

SETTLEMENT AGREEMENT FOR THE DESERT NATURE PRESERVE PROJECT

This Settlement Agreement ("Agreement") is made and entered into this 7TH day of July, 2010 by and between the City of Las Vegas, a municipal corporation in the State of Nevada (the "City") and Wiser Construction, Limited-Liability Company, a Nevada limited liability company ("Wiser"). The City and Wiser are individually or collectively referred to herein as the "Settling Party" or "Settling Parties."

RECITALS

WHEREAS, on, the City and Wiser entered into a contract ("Construction Contract") providing for the construction of a project known as the Desert Nature Preserve Project 07.15341.17-TF, which included construction of a trail and associated improvements (the "Project"), and commonly known as the Hualapai Canyon Trail Head Project; and

WHEREAS, the date of Substantial Completion of the Project was February 4, 2010; and

WHEREAS, the City and Wiser, through their respective authorized representatives, have participated in arms length negotiations related to any and all known and unknown current or future construction issues, disputes, and claims as they relate to the Project; and

WHEREAS, without any admission of liability, the Settling Parties now desire to settle any and all known and unknown current or future construction issues, disputes, and claims as they relate to the Project, subject to the terms and conditions set forth below; and

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

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

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

ARTICLE I SETTLEMENT AMOUNT

The Settling Parties hereby agree that the City will issue a change order authorizing payment to Wiser in the amount of One Hundred and Eight Thousand Four Hundred Eighteen Dollars and 93/100 Cents (\$108,418.93) (the "Settlement Amount") (which includes the payment of any interest pursuant to NRS 338.010 et. seq.) as the final and complete payment for any and all known and unknown current or future construction issues, disputes, and claims as they relate to the Project, including a claim for additional compensation for extra earthwork related items of work.

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

ARTICLE II RELEASE

In consideration for the City paying the Settlement Amount, Wiser hereby releases the City, its officers, employees, agents, representatives and consultants from any and all known and unknown current or future construction issues, disputes, and claims as they relate to the Project (including any and all additional costs related to change orders or requests for proposals) and any and all damages incurred (including delay damages) in connection therewith.

Wiser hereby represents that its counsel of record has explained the effect of the execution of this Agreement and the release of all known and unknown current or future construction issues, disputes, and claims as they relate to the Project, as provided for herein and, based upon that explanation, Wiser understands and acknowledges the legal significance and the consequences of the construction issues, disputes, and claims being released by this Agreement.

ARTICLE III REPRESENTATION AND WARRANTY

The Parties hereby represent and warrant they have not heretofore assigned or transferred, or purported to assign or transfer, to any person not a party hereto, claims or rights as to any of the matters released and referenced herein, or any part or portion thereof. The Parties further agree to indemnify and hold each other, their officers, employers, agents, representatives, and consultants harmless from and against any claim, demand, damage, liability, accounting, reckoning, obligations, costs, expense, lien, action or cause of action (including the payment of attorneys' fees and costs actually incurred, whether or not litigation has been commenced), arising out of any such assignment or transfer in violation of this representation and warranty. Wiser further agrees to defend, indemnify and hold the City or its officers harmless from any claims or causes of action, known or unknown, from Wiser's subcontractors of any tier, and material suppliers in the past or in the future related to the settled construction issues, disputes, and claims in this Agreement. The City agrees to notify Wiser immediately of any claims or causes of action, which are served or received by the City. Wiser's obligation to defend the City commences once notified by the City or once it is notified by the claimant or litigant.

ARTICLE IV NO ADMISSION OF LIABILITY

It is further understood that this Agreement is a compromise of any and all known and unknown current or future construction issues, disputes, and claims as they relate to the Project existing between the Settling Parties and the execution of this Agreement is not to be construed as an admission of liability on the part of Settling Parties and the Settling Parties deny liability therefore and that this Agreement intends merely to avoid the cost of further litigation and buy its peace.

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**ARTICLE V
COVENANT NOT TO SUE**

The Parties covenant and agree they will forever refrain from instituting, prosecuting, maintaining, proceeding on or advising a lawsuit or arbitration action be commenced against the other which arises out of, or is or may be, in whole or in part, based upon, related to, or connected to all known and unknown current or future construction issues, disputes, and claims as they relate to the Project

**ARTICLE VI
MISCELLANEOUS REPRESENTATIONS AND WARRANTIES**

1. The Settling parties acknowledge that this Agreement represents a good faith settlement between Wiser and the City, and is intended to bar all future claims by the Parties that are related to the Project.
2. Each Settling Party has received independent legal advice from its attorney with respect to the advisability of making the settlement provided for herein and the execution of this Agreement.
3. Neither Settling Party, nor any officer, agent, council member, partner, employee, representative, trustee or attorney of or for any Settling Party, has made any statement or representation to the other Settling Party regarding any fact relied upon entering into this Agreement and each Settling Party is not relying upon any statement, representation or promise of the other Settling Party, and officer, agent, council member, partner, employee, representative, trustee or attorney of the Settling party in executing this Agreement, or in making the settlement provided for herein, except as expressly stated in this Agreement.
4. Each Settling Party to this Agreement has made such investigations of the facts pertaining to this Agreement and the settlement set forth herein, and all of the matters pertaining thereto, as it deems necessary.
5. Each Settling Party, or responsible representative thereof, has read this Agreement and understands the contents thereof. The persons executing this Agreement on behalf of the Settling Parties are empowered to do so and thereby bind the Settling Party.
6. In entering into this Agreement and the settlement provided for herein, each Settling Party assumes the risk of any misrepresentation or mistake. This Agreement is intended to be, and hereby is, final and binding upon the Settling Parties, regardless of any claims of misrepresentations, promise made without intent to perform, concealment of act, mistake of fact or law, or of any other circumstance whatsoever.
7. Each Settling Party warrants and represents that (i) this Agreement in its reduction to final written form is a result of extensive good faith arms length negotiations between the Settling Parties through their respective representatives; (ii) said representatives have carefully reviewed and examined this Agreement for execution by the Settling Parties, or any of them; and (iii) any statute or rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Agreement.

8. The prevailing party in any action brought to enforce the terms of this Agreement shall be entitled to its reasonable attorneys' fees and costs incurred in enforcing this Agreement.
9. This Agreement shall be deemed to have been executed and delivered within the State of Nevada, and the rights and obligations of the Settling Parties hereto shall be construed and enforced in accordance with and governed by the laws of the State of Nevada. Claims to enforce this Agreement are subject to arbitration in accordance with the rules of the American Arbitration Association.
10. This Agreement is the entire agreement between the Settling Parties with respect to the Project, and supersedes all prior and contemporaneous oral and written agreements and discussions.
11. This Agreement is binding upon and shall insure to the benefit of the Settling Parties hereto and each of their present and former respective heirs, successors in interest, agents, employees, servants, principals, council members, assigns, assignors, executors, guarantors, attorney's associates, affiliates and/or any other person or entity otherwise related or connected to the Parties to this Agreement.
12. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable for whatever reason, the remaining provisions not so declared shall, nevertheless, continue in full force and effect, without being impaired in any manner whatsoever.
13. Counterparts; Electronic Delivery. This Agreement may be executed in counterparts, all such counterparts will constitute the same Agreement and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by facsimile or e-mail and upon receipt will be deemed originals and binding upon the Parties hereto, regardless of whether originals are delivered thereafter.

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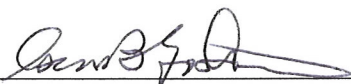
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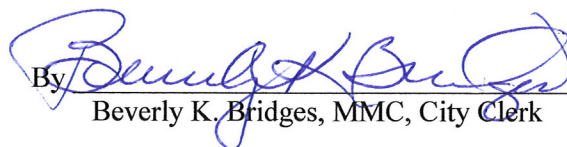
14. The Settling Parties hereby certify that each has read all of the Agreement and fully understand the same.

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

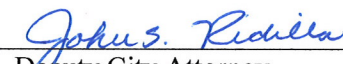
CITY OF LAS VEGAS

By: 
Oscar B. Goodman, Mayor

ATTEST:

By:  7/9/10
Beverly K. Bridges, MMC, City Clerk Date

APPROVED AS TO FORM:

By:  6/14/10
Deputy City Attorney Date
John S. Ridilla
Deputy City Attorney

**WISER CONSTRUCTION
LIMITED-LIABILITY COMPANY**

By: 

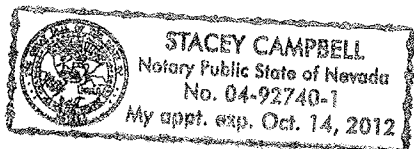
Name: Eric Hovde

Title: Project Manager

Notary Acknowledgements on Next Page

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

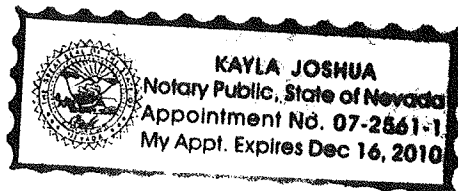
On this 9th day of July, 2010, before me, the undersigned Notary Public in and for said County and State, appeared Oscar B. Goodman, as Mayor of the City of Las Vegas, known to me to be the person who executed the above and foregoing instrument, and who acknowledged to me that he did so freely and voluntarily and for the purposes mentioned therein.



Stacey L Campbell
Notary Public

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

On this 14 day of June, 2010, before me, the undersigned Notary Public in and for said County and State, appeared Eric Haudek, _____ of Wiser Construction, Limited-Liability Company, known to me to be the person who executed the above and foregoing instrument, and who acknowledged to me that he did so freely and voluntarily and for the purposes mentioned therein.



Kayla Joshua
Notary Public