the Project Manager) after notice specifying the failure is sent.

(c) If Henderson terminates this Contract for default in whole or in part, it may acquire, under reasonable terms and in the manner Henderson considers appropriate, services similar to those terminated, and Consultant shall be liable to the Cities for any excess costs for those services. In the case of a partial termination, Consultant shall continue the work not terminated.

(d) Consultant shall not be liable for any excess costs if the failure to perform the Contract arises from circumstances beyond the control and without the fault or negligence of Consultant. These circumstances are limited to such causes as (1) acts of God or of the public enemy, (2) acts of government bodies, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, (9) unusually severe weather. The time of performance of Consultant's obligations under this Contract shall be extended by such period of

enforced delay; provided, however, that such reasonably extended time period shall not exceed sixty (60) days. If the foregoing circumstances result in a delay greater than sixty (60) days, Henderson may terminate the affected portion of the Contract pursuant to the terms of Paragraph E-3, "Termination for Convenience."

(e) Either party may terminate this Contract, in whole or in part, if the other party becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or if a receiver or trustee in bankruptcy is appointed for the other party, or if any proceeding in bankruptcy, receivership or liquidation is instituted against the other party and is not dismissed within thirty (30) calendar days following commencement thereof.

(f) Henderson retains the right to terminate for default immediately should Consultant fail to maintain the required levels of insurance, fail to comply with applicable local, state, and Federal statutes governing performance of these services, or fail to comply with statutes involving health or safety.

#### **E-5 Insurance**

(a) Consultant shall procure and maintain, at its own expense, during the entire term of the Contract, the following coverage:

(1) Comprehensive General Liability (bodily injury, property damage, errors and omissions) insurance with respect to Consultant's agents and vehicles assigned to the activities performed under this Contract in a policy limit of not less than \$1,000,000.00 combined single limit per occurrence and \$2,000,000.00 in the aggregate. Such coverage shall be on an "occurrence" basis and not on a "claims made" basis (except for Errors and Omissions coverage).

(b) The Cities shall be named as additional insured parties there under and such notation shall appear on the certificate of insurance furnished by Consultant's insurance company. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer and licensed by the State of Nevada. Each insurance company's rating as shown in the latest Best's Key Rating Guide shall be fully disclosed and entered on the required certificate of insurance. The adequacy of the insurance supplied by Consultant, including the rating and financial health of each insurance company providing coverage, is subject to the approval of the Cities. The Cities will require insurance carriers to maintain a Best's Key rating of "A VII" or higher.

(c) All deductibles and self-insurance retentions shall be fully disclosed in the certificate of insurance. No deductible or self-insurance retention may exceed \$10,000.00 without the prior written approval of the Cities.

(d) Certificates indicating that such insurance is in effect shall be delivered to the Cities within ten (10) calendar days after the Award Date of this Contract, or before work commences, whichever is earliest. Consultant shall maintain coverage for the duration of this Contract. Consultant shall annually provide the Cities with a certificate of insurance as evidence that all insurance requirements have been met. It is further agreed that Consultant and/or insurance carrier shall provide the Cities with a thirty (30) calendar day advanced notice of policy

modification or cancellation. Any exclusion to the effect that the insurance company surety company will "endeavor to inform" must be stricken from the certificate of insurance.

(e) Should Consultant fail to carry the required insurance, Henderson, on behalf of the Cities, has the option to purchase replacement insurance and charge the costs back to Consultant.

#### **E-6 Indemnification**

(a) Consultant shall protect, indemnify and hold harmless the Cities, their governing bodies, its officers, employees, agents, and consultants (collectively herein the "Cities") from any and all claims, liabilities, damages, losses, suits, actions, decrees and judgments, including attorney's fees, court costs or other expenses of any and every kind or character (collectively herein the "Liabilities") which may be recovered from or sought against the Cities as a result of, by reason of, or as a consequence of, any act or omission, negligent or otherwise, on the part of Consultant, its employees or agents in the performance of the terms, conditions and covenants of the Contract.

(b) It is expressly agreed that Consultant shall defend the Cities against the Liabilities and, in the event that Consultant fails to do so, the Cities shall have the right, but not the obligation, to defend the same and to charge all direct and incidental costs, including attorney's fees and court costs, to Consultant.

#### **E-7 Assignment**

Neither party may assign their rights or delegate their duties under this Contract without the written consent of the other party. Such consent shall not be withheld unreasonably. Any assignment or delegation shall not relieve any party of its obligations under this Contract.

#### **E-8 Waiver**

Waiver of any of the terms of this Contract shall not be valid unless it is in writing signed by each party. The failure of Henderson to enforce any of the provisions of this Contract, or to require performance of any of the provisions herein, shall not in any way be construed as a waiver of such provisions or to affect the validity of any part of this Contract, or to affect the right of Henderson to thereafter enforce each and every provision of this Contract. Waiver of any breach of this Contract shall not be held to be a waiver of any other or subsequent breach of this Contract.

#### **E-9 Taxes/Compliance with Laws**

(a) The Cities are exempt from paying Sales and Use Taxes under the provisions of Nevada Revised Statutes 372.325(4), and Federal Excise Tax under Registry Number 88-87-0003k. Consultant shall pay all taxes, levies, duties and assessments of every nature and kind which may be applicable to any work under this Contract. Consultant shall make any and all payroll deductions required by law. Consultant indemnifies and holds the Cities harmless from any liability of account of any and all such taxes, levies, duties, assessments and deductions.

(b) Consultant, in the performance of the obligations of this Contract, shall comply with all applicable laws, rules and regulations of all governmental authorities have jurisdiction over the performance of this Contract including, but not limited to, the Federal Occupational Health and Safety Act, and all state and federal laws prohibiting and/or relating to discrimination by reason of race, sex, age, religion or national origin.

#### **E-10 Audit of Records**

(a) Consultant agrees to maintain financial records pertaining to all matters relative to this Contract in accordance with standard accounting principles and procedures and to retain all records and supporting documentation applicable to this Contract for a period of three (3) years after completion of this Contract and any subsequent extensions thereof. All records subject to audit findings shall be retained for three (3) years after such findings have been resolved. In the event the Consultant goes out of existence, the Company shall turn over to the Cities all of its records relating to this Contract to be retained by the Cities for the required period of time.

(b) Consultant agrees to permit the Cities or their designated representative(s) to inspect and audit its records and books relative to this Contract at any time during normal business hours and under reasonable circumstances and to copy and/or transcribe any information that the Cities desires concerning Consultant's operation hereunder. Consultant further understands and agrees that said inspection and audit would be exercised upon written notice. If Consultant or its records and books are not located within the State of Nevada and in the event of an inspection and audit, Consultant agrees to deliver the records and books or have the records and books delivered to the Cities' designated representative(s) at an address as designated by the Cities. If the Cities or their designated representative(s) find that the records and books delivered by the Consultant are incomplete, Consultant agrees to pay the Cities or their representative(s)' costs to travel (including travel, lodging, meals and other related expenses) to Consultant's offices to inspect, audit, retrieve, copy and/or transcribe the complete records and books. Consultant further agrees to permit the Cities or their designated representative(s) to inspect and audit, as deemed necessary, all records of this project relating to finances, as well as other records, including performance records that may be required by relevant directives of funding sources of the Cities.

(c) If, at any time during the term of this Contract, or at any time after the expiration or termination of this Contract, the Cities or their designated representative(s) find the dollar liability is less than payments made by the Fiscal Agent to the Consultant, Consultant agrees that the difference shall be either: (a) repaid immediately by the Consultant to the Cities; or (b) at the Fiscal Agent's option, credited against any future billings due Consultant.

#### **E-11 Independent Contractor**

In the performance of services under this Contract, Consultant and any other person employed by it shall be deemed to be an independent contractor and not an agent or employee of the Cities, Henderson or any of its governing bodies. Consultant shall be liable for the actions of any person, organization or corporations with which it subcontracts to fulfill this Contract. The Cities shall hold Consultant as the sole responsible party for the performance of this Contract. Consultant shall maintain complete control over its employees and all of its subcontractors. Nothing contained in this Contract or any subcontract awarded by Consultant shall create a

partnership, joint venture or agency. Neither party shall have the right to obligate or bind the other party in any manner to any third party.

#### **E-12 Severability**

The invalidity, illegality or unenforceability of any provision of this Contract or the occurrence of any event rendering any portion or provision of this Contract void shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from this Contract, and the balance of this Contract shall be construed and enforced as if this Contract did not contain the particular portion or provision held to be void. The parties further agree to amend this Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this clause shall not prevent this entire Contract from being void should a provision which is of the essence of this Contract be determined void.

#### **E-13 Conforming Services**

The services performed under this Contract shall conform in all respects with the requirements set forth in this Contract. It shall be the responsibility of Consultant to furnish Henderson with sufficient data and information needed to determine if the services performed conform to all the requirements.

#### **E-14 Modification/Amendment**

This Contract shall not be modified or amended except by the express written agreement of the parties, signed by a duly authorized representative for each party. Any other attempt to modify or amend this Contract shall be null and void, and may not be relied upon by either party.

#### **E-15 Section and Paragraph Headings**

The section and paragraph headings appearing in the Contract are inserted for the purpose of convenience and ready reference. They do not purport to define, limit or extend the scope or intent of the language of the sections and paragraphs to which they pertain.

#### **E-16 Conflict of Interest**

(a) An official of Henderson, who is authorized in such capacity and on behalf of Henderson to negotiate, make, accept or approve, or take part in negotiating, making, accepting or approving this Contract, payments under this Contract, or work under this Contract, shall not be directly or indirectly interested personally in this Contract or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of, or for Henderson or any member of its governing body, who is authorized in such capacity and on behalf of Henderson to exercise any legislative, executive, supervisory or other similar functions in connection with this Contract, shall become directly or indirectly interested personally in this Contract or in any part hereto, any material supply contract, subcontract, insurance contract, or any other contract pertaining to this Contract.

(b) Each party represents that it is unaware of any financial or economic interest of any public officer or employee of Henderson relating to this Contract. Notwithstanding any other provision of the Contract, if such interest becomes known, Henderson may immediately terminate this Contract for default or convenience, based on the culpability of the parties.

(c) Henderson requires disclosure of ownership and principals. The disclosure requirements have been met through the "Certificate – Disclosure of Ownership/Principals" set forth in Attachment 1.

#### **E-17 Integration**

The Contract represents the entire and integrated agreement between Henderson and Consultant. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Contract.

#### **E-18 Public Records**

The City Council of each City are public agencies as defined by state law. As such, they are subject to the Nevada Public Records Law (Chapter 239 of the Nevada Revised Statutes). All of the Cities' Records are therefore public records, which are subject to inspection and copying by any person (unless declared by law to be confidential). The Contract and all supporting documents submitted by Consultant incident to award or performance of this Contract are deemed to be public records.

#### **E-19 Waiver**

Waiver of any of the terms of this Contract shall not be valid unless in writing signed by each party. The failure of Henderson to enforce any of the provisions of this Contract, or to require performance of any of the provisions herein, shall not in any way be construed as waiver of such provisions or to affect the validity of any part of this Contract, or to affect the right of Henderson to thereafter enforce each and every provision of the Contract. Waiver of any breach of this Contract shall not be held to be a waiver of any other or subsequent breach of this Contract.

#### **E-20 Confidentiality – Cities Information**

(a) All information, including but not limited to oral statements, computer files, databases, and other material or data supplied to Consultant, is confidential and privileged. Consultant shall not disclose this information, nor allow to be disclosed to any person or entity without the express written consent of Henderson. Consultant shall have the right to use any such confidential information only for the purpose of providing the services under this Contract, unless the express prior written consent of Henderson is obtained. Upon request by Henderson, Consultant shall promptly return to Henderson all confidential information supplied by Henderson, together with all copies and extracts.

(b) The confidentiality requirements shall not apply where: (i) the information is, at the time of disclosure by the Cities, then in the public domain; (ii) the information is known to Consultant prior to obtaining the same from the Cities; (iii) the information is obtained by Consultant from a third party who did not receive the same directly from the Cities; or (iv) the

information is subpoenaed by court order or other legal process, but in such event, Consultant shall notify Henderson. In such event, Henderson, in its sole discretion, may seek to quash such demand.

(c) The obligations of confidentiality shall survive the termination of this Contract.

**E-21 Marketing Restrictions**

Consultant may not publish or sell any information from or about this Contract without the prior written consent of Henderson. This restriction does not apply to the use of the Cities' name in a general list of customers, so long as the list does not represent an express or implied endorsement of Consultant or its services.

**E-22 Limitation of Funding**

Henderson reserves the right to reduce estimated or actual quantities, in whatever amount necessary, without prejudice or liability to Henderson, if funding is not available or if legal restrictions are placed upon the expenditure of monies for the services required under this Contract.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly authorized representatives.

Date of Council Approval: \_\_\_\_\_

Agent:

ATTEST:

CITY OF HENDERSON

\_\_\_\_\_  
Monica Martinez Simmons, City Clerk

By: \_\_\_\_\_  
James B. Gibson, Mayor                      Date

APPROVED AS TO FORM:

\_\_\_\_\_  
Shauna M. Hughes                      Date  
City Attorney

CONSULTANT:PML CONSULTING LLC

\_\_\_\_\_  
By: Marvin Leavitt                      Date  
Managing Member