

## CONTRACT

### CONTRACT FOR COBRA FACILITATION SERVICES

THIS CONTRACT is being entered into this \_\_\_\_ day of \_\_\_\_, 2010 by and between the CITY OF LAS VEGAS (hereinafter the "City"), a municipal corporation within the State of Nevada having its principal office at 400 Stewart Avenue, Las Vegas, Nevada 89101, and HR SIMPLIFIED, INC. (hereinafter the "Company") having its principal office located at 8441 Wayzata Blvd, Suite 300, Minneapolis, Minnesota 55426.

#### SECTION A – Contract Form

The subject matter of this Contract is COBRA (Consolidated Omnibus Budget Reconciliation Act) Facilitation Services.

#### SECTION B – Basic Terms

##### B-1 Definitions

The following definitions apply to this Contract:

- (a) "Award Date" means the date that a Contract becomes effective. It is the date that is entered into the first paragraph of a Contract upon execution by an authorized representative of the City.
- (b) "City" means the City of Las Vegas.
- (c) "City Council" means the governing body of the City of Las Vegas.
- (d) "COBRA" Consolidated Omnibus Budget Reconciliation Act (COBRA) which gives workers and their families who lose their health benefits the right to choose to continue group health benefits provided by their group health plan for a limited period of time.
- (e) "ARRA" The American Recovery and Reinvestment Act of 2009 (ARRA), as amended.
- (f) "Company" means the individual, partnership, or corporation responsible for the performance of services under this Contract.
- (g) "Company Representative" means the individual authorized to act on behalf of the Company regarding routine matters arising under or relating to this Contract.
- (h) "Contract" means this document, consisting of Sections A through F, which is binding and effective only upon execution by the City.
- (i) "Deliverable" means any report, software, hardware, data, documentation, or other tangible item that the Company is required to provide to the City under the terms of the Contract.
- (j) "Qualifying Events (QE)" means the loss of coverage under a Plan on account of one of the specific events described in COBRA or The American Recovery and Reinvestment Act of 2009 (ARRA), as amended.
- (k) "Non-exclusive Contract" means a Contract under which the City agrees to obtain some, but not necessarily all, of the City's requirements for a particular service.
- (l) "Premium Administration fee" means 2% of the total monthly COBRA premium as established by the City each year.
- (m) "Project Manager" means the City representative who is responsible for the coordination of Contract performance between the City and the Company.

## B-2 Contract Type

The Contract type is fixed-fee. This is a Non-Exclusive Contract.

## B-3 Prices/Costs

(a) The City will pay the Company the following amounts:

| Item No. | Description                                            | Est. Volume | Rate/Fee | 1 <sup>st</sup> Year | 2 <sup>nd</sup> Year |
|----------|--------------------------------------------------------|-------------|----------|----------------------|----------------------|
| Item 1   | Takeover Fee of Active and Pending COBRA Beneficiaries | 18          | \$12.00  | \$216.00             | 00.00                |
| Item 2   | Monthly Base Fee                                       | 12          | \$100.00 | \$1,200.00           | \$1,200.00           |
| Item 3   | Fee per Benefit Eligible Employee per Month            | 2,200       | \$0.45   | \$11,880.00          | \$11,880.00          |
| Item 4   | COBRA Initial Notice Fee (Per Letter Sent)             | 186         | \$3.00   | \$558.00             | \$558.00             |
| Item 5   | Annual Rate & Plan Change Notice Fee                   |             | Included |                      |                      |
| Item 6   | Eligibility Updates to Carrier or TPA                  |             | Included |                      |                      |
| Item 7   | Reports Fee                                            |             | Included |                      |                      |

- (b) Optional service of sending Open Enrollment Packets to all active and pending COBRA beneficiaries, including processing returned enrollment forms at \$200.00 for program set-up plus \$20.00 per packet, plus postage.
- (c) The Company reserves the right to adjust fees on an annual basis on a 10% or greater variation in the quantities above, including reducing prices to the City. Fee is based on the total active, benefit eligible employees per month.
- (d) Pricing covers up to 30 Qualifying Events (QE) Notices and any notice requirements under ARRA, in any 1 month period. QE Notices in excess of 30 for the month will be billed at \$15.00 per notice
- (e) The Company will retain a 2% Premium Administration Fee. The 2% premium fee is based on the total premium, not just the amount the COBRA participant pays. For example, if the total premium is \$100.00 and the participant qualifies for the 35% federal premium subsidy and pays \$35.00, the 2% fee will be based on the \$100.00.
- (f) The annual fees paid shall not exceed \$25,000 without written approval by the City.

## B-4 Remittance Payments and Contract Charges

- (a) The Company shall submit a report to the City in accordance with the payment schedule set forth in Paragraph B-3 (Prices/Costs) above, to include all Premiums received and all Contract charges identified. Each monthly report should identify the following items:

- (i) the date of the report;
- (ii) the Benefit participants name and premium received;
- (iii) the Contract Item against which charges are made;
- (iv) performance dates covered;
- (v) the associated purchase order number;

(b) Payment to the City. The Company shall submit a check with the supporting remittance report to:

Department of Finance and Business Services  
ATTN: Accounts Payable  
City of Las Vegas  
400 Stewart Ave.  
Las Vegas, NV 89101 – 2986

Copy of invoice to:  
Department of Human Resources  
Attn. COBRA Benefits Coordinator  
City of Las Vegas  
400 Stewart Avenue  
Las Vegas, NV 89101

(c) A representative of the Company shall sign and certify the report in the following manner: "I hereby certify, under penalty of perjury, that the above report is just and correct and that reimbursement for such expenses listed on this report has not been previously received from the City of Las Vegas nor any other source."

#### **B-5 Performance Period/Delivery Schedule**

The performance period commences from Award Date and continues through June 30, 2013, unless extended through mutual agreement by both parties.

### **SECTION C – Statement of Work**

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

The Company shall provide the services to accomplish the COBRA Facilitation Services.

#### **C-2 Service Detail**

The Company shall:

- (a) Assume administration of current COBRA participant files, as assigned
- (b) Provide initial notice of COBRA rights and all appropriate enrollment materials to all covered employees and/or eligible dependents, based on eligibility information provided by City via the Company's website
- (c) Notify insurance carrier and employer of participant's election to continue insurance coverage under COBRA
- (d) Collect premium from participants and remit payment to the City
- (e) Provide notification to participants of pending changes to benefit plans as directed by the City.
- (f) Notify participant, insurer and employer of termination of coverage due to nonpayment or upon reaching the maximum eligibility period.

- (g) Provide a monthly report to the City's Project Manager detailing the status of each enrolled participant, including amounts charged and/or submitted, as well as amounts covered by the federal subsidy
- (h) Act as customer contact for all questions and issues concerning COBRA administration, providing customer service to eligible employees and/or their dependents

## **SECTION D – Special Clauses**

### **D-1 Legal Notice [CAO-7/24/08]**

- (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:
  - (i) received by the party to whom it is directed by hand delivery or personal service, or
  - (ii) transmitted by facsimile with confirmation of transmission, or
  - (iii) sent by U.S. mail via certified mail-return receipt requested at the following addresses:

**FOR THE CITY:**

City of Las Vegas  
Manager, Purchasing and Contracts  
City Hall, First Floor  
400 Stewart Avenue  
Las Vegas, Nevada 89101-2986  
Fax: (702) 384-9964

**FOR THE COMPANY:**

HR Simplified  
Attn. Vice President, Customer Service  
8441 Wayzata Blvd., Suite 300  
Minneapolis, MN 55426  
Fax: (877) 591-4249

- (b) The parties shall provide written notification of any change in the information stated above.
- (c) An original signed copy, via U. S. Mail, shall follow facsimile transmissions.
- (d) For purposes of this Contract, legal notice shall be required for all matters involving potential termination actions, litigation, indemnification, and unresolved disputes. This does not preclude legal notice for any other actions having a material impact on the Contract.
- (e) Routine correspondence should be directed to the Project Manager or the Company Representative, as appropriate.

### **D-2 Project Manager/Company Representative [CAO-7/24/08]**

- (a) The City designates Sandy Ray as the Project Manager for this Contract. The City will provide written notice to the Company, should there be a subsequent Project Manager change. The Project Manager will be the Company's principal point of contact at the City regarding any matters relating to this Contract, will provide all general direction to the Company regarding Contract performance, and will provide guidance regarding the City's goals and policies. The Project Manager is not authorized to waive or modify any material scope of work changes or terms of the Contract.
- (b) The Company designates Rudy Allebach as the Company Representative for this Contract. The Company will provide written notice to the City, should there be a subsequent Company Representative change. The City has the right to assume that the Company Representative has full authority to act for the Company on all matters arising under or relating to this Contract.

**D-3 Warranty – Services** [CAO-7/24/08]

The Company 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 the Company to perform the services in accordance with this Contract, the Company shall, at no cost to the City, re-perform or perform the services so that the services conform to the warranty.

**D-4 Intellectual Property Rights** [CAO-7/24/08]

All deliverables produced under this Contract, as well as all data, notes, and documentation collected on behalf of the City are exclusively the property of the City.

**D-5 Licenses/Registrations** [CAO-7/24/08]

During the entire performance period of this Contract, the Company shall maintain all federal, state, and local licenses, certifications and registrations applicable to the work performed under this Contract, including maintaining an active City of Las Vegas business license.

**D-6 Order of Precedence** [CAO-7/24/08]

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.

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## SECTION E – General Clauses

### E-1 Disputes [CAO-7/25/08]

- (a) For each claim or dispute arising between the parties under this Contract, the parties shall attempt to resolve the matter through escalating levels of management. In the event the matter cannot be successfully resolved in this manner, the City is granted the right, regardless of which party is asserting the claim or dispute, to determine between arbitration or litigation as the forum in which the party desiring to proceed further shall file to resolve the claim or dispute. For any and all claims or disputes asserted by the Company, the Company shall notify the City of its intent to proceed further with the claim or dispute, and in response thereto, the City shall notify the Company as to its selected forum for resolution. For any and all claims or disputes asserted by the City, the City shall notify the Company in the notice of its intent to proceed with further resolution and in the same notice as to whether it has selected arbitration or litigation as the forum to resolve the claim or dispute. In the event arbitration is the designated forum, such arbitration shall be binding on the parties.
- (b) If arbitration is selected by the City as the forum for further resolution, the claim or dispute shall be filed with the Nevada Arbitration Association or the American Arbitration Association under its then current Commercial Arbitration Rules, Expedited Procedures, regardless of the amount of the claim or dispute.
- (c) The laws of the State of Nevada shall govern this Contract and the venue for purposes of such litigation or arbitration shall be in the City.

### E-2 Notice of Delay [CAO-7/24/08]

- (a) Should the timely performance of this Contract be jeopardized by the non-availability of City provided personnel, data, or equipment, the Company immediately shall notify the City in writing of the facts and circumstances that are contributing to such delay. Upon receipt of this notification, the City will advise the Company in writing of the action which will be taken to remedy the situation.
- (b) The Company shall advise the City in writing of an impending failure to meet established milestones or delivery dates based on the Company's failure to perform. Notice shall be provided as soon as the Company is aware of the situation; however, such notice shall not relieve the Company from any existing obligations regarding performance or delivery.

### E-3 Termination for Convenience [CAO-7/24/08]

The City shall have the right at any time to terminate further performance of this Contract, in whole or in part, for any reason whatsoever (including no reason). Such termination shall be effected by written notice from the City to the Company, specifying the extent and effective date of the termination. On the effective date of the termination, the Company shall terminate all work and take all reasonable actions to mitigate expenses. The Company shall submit a written request for incurred costs for services performed through the date of termination, and shall provide any substantiating documentation requested by the City. In the event of such termination, the City agrees to pay the Company within 30 days after receipt of a correct, adequately documented written request. The City's sole liability under this Paragraph is for payment of the costs for the services requested by the City and actually performed by the Company.

### E-4 Termination for Default [CAO-11/9/09] R

- (a) "Either party may, by written notice to the other party, terminate this contract in whole or in part if the other party fails to:"
  - (i) Perform the services under Section C (Statement of Work), including, if applicable, delivering any required software, goods, or documentation within the time specified in this Contract or any extension;
  - (ii) Make progress, so as to endanger performance of this Contract; or
  - (iii) Perform any of the other provisions of this Contract.

- (b) The City's right to terminate this Contract under (a)(ii) and (a)(iii) above, may be exercised if the Company does not cure such failure within ten calendar days (or more if authorized by the City) after notice, specifying the failure, is provided pursuant to the Paragraph D-1 (Legal Notice) of this Contract.
- (c) 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 30 days following commencement thereof.
- (d) The City retains the right to terminate for default immediately should the Company 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) In the event that the City fails to perform any of its obligations required under this Contract, and the City does not remedy the failure after notice thereof is provided to the City by the Company pursuant to Paragraph D-1 (Legal Notice) above, the Company shall have the right to treat the failure as a claim or dispute subject to the resolution provisions of Section E-1 (Disputes) of this Contract. During the period of such resolution, the Company shall continue with its performance under the Contract.

**E-5 Insurance:** [CAO-1/12/09] R

- (a) The Company shall procure and maintain, at its own expense, during the entire term of the Contract, the following coverage(s):
  - (i) Industrial/Workers' Compensation Insurance protecting the Company and the City from potential Company employee claims based upon job-related sickness, injury, or accident, during performance of this Contract, and must submit proof of such insurance on a certificate of insurance issued by an insurer qualified to underwrite workers' compensation insurance in the State of Nevada, in accordance with NRS 616A-616D, inclusive.
  - (ii) Commercial General Liability Insurance (bodily injury, property damage) with respect to the Company's agents assigned to the activities performed under this Contract in a policy limit of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate, for bodily injury (including death), personal injury and property damages. Such coverage shall be on an "occurrence" basis and not on a "claims made" basis, and be provided on either a Commercial General Liability or a Broad Form Comprehensive General Liability (including a Broad form CGL endorsement) insurance form. The form must be written on an ISO Form CG 00 01 10 01, or an equivalent form.
  - (iii) Commercial Automobile Liability Insurance of limits no less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage to include, but not be limited to, coverage against all insurance claims for injuries to persons or damages to property which may arise from services rendered by Company and any auto used to the performance of services under this Contract. The policy must insure all vehicles **owned** by the Company and include coverage for **hired** and **non-owned** vehicles.

If the services requested do not require the use of vehicle to perform, Commercial Automobile Liability Insurance requirements, as described in (iii) above, do not apply.

- (iv) Professional Liability Insurance (only if the contract is for professional services) of limits no less than \$1,000,000, combined single limit and in the aggregate. If coverage is on a "claims made" basis, then it must continue for a period of two years beyond the completion or termination of this Contract. Any retroactive coverage must coincide with or predate the beginning of this Contract and may not be changed without the consent of the City.
- (b) Company must provide required insurance documentation to Insurance Tracking Services (ITS) immediately upon notification of selection. Award is conditional upon verification by ITS that all insurance requirements have been met. All policy certificates and endorsements are required to be an agent authorized by that insurer and who is licensed by the State of Nevada. All required aggregate limits must be disclosed and

amounts entered on the certificate(s) of insurance. The certificates must identify the Contract number and the Contract description. The Company shall maintain coverage for the duration of this Contract, and any renewal periods, if applicable. The Company shall annually provide the ITS with a certificate of insurance as evidence that all insurance requirements have been met. The Company and/or insurance carrier shall provide the City with a 30 day advance notice of policy modification, cancellation or erosion of insurance limits, sent by certified mail "return receipt requested".

Submit certificates of insurance to:

City of Las Vegas  
C/O Insurance Tracking Services, Inc. (ITS)  
P.O. Box 21919  
Long Beach, CA 90801

Account Manager: Michael Palacios  
Phone: (888) 435-2955 ext. 503 • Fax: 562-435-2999  
Email: [michael.palacios@instracking.com](mailto:michael.palacios@instracking.com)

A certified, true and exact copy of each of the project specific insurance policies (including renewal policies) required under this Section E-5 shall be provided to the City if so requested.

- (c) The City, its officers and employees shall be named as additional insureds and such notation shall appear on the certificate of insurance furnished by the Company's insurance carrier. 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 carrier'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 City requires insurance carriers to maintain a Best's Key rating of A VII, or higher. The adequacy of the insurance supplied by the Company, including the rating and financial health of each insurance carrier providing coverage, is subject to the approval of the City.
- (d) All deductibles and self-insurance retentions shall be fully disclosed in the certificate of insurance. No deductible or self-insured retention may exceed \$10,000.00 without the prior written approval of the City.
- (e) If the Company fails to carry the required insurance, the City may (i) order the Company to stop further performance hereunder, declare the Company in breach, pursuant to Paragraph E-4, terminate the Contract if the breach is not remedied and, if permitted, assess liquidated damages, or (ii) purchase replacement insurance and withhold the costs or premium payments made from the payments due to the Company or charge the replacement insurance costs back to the Company.
- (f) Any subcontractor or subconsultant approved by the City shall be required to procure, maintain and submit proof of insurance to the City of the same insurance requirements as specified above, and as required in this paragraph.
- (g) The Company is encouraged to purchase any additional insurance as it deems necessary.
- (h) The Company is required to remedy all injuries to persons and damage or loss to any property of the City, caused in whole or in part by the Company, its subcontractors or anyone employed, directed or supervised by the Company.
- (i) The policies required in E-5 (a) i-iii shall have a Waiver of Subrogation provision endorsement in favor of the City of Las Vegas.

#### **E-6 Indemnification [CAO-7/24/08] R**

- (a) In addition to the insurance requirements set forth in Paragraph E-5 (Insurance), the Company shall protect, indemnify and hold harmless the City, its officers, employees, agents, and consultants (collectively herein the "City") harmless 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 City, as a result of, by reason of, or as a

consequence of, any act or omission, negligent or otherwise, on the part of the Company, its officers, employees, or agents in the performance of the terms, conditions and covenants of the Contract.

- (b) If a third party claim against the City for negligent performance by the Company is within the limits of its liability insurance and the insurance company has accepted the City's tender of defense, then the City will pay the Company what is due and owing to them, within the payment method specified in this Contract. However, if the claim is greater than the coverage amount, the City, for its protection, may retain any money due and owing the Company under this Contract, until the claim has been resolved. In the event no money is due and owing, the surety, if required, of the Company, may be held until all of the Liabilities have been settled and suitable evidence to that effect furnished to the City.

#### **E-7 Assignment [CAO-7/24/08]**

Neither party may assign their rights nor 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 [CAO-7/24/08]**

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 the City 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 City 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 [CAO-7/24/08]**

- (a) The City is 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. The Company shall pay all taxes, levies, duties and assessments of every nature and kind, which may be applicable to any work under this Contract. The Company shall make any and all payroll deductions required by law. The Company agrees to indemnify and hold the City harmless from any liability on account of any and all such taxes, levies, duties, assessments and deductions.
- (b) The Company in the performance of the obligations of this Contract shall comply with all applicable laws, rules and regulations of all governmental authorities having 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 [CAO-8/5/08]**

- (a) The Company agrees to maintain the financial books and records (including supporting documentation) pertaining to the performance of this Contract according to standard accounting principles and procedures. The books and records shall be maintained for a period of three (3) years after completion of this Contract, except that books and records which are the subject of an audit finding shall be retained for three (3) years after such finding has been resolved. If the Company goes out of business, the Company shall forward the books and records to the City to be retained by the City for the period of time required herein.
- (b) The City, or its designated representative(s), shall have the right to inspect and audit (including the right to copy and/or transcribe) the books and records of the Company pertaining to the performance of this Contract during normal business hours. The City will provide prior written notice to the Company of the audit and inspection. If the books and records are not located within Clark County, the Company agrees to deliver them to the City, or to the address, designated by the City, within Clark County. In lieu of such delivery, the Company may elect to reimburse the City for the cost of travel (including transportation, lodging, meals and other related expenses) to inspect and audit the books and records at the Company's office. If the books and records provided to the City are incomplete, the Company agrees to remedy the deficiency after written notice thereof from the City, and to reimburse the City for any additional costs associated therewith including, without limitation, having to revisit the Company's office. The Company's failure to remedy the deficiency shall

constitute a material breach of this Agreement. The City shall be entitled to its costs and reasonable attorney fees in enforcing the provisions of this Paragraph

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

#### **E-11 Independent Contractor** [CAO-7/24/08]

In the performance of services under this Contract, the Company and any other person employed by it shall be deemed to be an independent contractor and not an agent or employee of the City. The Company shall be liable for the actions of any person, organization or corporations with which it subcontracts to fulfill this Contract. The City shall hold the Company as the sole responsible party for the performance of this Contract. The Company shall maintain complete control over its employees and all of its subcontractors. Nothing contained in this contract or any subcontract awarded by the Company shall create a partnership, joint venture or agency with the City. Neither party shall have the right to obligate or bind the other party in any manner to any third party.

#### **E-12 Severability** [CAO-7/24/08]

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.

#### **E-13 Conforming Services** [CAO-7/24/08]

The services performed under this Contract shall conform in all respects with the requirements set forth in this Contract. The Company shall furnish the City with sufficient data and information needed to determine if the services performed conform to all the requirements of this Contract.

#### **E-14 Modification/Amendment** [CAO-7/24/08]

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 Entire Agreement, Section and Paragraph Headings** [CAO-7/24/08]

- (a) This Contract represents the entire and integrated agreement between the City and the Company. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Contract.
- (b) 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.

#### **E-16 Conflict of Interest (City Officials)** [CAO-7/24/08]

- (a) An official of the City, who is authorized in such capacity and on behalf of the City 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 City, who is authorized in such capacity and on behalf of the City 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 hereof, 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 City relating to this Contract. Notwithstanding any other provision of this Contract, if such interest becomes known, the City may immediately terminate this Contract for default or convenience, based on the culpability of the parties.

#### **E-17 Public Records** [CAO-7/24/08]

The City is a public agency as defined by state law. As such, it is subject to the Nevada Public Records Law (Chapter 239 of the Nevada Revised Statutes). The City's Records are public records, which are subject to inspection and copying by any person (unless declared by law to be confidential). This Contract, all supporting documents, and proposals submitted under the original Request for Proposal are deemed to be public records.

#### **E-18 Confidentiality – City Information** [CAO-7/24/08]

- (a) All information, including but not limited to, oral statements, computer files, databases, and other material or data supplied to the Company is confidential and privileged. The Company shall not disclose this information, nor allow to be disclosed to any person or entity without the express prior written consent of the City. The Company 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 the City is obtained. Upon request by the City, The Company shall promptly return to the City all confidential information supplied by the City, 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 City, then in the public domain; (ii) the information is known to the Company prior to obtaining the same from the City; (iii) the information is obtained by the Company from a third party who did not receive the same directly or indirectly from the City; or (iv) the information is subpoenaed by court order or other legal process, but in such event, the Company shall notify the City. In such event the City, in its sole discretion, may seek to quash such demand.
- (c) The obligations of confidentiality shall survive the termination of this Contract.

#### **E-19 Marketing Restrictions** [CAO-7/24/08]

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

#### **E-20 Limitation of Funding** [CAO-7/24/08]

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

#### **E-21 Changes – Fixed-Price Services** [CAO-7/24/08]

- (a) The City may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Contract in any one or more of the following:
  - (i) Description of services to be performed.
  - (ii) Time of performance (i.e., hours of the day, days of the week, etc.).
  - (iii) Place of performance of the services.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, the City shall make an equitable adjustment in the Contract price, the delivery schedule, or both, and shall modify the Contract.

- (c) The Company must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order; however, if the City decides that the facts justify, the City may receive and act upon a proposal submitted before final payment of the Contract.
- (d) If the Company's proposal includes the cost of property made obsolete or excess by the change, the City shall have the right to prescribe the manner of the disposition of the property.
- (e) Failure to agree to any adjustment shall be a dispute under Paragraph E-1 (Disputes); however, nothing in this clause shall excuse the Company from proceeding with the Contract as changed.

The Company shall provide current, complete, and accurate documentation to the City in support of any equitable adjustment. Failure to provide adequate documentation, within a reasonable time after a request from the City, will be deemed a waiver of the Company's right to dispute the equitable adjustment proposed by the City, where such equitable adjustment has a reasonable basis at the time it is determined by the City.

**E-22 Counterpart Signatures** [CAO-9/24/08]

This Contract may be executed in counterparts, all such counterparts will constitute the same contract 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.

**SECTION F – List of Attachments/Exhibits**

The following attachments are hereby incorporated into this contract:

| <u>Identifier</u> | <u>Title/Text Reference</u> | <u>Date</u> | <u>Pages</u> |
|-------------------|-----------------------------|-------------|--------------|
| None              |                             |             |              |

**The balance of this page intentionally left blank.**

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

**CITY OF LAS VEGAS**

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KATHLEEN C. RAINEY, Manager  
Purchasing and Contracts

"City"

ATTEST:

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BEVERLY K. BRIDGES, MMC  
City Clerk

APPROVED AS TO FORM:

*Robert S. Sylvain* 6-2-10  
Deputy City Attorney Date

**HR SIMPLIFIED, INC.**

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Rudy Allebach, Vice President, Customer Service  
"Company"