

## **SETTLEMENT AGREEMENT FOR THE MARTIN LUTHER KING BOULEVARD IMPROVEMENTS PROJECT**

This Settlement Agreement ("Agreement") is made and entered into this 4<sup>TH</sup> day of September, 2009 by and between the City of Las Vegas, a municipal corporation in the State of Nevada (the "City") and Wells Cargo, Inc., a Nevada corporation ("Wells Cargo"). The City and Wells Cargo are individually or collectively referred to herein as the "Settling Party" or "Settling Parties."

### **RECITALS**

WHEREAS, On January 31, 2008, the City and Wells Cargo entered into a contract ("Construction Contract") providing for the construction of a project known as Martin Luther King Boulevard Improvements, Alta Drive to Carey Avenue, CLV Bid No. 07.1730.05-LED, which included improvements to Martin Luther King Boulevard ("Project");

WHEREAS, the City and Wells Cargo, through their respective authorized representatives, have participated in arms length negotiations related to construction issues, disputes, and claims related to the Project;

WHEREAS, without any admission of liability, the Settling Parties now desire to settle the construction issues, disputes, and claims as they relate to the Project, and to release each other from certain claims subject to the terms and conditions set forth below;

WHEREAS, the Director of Public Works, and his designated representatives, are authorized to approve modifications to the Construction Contract provided the amount of the modification does not exceed the amount of the contingency fund established for the Project; and

WHEREAS, the settlement agreed to herein by the Settling Parties will be made pursuant to a change order issued in connection with the Project, and not a payment under the provisions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing facts and terms, conditions and covenants set forth below, the Settling Parties hereto agree as follows:

### **ARTICLE I EXTENSION OF TIME**

The Settling Parties hereby agree to extend the contract time by 151 calendar days due to delays as of March 31, 2009 caused by utility conflicts, emulsified asphalt treated base course and other Project issues set forth below. Based on the Contract Notice to Proceed date of March 3, 2008, the original 600 calendar day Contract Time and the additional 151 calendar days, the Contract shall be substantially complete by March 23, 2010. No further work, except for the 30-day punch list items, shall be performed beyond March 23, 2010. After March 23, 2010, the conditions and requirements of Special Provisions Section 108.09 "Failure to Complete the Work on Time" shall apply. The aforementioned dates are subject to delays or other Project issues that may be encountered by the Settling Parties after March 31, 2009.

## **ARTICLE II ADDITIONAL WORK**

The City is granting this Extension of Contract time for work completed to date and Wells Cargo has not agreed to perform any additional items of work.

## **ARTICLE III SETTLEMENT AMOUNT**

The Settling Parties hereby agree that the City will issue a change order, though March 31, 2009, authorizing payment to Wells Cargo in the amount of Seven Hundred Ninety Five Thousand Dollars and No Cents. (\$795,000.00) ("Settlement Amount") (which includes the payment of any interest pursuant to NRS 338.010 et. seq.) as the final and complete payment for the following, all of which arose prior to March 31, 2009:

1. Compensation for issues related to Emulsified Asphalt Treated Base Course work at Five Hundred Twenty Six Thousand Eight Hundred Seventy Two Dollars and No Cents (\$526,872.00).
2. Additional overhead and delay related costs for 151 calendar days at Two Hundred Ninety One Thousand One Hundred Twenty Eight Dollars and No Cents (\$291,128.00).
3. A credit issued by Wells Cargo to the City in the amount of Twenty Three Thousand Dollars and No Cents (\$23,000.00) for damage to fiber optic infrastructure.

The City shall pay the Settlement Amount within thirty (30) days after the execution of this Agreement by the Parties and approval by the Regional Transportation Commission of Southern Nevada ("RTC"). The Settlement Amount will be paid pursuant to a change order issued in connection with, and authorized under, the Contract, which shall be approved and executed in the same manner as other change orders issued in connection with the Project.

## **ARTICLE IV RELEASE**

In consideration for the City paying the Settlement Amount, Wells Cargo hereby releases the City, its officers, employees, agents, representatives and consultants from any and all current or future claims, known and unknown, related to the construction of the Project (including any and all additional costs related to change orders or requests for proposals) and any and all damages incurred (including delay damages) in connection therewith, in the past and through March 31, 2009.

In addition, Wells Cargo hereby forever releases any right under the Construction Contract to any claim related to the Construction Contract (including, but not limited to, typical street cross sections, street cross-slopes, street plan and profile views, existing and proposed topographic information, equipment requirements for construction of the pavement section, specifications related to the emulsified asphalt treated base course, the use of the term "add rock," the bid schedule, or estimated quantities), or any formal or informal communication between the Settling Parties or their agents at any time, adequately indicated to Wells Cargo at any time the necessary labor, materials, equipment and incidentals required to construct the emulsified asphalt treated base course to the lines, grades and other requirements of the Construction Contract. Those aforementioned requirements include, but are not limited to, the milling, stockpiling, processing and handling required to utilize on-site existing asphalt and base materials for the emulsified asphalt treated base course when possible and utilizing imported materials when needed

(without leaving existing asphalt in place and meeting the reasonable conditions imposed as part of City's approval of Wells Cargo's Traffic Control Plans). Furthermore, Wells Cargo hereby forever releases any right under the Construction Contract to renegotiation of the unit price bid related to the above or due to changes in quantities resulting from changing the NDOT area for conventional pavement section to Emulsified Asphalt Treated Base Section for the following Bid Items:

1. 302.01—Type II Aggregate Base (NDOT)
2. 309.01—Construct 8-Inch or 10-Inch Emulsified Asphalt Treated Base Course
3. 309.02—Asphalt Emulsion for Asphalt Treated Base Course
4. 402.03—6-Inch Plantmix Bituminous Surface
5. 402N.01—8.5-Inch Plantmix Bituminous Surface (NDOT)
6. 403-2.01—1-Inch UTACS Bonded with PMM S3
7. 403 N.01—3/4-Inch Plantmix Bituminous Open Grade Surface (NDOT)
8. 203.01—Roadway Excavation
9. 203.02—Roadway Embankment
10. 202.27—Remove Asphalt Concrete

All of the aforementioned Bid Items 1 through 9 shall be paid based on actual quantities installed pursuant to the Construction Contract.

Specifically excluded from release are any rights Wells Cargo has under the Construction Contract for renegotiation or adjustment of the unit price Bid for Items 3, 4, and 6 listed above due to increased costs from suppliers for asphaltic materials.

Any compensation paid for Bid Item 762.01—Improvements to Parcel 139-28-312-002 beyond work already performed through March 31, 2009 and previously paid for shall be handled as force account work under the terms of the Construction Contract.

Wells Cargo hereby represents that its counsel of record has explained the effect of the execution of this Agreement and the release of all claims, known and unknown, as provided for herein and, based upon that explanation, Wells Cargo understands and acknowledges the legal significance and the consequences of the claims being released by this Agreement. Wells Cargo further represents that it understands and acknowledges the legal significance and consequence of the release of unknown current or future claims related to construction of the Project and/or for any claims or issues against the City arising from the construction of the Project in the past and through March 31, 2009.

#### **ARTICLE IV REPRESENTATION AND WARRANTY**

The Parties hereby represent and warrant they have not heretofore assigned or transferred, or purported to assign or transfer, to any person not a party hereto, claims or rights as to any of the matters released and referenced herein, or any part or portion thereof. The Parties further agree to indemnify and hold each other, their officers, employers, agents, representatives, and consultants harmless from and against any claim, demand, damage, liability, accounting, reckoning, obligations, costs, expense, lien, action or cause of action (including the payment of attorneys' fees and costs actually incurred, whether or not litigation has been commenced), arising out of any such assignment or transfer in violation of this representation and warranty. Wells Cargo further agrees to defend, indemnify and hold the City or its officers harmless from any claims or causes of action, known or unknown, from Wells Cargo's

subcontractors of any tier, and material suppliers in the past through March 31, 2009 related to the claims in this Agreement. The City agrees to notify Wells Cargo immediately of any claims or causes of action, which are served or received by it. Wells Cargo's obligation to defend the City commences once notified by the City or once it is notified by the claimant or litigant. Nothing contained herein is intended to release or indemnify for any claims except the claims contained in this Agreement.

#### **ARTICLE V NO ADMISSION OF LIABILITY**

It is further understood that this Agreement is a compromise of disputed claims existing between the Settling Parties and the execution of this Agreement is not to be construed as an admission of liability on the part of Settling Parties and the Settling Parties deny liability therefore and that this Agreement intends merely to avoid the cost of further litigation and buy its peace.

#### **ARTICLE VI COVENANT NOT TO SUE**

The Parties covenant and agree they will forever refrain from instituting, prosecuting, maintaining, proceeding on or advising a lawsuit or arbitration action be commenced against the other which arises out of, or is or may be, in whole or in part, based upon, related to, or connected with the claims in this Agreement in the past and through March 31, 2009.

#### **ARTICLE VII MISCELLANEOUS REPRESENTATIONS AND WARRANTIES**

1. Each Settling Party has received independent legal advice from its attorney with respect to the advisability of making the settlement provided for herein and the execution of this Agreement.
2. Neither Settling Party, nor any officer, agent, council member, partner, employee, representative, trustee or attorney of or for any Settling Party, has made any statement or representation to the other Settling Party regarding any fact relied upon entering into this Agreement and each Settling Party is not relying upon any statement, representation or promise of the other Settling Party, and officer, agent, council member, partner, employee, representative, trustee or attorney of the Settling party in executing this Agreement, or in making the settlement provided for herein, except as expressly stated in this Agreement.
3. Each Settling Party to this Agreement has made such investigations of the facts pertaining to this Agreement and the settlement set forth herein, and all of the matters pertaining thereto, as it deems necessary.
4. Each Settling Party, or responsible representative thereof, has read this Agreement and understands the contents thereof. The persons executing this Agreement on behalf of the Settling Party is empowered to do so and thereby bind the Settling Party.
5. In entering into this Agreement and the settlement provided for herein, each Settling Party assumes the risk of any misrepresentation or mistake. This Agreement is intended to be, and hereby is, final and binding upon the Settling Parties, regardless of any claims of

misrepresentations, promise made without intent to perform, concealment of act, mistake of fact or law, or of any other circumstance whatsoever.

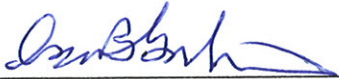
6. Each Settling Party warrants and represents that (i) this Agreement in its reduction to final written form is a result of extensive good faith arms length negotiations between the Settling Parties through their respective representatives; (ii) said representatives have carefully reviewed and examined this Agreement for execution by the Settling Parties, or any of them; and (iii) any statute or rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Agreement.
7. The Settling parties acknowledge that this Agreement represents a good faith settlement between Wells Cargo and the City, and is intended to bar all future claims by the Parties that are related to the claims in this Agreement in the past and through March 31, 2009.
8. The prevailing party in any action brought to enforce the terms of this Agreement shall be entitled to its reasonable attorneys' fees and costs incurred in enforcing this Agreement.
9. This Agreement shall be deemed to have been executed and delivered within the State of Nevada, and the rights and obligations of the Settling Parties hereto shall be construed and enforced in accordance with and governed by the laws of the State of Nevada. Claims to enforce this Agreement are subject to arbitration in accordance with the rules of the American Arbitration Association.
10. This Agreement is the entire agreement between the Settling Parties with respect to the Project, and supersedes all prior and contemporaneous oral and written agreements and discussions.
11. This Agreement is binding upon and shall inure to the benefit of the Settling Parties hereto and each of their present and former respective heirs, successors in interest, agents, employees, servants, principals, council members, assigns, assignors, executors, guarantors, attorney's associates, affiliates and/or any other person or entity otherwise related or connected to the parties to this Agreement.
12. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable for whatever reason, the remaining provisions not so declared shall, nevertheless, continue in full force and effect, without being impaired in any manner whatsoever.
13. Counterparts; Electronic Delivery. This Agreement may be executed in counterparts, all such counterparts will constitute the same Agreement and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by facsimile or e-mail and upon receipt will be deemed originals and binding upon the Parties hereto, regardless of whether originals are delivered thereafter.

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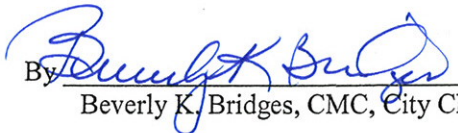
14. The Settling Parties hereby certify that each has read all of the Agreement and fully understand the same.

IN WITNESS WHEREOF, the Settling Parties have executed this Agreement as of the day and year first written above.

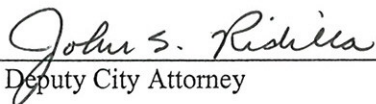
**CITY OF LAS VEGAS**

By:   
Oscar B. Goodman, Mayor

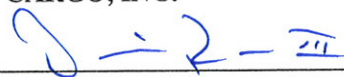
ATTEST:

By:  9/4/09  
Beverly K. Bridges, CMC, City Clerk Date

APPROVED AS TO FORM:

By:  8/11/09  
Deputy City Attorney Date

**WELLS CARGO, INC.**

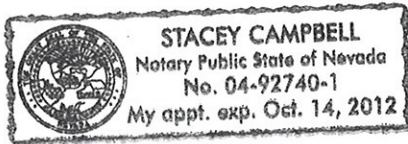
By: 

Name: DENNIS ROSS III

Title: ASSISTANT SECRETARY

STATE OF NEVADA )  
 )ss.  
COUNTY OF CLARK )

On this 4<sup>TH</sup> day of September, 2009, before me, the undersigned Notary Public in and for said County and State, appeared Oscar B. Goodman, as Mayor of the City of Las Vegas, known to me to be the person who executed the above and foregoing instrument, and who acknowledged to me that he did so freely and voluntarily and for the purposes mentioned therein.



Stacey L Campbell  
Notary Public

STATE OF NEVADA )  
 )ss.  
COUNTY OF CLARK )

On this 7 day of AUGUST, 2009, before me, the undersigned Notary Public in and for said County and State, appeared DENNIS ROSS III, ASSISTANT SECRETARY of Wells Cargo, Inc., known to me to be the person who executed the above and foregoing instrument, and who acknowledged to me that he did so freely and voluntarily and for the purposes mentioned therein.

Cathy Armstrong Carrabis  
Notary Public



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

### **1. Definitions**

*"City"* means the City of Las Vegas.

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

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

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

### **2. Policy**

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

### **3. Instructions**

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

### **4. Incorporation**

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



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

|              |                                                |
|--------------|------------------------------------------------|
| Block 1      | <b>Contracting Entity</b>                      |
| Name:        | WELLS CARGO INC                                |
| Address:     | 7770 SPRING MOUNTAIN RD<br>LAS VEGAS, NV 89117 |
| Telephone:   | 702.876.0659                                   |
| EIN or DUNS: | 88.0048940                                     |

|                                                                                                                        |                    |
|------------------------------------------------------------------------------------------------------------------------|--------------------|
| Block 2                                                                                                                | <b>Description</b> |
| Subject Matter of Contract/Agreement:<br>SETTLEMENT AGREEMENT<br>MARTIN LUTHER KING BOULEVARD<br>IMPROVEMENTS PROJECTS |                    |
| RFP #:                                                                                                                 |                    |

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

| Block 4                                                                                                                                                                                                                                 | <b>Disclosure of Ownership and Principals</b> |                                                |                |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|------------------------------------------------|----------------|
| In the space below, the Contracting Entity must disclose all principals (including partners) of the Contracting Entity, as well as persons or entities holding more than one-percent (1%) ownership interest in the Contracting Entity. |                                               |                                                |                |
|                                                                                                                                                                                                                                         | FULL NAME/TITLE                               | BUSINESS ADDRESS                               | BUSINESS PHONE |
| 1.                                                                                                                                                                                                                                      | DAVID H. WELLS<br>PRESIDENT / CEO             | 7770 SPRING MOUNTAIN RD<br>LAS VEGAS, NV 89117 | 702.876.0659   |
| 2.                                                                                                                                                                                                                                      | HOWARD A. WELLS JR.<br>EXECUTIVE OFFICER      | 7770 SPRING MOUNTAIN RD<br>LAS VEGAS, NV 89117 | 702.876.0659   |
| 3.                                                                                                                                                                                                                                      | SHAWN E. LANDRUM<br>SECRETARY                 | 7770 SPRING MOUNTAIN RD<br>LAS VEGAS, NV 89117 | 702.876.0659   |
| 4.                                                                                                                                                                                                                                      | DENNIS A. ROSS III<br>ASSISTANT SECRETARY     | 7770 SPRING MOUNTAIN RD<br>LAS VEGAS, NV 89117 | 702.876.0659   |
| 5.                                                                                                                                                                                                                                      | JOHN DAVID MIRAMONTES<br>TREASURER            | 3635 S RAINBOW BLVD<br>LAS VEGAS, NV 89103     | 702.873.7440   |
| 6.                                                                                                                                                                                                                                      |                                               |                                                |                |
| 7.                                                                                                                                                                                                                                      |                                               |                                                |                |
| 8.                                                                                                                                                                                                                                      |                                               |                                                |                |
| 9.                                                                                                                                                                                                                                      |                                               |                                                |                |
| 10.                                                                                                                                                                                                                                     |                                               |                                                |                |

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

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

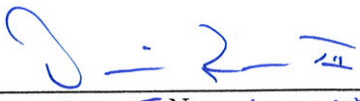
If the Contracting Entity, or its principals or partners, are required to provide disclosure (of persons or entities holding an ownership interest) under Federal law (such as disclosure required by the Securities and Exchange Commission or the Employee Retirement Income Act), a copy of such disclosure may be attached to this Certificate in lieu of providing the information set forth in Block 4 above. A description of such disclosure documents must be included below.

Name of Attached Document: \_\_\_\_\_

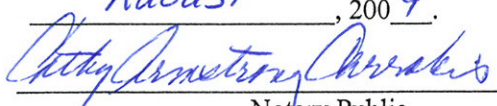
Date of Attached Document: \_\_\_\_\_

Number of Pages: \_\_\_\_\_

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

  
\_\_\_\_\_  
DENNIS ROSS III Name ASSISTANT SECRETARY  
AUGUST 7, 2009  
\_\_\_\_\_  
Date

Subscribed and sworn to before me this 7 day  
of

AUGUST, 2009.  
  
\_\_\_\_\_  
Notary Public

