

CONTRACT FOR SEWER FLOW MONITOR 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 ADS Environmental Services (hereinafter the "Company") having its principal office located at 4940 Research Drive, Huntsville, AL 35805.

SECTION A – Contract Form

The subject matter of this Contract is sewer monitor equipment, monitoring, servicing, web-based data access and reporting.

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) "*Company*" means the individual, partnership, or corporation responsible for the performance of services under this Contract.
- (e) "*Company Representative*" means the individual authorized to act on behalf of the Company regarding routine matters arising under or relating to this Contract.
- (f) "*Contract*" means this document, consisting of Sections A through F, which is binding and effective only upon execution by the City.
- (g) "*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.
- (h) "*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.
- (i) "*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 firm fixed price. This is a Non-Exclusive Contract.

B-3 Prices/Costs

(a) The City will pay the following amounts:

<u>Description</u>	<u>Amount</u>
Flow Meter Mobilization/Installation	\$1500/site x 30 sites = \$45,000*
• Mobilization of crews and equipment	

- Equipment assessment
- Site investigations
- Traffic Control Plans
- Flow Meter installation and calibration
- Incorporation of City of LV data to IntelliServe
- On-Site Training

Monthly Maintenance and access to data via IntelliServe \$607.50/per meter per month*

- Monthly field maintenance
- On-line data reporting via IntelliServe including finalized data
- Labor to maintain 90% final data
- All equipment and spare parts to maintain 90% final data
- Software
- Monthly wireless telemetry
- Mobilization
- Traffic Control Plans

*Installation and Maintenance price shall apply to any additional or relocated sites required outside of the 30 sites identified in this Agreement.

Meter removal and reinstallation	\$800 per site (requires 2 week notice)
Emergency removal and reinstallation	\$1200 per site (requires 48 hour notice)

(b) Payment Schedule. The Company will invoice the City in accordance with the following payment schedule:

Flow Meter Installation/Mobilization:	\$22,500 30 days after notice to proceed \$22,500 upon completion of installation
Monthly Maintenance and access to data Via IntelliServe	Monthly by the 10 th of the month for the previous month.

B-4 Invoices

(a) The Company shall submit an invoice to the City in accordance with the payment schedule set forth in Paragraph B-3 (Prices/Costs) above. All invoices should identify the following items:

- (i) the date of the invoice;
- (ii) the Contract Item against which charges are made;
- (iii) performance dates covered;
- (iv) the associated purchase order number;

Upon reconciliation of all errors, corrections, credits, and disputes, payment to the Company will be made in full within 30 calendar days. **Invoices received without a valid purchase order number will be returned unpaid.** The Company shall submit an original invoice to:

City of Las Vegas Public Works
Attention: Joe Pena
731 S. 4th Street
Las Vegas, NV 89101

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

B-5 Performance Period/Delivery Schedule

- (a) The performance period commences from June 16, 2010 for two years with three 1 year options to renew.
- (b) Delivery Schedule/Deliverables. The Company shall provide services in accordance with the following delivery schedule:

Task	Deliverable or Milestone	Due Date
1	Safety Plan • Work Zone Safety Plan • Barricade Plan – Site Specific	Required with RFP submittal. Within two (2) weeks after notice to proceed. Two (2) weeks prior to scheduled installation.
2	Flow Monitor Equipment • No deliverables	
3	Installation • Installation Plan – published to the Company’s website • First Installation • Calibration Procedure	Fifteen (15) days prior to first installation. Within forty-five (45) days after notice to proceed. Fifteen (15) days prior to first installation.
4	Software and Training • Website Access and Development (if necessary) • Software Training Outline • Training	Within thirty (30) days of notice to proceed. Within two (2) weeks after notice to proceed Within thirty (30) days after notice to proceed
5	Services and Maintenance • Names and contact information of Project Manager and Field Manager including the names of manufacturer certified personnel.	Within two (2) weeks after notice to proceed.
6	Incorporation of City of Las Vegas Data into database	Within thirty (30) days after receipt from City of Las Vegas

SECTION C – Statement of Work

C-1 Scope of Services

Safety

- (i) Company to submit a copy of their Workplace Safety Programs for the City's review. Programs may include but are not limited to the following:
 - Hazard Communication Program including all material safety data sheets for any chemicals being utilized during the Work.
 - Confined Space Entry Program
 - All applicable licenses/certifications required to perform the tasks required in the Scope of Work.
- (ii) The Company shall submit a Work Zone Safety Plan complying with all applicable laws, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property from damage, injury or loss including all applicable Occupational Safety and Health regulations. The Company shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with this work.
- (iii) The Company shall submit a Barricading Plan for each site that meets the current requirements of the latest edition of the Manual for Uniform Traffic Control Devices. The plan shall be reviewed and approved by the City's Traffic Engineering Division.

Barricade Plans may also require approval from Clark County Department of Development Services or City of North Las Vegas Traffic Operations. Various locations may require additional approval by the Nevada Department of Transportation (NDOT). Please see Table II-A for locations requiring approval from other jurisdictions and NDOT.

* Refer to information packet for all flow monitor site locations

Table II-A

SITE	Clark County	City of North Las Vegas	NDOT
RIOVISTA_LV12	✓		
DURANGO_21	✓		
WSAHARA_LV15	✓		
GOWAN_LV14	✓		
LAKEMEAD_18	✓		
EASAHARA_LV3	✓		✓
SAHARA_23	✓		✓
WASH_02090721		✓	
PECOS & OWENS		✓	
CHARLESTON_28			✓
RANCHO_24			✓

Please note that on high speed multi-lane roadways of 45 M.P.H. and above require an attenuator or if Work is performed within 15 feet of the right-of-way. On roadways of 35 M.P.H. or greater, an arrow board must be utilized.

The Work may require lane closure for a buffer space for workers during off-peak hours. On arterial roads such as Sahara Avenue, Charleston Boulevard and Rancho Road the Work may require off-peak hours at night or on weekends. Buffer spaces (lane closures) are required when the working in median areas.

- (iv) The Company shall take all reasonable precautions for the safety of all employees on the Work and all other persons who may be affected thereby.
- (v) Company is responsible to ensure their employees have received adequate safety training specific to the safety programs listed above and, if requested, provide documentation of such training.

Flow Monitoring Equipment

- (i) All monitors shall be self powered (ie. battery powered).
- (ii) The Company will be required to evaluate the current flow monitoring locations to select the most appropriate flow monitor for each site condition. It is the Company's sole responsibility to determine the appropriate flow monitor device required at each site in order to meet the requirements set forth in the contract. The Company shall assume ownership of existing flow monitors and may use existing flow monitors if the Company so desires. The Company is solely responsible for the assessment of the condition of the new and existing flow monitors and equipment to ensure all equipment is functioning properly in order to meet minimum criteria of this proposal.
- (iii) The flow monitor shall accurately and reliably measure the full range of flows passing through the flow monitoring site. Flow monitors shall be area-velocity flow capable of measuring depth and velocity, and capable of measuring flow under surcharged conditions. The Company shall ensure that the flow monitor equipment maintains accurate flow measurements under all conditions to which the equipment may be exposed. The accuracy of the depth and velocity sensors shall be within 1% for depth and 2% for velocity.
- (iv) All equipment shall be owned, maintained and serviced by the Company; only the flow data generated by the flow monitor equipment shall become property of the City of Las Vegas.
- (v) Flow data shall be recorded in 15-minute intervals, and uploaded to a service provider server at minimum 24-hour intervals. The City will have necessary securities/permissions to access and retrieve flow monitoring data at any time. The flow data and any associated web-based databases or auxiliary data storage components will not be stored on a City server.
- (vi) Software shall log all service, maintenance and calibration activity. The log file shall provide date of each log entry with twenty-four (24) hour time of day stamp. at a minimum the log file shall also record stop and start times and battery power levels. Log files shall be kept on the server provided by the Company and available for viewing by City staff via the internet.
- (vii) The Company shall submit a list of flow meters type(s) proposed to be used on the project to City Staff. The list shall include make and model as well as the names of service technicians certified to perform installation, calibration and maintenance on all flow meter equipment being proposed as part of this project.

Installation

- (i) Prior to installation, each site shall be inspected to determine hydraulic suitability. This may require descending into the manhole to ensure adequate inspection. There may be cases where the Company may recommend that the designated site be changed to take advantage of more favorable hydraulics at upstream or downstream locations, provided the drainage basins remain approximately the same.
 - A. The Company is responsible for obtaining all permits required for the installation, operation and maintenance of the flow monitors from all federal, state and local agencies. The Company shall comply with all federal, state and local agency requirements for the temporary diversion and control of traffic required for the installation, operation and maintenance of the flow monitors.

- B. The Company shall submit an Installation Plan to the City a minimum of fifteen (15) days prior to the start of installation to coordinate access to the sites and for possible flow diversion, if available. The City may specify the schedule and the day or time of day of the flow monitor installations and calibrations. The Installation Plan shall include:
 - a. Monitor type/model proposed for each location
 - b. Any recommended site relocations
 - c. Schedule of installations
 - d. Sample site document for review as required in Section B, above.
- (ii) The Company shall provide a Site Document that includes the pertinent installation information such as the flow meter site location, meter type, installation date and configuration information, etc. The Company shall submit the Site Document and other forms to the City for prior approval. The site condition and installation shall also be documented with digital photos. All site documents shall be available electronically through the web for viewing and downloading by City staff.
- (iii) The Company shall prepare and submit a procedure for performing field calibrations. The field calibration procedure shall demonstrate that all flow meters are installed and calibrated so that depth, velocity, and flow rate are all within the accuracy identified in Service and Maintenance, Section E.
- (iv) There are two (2) monitor site locations not under the jurisdiction of the City of Las Vegas. These sites are the Pecos & Owens site belonging to the City of North Las Vegas and the Durango_21 site belonging to the Clark County Water Reclamation District. The Company is responsible for obtaining all permits, permissions, licenses and equipment required by the corresponding agencies to enter sanitary sewer manholes and/or vaults for the installation and maintenance of the sewer monitor equipment.

Software and Training

- (i) Software shall be internet web-based, requiring only Microsoft Internet Explorer and Active X on a City desktop or laptop computer and an Internet connection that provides City staff the ability to:
 - A. View and download all data in graphical and tabular format for all flow meters with user-defined intervals and with different data measurements including flow rate, depth, and velocity, etc. Graphical formats shall include Scatter Graphs and Hydrographs.
 - B. Make minor data changes to data to create reports, charts, graphs, etc. without deleting any original data points.
 - C. View raw, un-edited, non-processed data collected directly from flow meters.
 - D. View monitor log history for each flow meter.
 - E. View monitor maintenance and calibration reports of all monitors.
- (ii) The Company shall provide training in the use of the software necessary for viewing and analyzing data collected from the flow meters. The Company is required to submit an outline of the training and time required to complete the training.
- (iii) The Company shall provide the City with all licenses required to use the software in perpetuity at no additional cost.

- (iv). Company shall provide a system that allows authorized City staff to view, download and print flow meter data at any time. Downloads shall be at a minimum Microsoft Excel 2003 or greater compatible.
- (v) Software shall allow remote internet access to the flow monitoring data 24 hours a day, 7 days a week, 365 days a year.
- (vi) The Company's website shall include a map of the City of Las Vegas showing all flow meter locations and provide a quick view of the most current flow level, velocity and battery power level at each monitor location. The map shall also color code each flow meter point indicating operating, non-operating, surcharged, and off-line. The flow meter points on the map shall be capable of one click (hot link) access to the flow meters most recent data and reports.
- (vii) The Company shall provide technical support via the internet or telephone during regular business hours.

Service and Maintenance

- (i) Company shall provide a dedicated project manager and a dedicated field manager for activities associated with this scope of work. The Project Manager shall manage the overall project, scope, budget and schedule, and will be the single point of contact for all project issues. The Project Manager will oversee the field manager, data analysis, data management, and other associated field work.
- (ii) The field manager shall oversee the scheduling and work efforts of the field crews. The field manager shall also maintain records of all field activities (e.g. calibrations, site investigations, installations, repairs, and replacement, etc.) and flow monitor failures. All field activity records shall be made available for viewing by City staff via the Company maintained website. The field manager shall be the single point of contact for field issues.
- (iii) Flows shall be sampled in fifteen (15) minute intervals, and uploaded at a minimum 24-hour intervals to the Company's secure internet server with the ability to upload on demand.
- (iv) The Company shall operate and maintain flow measurement equipment such that the flow data from each site is reliable, consistent and useful at a minimum 90% of the time. Any or all monitoring locations that do not individually achieve 90% uptime with reliable and consistent data shall not be billed or payable for that billing cycle. 90% uptime shall be based upon finalized data. No site shall be down for more than 72 hours.
- (v) The Company shall implement a calibration program, document and maintain accurate readings to within 5% of actual flow and provide 90% operational uptime of each monitor, 90% uptime shall be based upon finalized data. Flow monitors shall be calibrated at intervals necessary to provide minimum uptime and evaluation requirements. Calibration shall be performed by manufacturer certified technicians for the specific model being calibrated. The City reserves the right to accompany the Company to observe the calibration procedures used to maintain the flow monitors. The Company shall coordinate the observation of the calibration procedure with City staff upon receipt of a written or oral request.
- (vi) The Company shall monitor the data being transmitted from the flow monitor sites and shall carry out a diagnostic inspection of the data on a daily basis to ensure all flow monitors are connected to the monitoring system and that the data is reliable and consistent. Any flow monitor problems found shall be corrected within seventy-two (72) hours.

(vii) Historical flow data of all sites shall be provided to the Company by City staff. Historical data of all sites shall be uploaded to the Company's server and made available through the Company's website and provide the same viewing reporting capabilities as the flow meter data obtained through the Company's flow meters.

(viii) The City of Las Vegas reserves the right to add or relocate any site upon written request. Additional sites requested by the City of Las Vegas would be at the same per site cost and subject to the same terms agreed upon with this contract.

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: ADS LLC
 4940 Research Drive
 Huntsville, AL 35805
 Fax: (256) 430-3366

(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 Joe Pena 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 Neil Volk 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.

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]

- (a) The City may, by written notice of default to the Company, terminate this Contract in whole or in part if the Company 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) If the City terminates this Contract for default in whole or in part, it may acquire, under reasonable terms and in the manner the City considers appropriate, services or goods similar to those terminated, and the Company shall be liable to the City for any excess costs for those services or goods. However, the Company shall continue the work not terminated.
- (d) The Company 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 the Company. These circumstances are limited to such causes as (1) acts of God or of the public enemy, (2) acts of governmental bodies, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) labor strikes, (8) freight embargoes, or (9) unusually severe weather. The time of performance of the Company'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 60 days. If the foregoing circumstances result in a delay greater than 60 days, the City 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 30 days following commencement thereof.

- (f) 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.
- (g) 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 E-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-3 (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]

- (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 to the City 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. If Company is a sole proprietor, it will be required to submit an affidavit indicating that the company has elected not to be included in the terms, conditions and provisions of NRS 616A-616D, inclusive, and is otherwise in compliance with those terms, conditions and provisions.

Sole Proprietorships must execute the Affidavit - Declaration of Sole Proprietor, Attachment 1 in lieu of providing said insurance.

- (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) The Company shall deliver certificate(s) of insurance in ACORD form, and endorsements indicating that such coverage required by this Contract is in effect shall be delivered to Insurance Tracking Services, Inc. (ITS), the City's representatives, within three days after the Award Date of this Contract, or before work commences, whichever is earliest. 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 City's representative with a

certificate of insurance as evidence that all insurance requirements have been met. The Company and/or insurance carrier shall provide the City's Representative 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:

Mr. Michael Palacios
Insurance Tracking Services, Inc. (ITS)
110 West Ocean Boulevard, Suite 602
Long Beach, California 90802
Phone: (888) 435-2955 ext. 503 • Fax: 562-435-2999
Email: michael@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]

- (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, regardless of whether the Liabilities were caused in part by the City.
- (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.

- (c) It is expressly agreed that the Company shall defend the City, against the Liabilities and in the event that the Company fails to do so, the City 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 the Company.

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.

E-23 Hazardous Material

If the Company encounters on the project site material reasonably believed to be asbestos, lead, or polychlorinated biphenyl (PCB), the Company shall immediately stop work in the area affected and give notice of the condition to the City. Work in the affected area shall not be resumed without written direction by the City.

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>
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None

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

CITY OF LAS VEGAS

KATHLEEN C. RAINEY, Manager
Purchasing and Contracts

“City”

ATTEST:

BEVERLY K. BRIDGES, MMC
City Clerk

Date

APPROVED AS TO FORM:

Deputy City Attorney

Date

ADS ENVIRONMENTAL SERVICES

JOSEPH GOUSTIN, Treasurer

“Company”