

CONTRACT MODIFICATION No. 1
SOIL TRANSPORTATION AND STOCKPILE MANAGEMENT

THIS MODIFICATION No. 1 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 LAS VEGAS PAVING CORPORATION (hereinafter the "Company"), having its principal office at 4420 South Decatur Boulevard, Las Vegas, Nevada 89103.

RECITALS

WHEREAS, the parties hereto entered into the Soil Transportation and Stockpile Management contract dated July 23, 2007, and

WHEREAS, the parties hereto desire to further modify the Contract to exercise an annual renewal option and to incorporate Modifications into an Amended and Restated Contract set forth below, and

WHEREAS, with the execution of Modification No. 1 by the parties hereto, the Amended and Restated Contract set forth below will replace and supplant the Contract dated July 23, 2007,

NOW, THEREFORE, in consideration of the foregoing and other and good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree that the Contract shall be amended and restated in its entirety to read as follows:

The Contract between the City and the Company dated July 23, 2007 is hereby modified as shown in the Amended and Restated Contract attached and dated the same as this modification:

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IN WITNESS WHEREOF, the parties hereto have caused this Modification No. 1 to be executed by their duly authorized representatives.

CITY OF LAS VEGAS

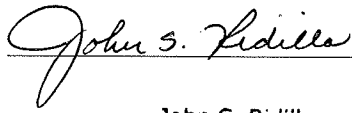
KATHLEEN C. RAINEY, Manager
Purchasing and Contracts

"City"

ATTEST:

BEVERLY K. BRIDGES, CMC
City Clerk

APPROVED AS TO FORM:

 _____
Date
John S. Ridilla
Deputy City Attorney

LAS VEGAS PAVING CORPORATION

DAVID C. BREAUULT, Environmental Manager

"Company"

CONTRACT FOR SOIL TRANSPORTATION AND STOCKPILE MANAGEMENT SERVICES FOR SYMPHONY PARK

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 LAS VEGAS PAVING CORPORATION (hereinafter the "Company") a domestic corporation having its principal office located at 4420 South Decatur Boulevard, Las Vegas, Nevada 89103.

SECTION A – Contract Form

The subject matter of this Contract is the management and transportation of contaminated soil stockpiles at Symphony Park.

SECTION B – Basic Terms

B-1 Definitions and Abbreviations

The following definitions apply to this Contract:

- (i) "ANSI" means the American National Standards Institute
- (ii) "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.
- (iii) "CEM" means Certified Environmental Manager
- (iv) "CFR" means the Code of Federal Regulations
- (v) "City" means the City of Las Vegas.
- (vi) "City Council" means the governing body of the City of Las Vegas.
- (vii) "Company" means the individual, partnership, or corporation responsible for the performance of services under this Contract.
- (viii) "Company Representative" means the individual authorized to act on behalf of the Company regarding routine matters arising under or relating to this Contract.
- (ix) "Contract" means this document, consisting of Sections A through E, which is binding and effective only upon execution by the City and the Company.
- (x) "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.
- (xi) "EPA" means the Environmental Protection Agency (USA)
- (xii) "NDEP" means the Nevada Division of Environmental Protection
- (xiii) "NDOT" means the Nevada Department of Transportation
- (xiv) "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.
- (xv) "NPDES" means the National Pollutant Discharge Elimination System.
- (xvi) "NRS" means Nevada Revised Statutes
- (xvii) "OSHA" means Occupational Safety and Health Standards
- (xviii) "PCB" means polychlorinated biphenyls
- (xix) "Project Manager" means the City representative who is responsible for the coordination of Contract performance between the City and the Company.
- (xx) "RCRA" means Resource Conservation and Recovery Act

- (xxi) "SVOC" means semi-volatile organic compound
- (xxii) "SWMP" means Final Soil and Groundwater Management Plan , March 21, 2007, Kleinfelder, Inc.
- (xxiii) "SWPPP" means the Storm Water Pollution Prevention Plan
- (xxiv) "TPH" means total petroleum hydrocarbon
- (xxv) "UPRR" means Union Pacific Railroad
- (xxvi) "VOC" means volatile organic compound

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 Company for actual materials handled or days worked at the following unit prices:

Item No.	Description	UOM	Price
220.01	Prepare Containment Area	Square Yard	\$1.04
220.03	Stockpile Management	Day	\$748.95
220.04	Visqueen Cover	Square Yard	\$.28
230.01	Contaminated Soil Transportation	Ton	\$2.74
230.02	Hazardous Soil Transportation	Ton	\$29.70
637.01a	Dust Control – Regular Time	Hour	\$135.88
637.01b	Dust Control – Overtime	Hour	\$157.62
637.02	Storm Water Pollution Prevention	Not to Exceed	\$3,925.52

- (b) Method of Measurement

The item "Prepare Containment Area" shall be measured on a square yard basis as measured by the inside perimeter of the containment berm. The item "Stockpile Management" shall be measured per calendar day per containment area and verified by the Project Manager. The item "Visqueen Cover" shall be measured per square yard as determined by the Project Manager per event as defined in Section C-3. Maintenance of the Visqueen cover during any period of inactivity will be incidental to the Visqueen cover item, and will not be measured or classified as a covering event. The item "Contaminated Soil Transportation" shall be measured per ton documented by weigh tickets for each load transported to the remediation facility. The item "Hazardous Soil Transportation" shall be measured per ton documented by weigh tickets for each load transported to the U.S. Ecology facility. The item "Dust Control" shall be measured per hour and verified by the Project Manager. The item "Storm Water Pollution Prevention" shall be a not to exceed expense reimbursement amount to be billed as needed.

The accepted quantity of Prepare Containment Area will be paid for at the contract unit price per square yard and shall include mobilization/demobilization of all equipment and all labor, equipment, and materials to prepare and maintain the integrity of the containment area during use, and removal of the containment area once its location is no longer required. No compensation will be made for any existing containment areas. Expansion of an existing containment area will be paid for at the unit rate for the net increase in area added to the containment area as determined by the Project Manager. The Company will be compensated for containment area relocation as if a new containment area is prepared.

The accepted quantity of Stockpile Management will be paid at the contract unit price per calendar day, shall consist of mobilization/demobilization of all equipment and all labor, equipment and materials to manage the soils in an existing containment area by adding or moving soils to existing stockpiles during excavation activities, and shall include a minimum of one front end loader and operator per containment area. If future work activities at Symphony Park require the concurrent use of multiple containment areas and each is managed by a separate loader and operator, this item will be measured per day per containment area. No additional compensation will be made for equipment stored on-site.

The accepted quantity of Visqueen Cover will be paid at the contract unit price per square yard and shall include all labor, tools, equipment and materials as specified herein and as required by the Project Manager.

The accepted quantity of Contaminated Soil Transportation will be paid for at the contract unit price per ton and shall include all mobilization/demobilization and labor, tools and equipment as specified herein and as required by the Project Manager to load designated material in haul trucks, transport, and offload the material at the Las Vegas Paving Soil Remediation Facility.

The accepted quantity of Hazardous Soil Transportation will be paid for at the contract unit price per ton and shall include all mobilization/demobilization and labor, tools, equipment and material to load, transport and unload material at the U.S. Ecology facility in Beatty, Nevada. Equipment decontamination is considered incidental to the transportation bid items and will not be compensated directly.

The accepted quantity of Dust Control – Regular Time will be paid at the contract unit price per hour and shall include mobilization/demobilization of all equipment and labor, a minimum of one water truck and operator, and water for dust control purposes during soil handling. On days with stockpiling or hauling activity, the Company shall maintain a water truck and operator at the containment area during working hours to apply water as needed to control dust.

The accepted quantity of Dust Control – Overtime will be paid at the contract unit price per hour and shall include mobilization/demobilization of all equipment and labor, a minimum of one water truck and operator, and water for dust control purposes during period of inactivity. On days with no stockpiling or hauling activity, the Company shall apply a minimum of 8,000 gallons of water to the containment area during two separate visits, at the beginning and end of each working day. This item may also be used, by mutual agreement of Project Manager and Company Representative, on an as-needed basis on weekend and holiday days or after business hours when high winds necessitate the application of water for dust control.

The accepted quantity of Storm Water Pollution Prevention will be paid as a reimbursement item. Charges must be authorized in advance by the Project Manager, and may include expenses encountered in implementing best management practices recommended in the SWPPP and other miscellaneous charges encountered by the Company in its efforts to prevent storm water pollution.

(c) Price Adjustments

The Company or the City may request price adjustments in writing. The City will determine if the price adjustment is justified. Only one price increase per year will be considered. Price adjustments shall be based on the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index, Table A, Urban Consumers, Expenditure Category: Transportation. Price adjustments must be agreed upon in writing by the City and the Company, in accordance with Paragraph E-15, Modification/Amendment.

No unit price adjustments will be allowed for any measured over-run or under-run of the original bid quantity.

B-4 Invoices

(a) The Company shall submit an invoice to the City in accordance with the prices 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;
- (v) field reports for each day billed.

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:

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

- (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."
- (c) The Company shall forward a copy of the original invoice to the City's Project Manager identified in Paragraph D-2 (Project Manager/Company Representative).
- (d) The City may withhold from a payment, with timely notice and a detailed explanation, a sufficient amount to compensate for the failure by the Company to comply with Contract requirements or applicable laws or regulations.

B-5 Performance Period/Delivery Schedule

- (a) The performance period commences from Award Date and continues through July 30, 2012. The Contract may be extended for one additional one-year period by mutual agreement of both parties in accordance with Paragraph E-14 Modification/Amendment. The City reserves the right to temporarily extend this Contract by up to 180 days from the expiration date, for any reason.

SECTION C – Scope of Services

C-1 General

- (a) City Parkway V is developing the 61 acre site known as Symphony Park, located just west of downtown Las Vegas. The site is bounded on the north and west by Grand Central Parkway, on the east by the Union Pacific Railroad, and on the south by Bonneville Avenue. Newland Communities serves as the development consultant to City Parkway V, who is acting as the master developer. The Symphony Park vision is to develop a new skyline and destination for local residents with mutually supportive mixed uses, not dominated by one or two large uses. All of the infrastructure for the site will be developed by City Parkway V.

Over the past 70 years, during the course of normal operations, former UPRR operations on the site resulted in releases of petroleum products, various organic and inorganic solvents, and metals. Some of the lead and petroleum-impacted soil has been removed and replaced with clean fill material according to an agreement between NDEP and UPRR. Areas still remain that are impacted by either TPH compounds, VOCs, SVOCs, PCBs, or metals. Therefore, contaminated soil is anticipated to be encountered during excavation of the site. The SWMP has been developed by Kleinfelder and approved by NDEP for City Parkway V to manage the contaminated soils and groundwater properly to meet local, state and federal regulations.

Contaminated soils need to be disposed of properly according to the SWMP and all federal, state and local regulations. The soils will be classified by the onsite CEM. The contaminated soils will be classified into two categories: Contaminated Non-Hazardous and Contaminated Hazardous. The Contaminated Non-Hazardous soils will be thermally treated at the Las Vegas Paving Soils Remediation facility located at the southwest corner of Bucyrus Erie Street and Colton Avenue in Las Vegas. Contaminated Hazardous soils deemed hazardous under the RCRA and under the SWMP will be transported via an RCRA certified hauler to the U.S. Ecology landfill in Beatty, Nevada for treatment and disposal.

- (b) Under direction of the Project Manager and the CEM, the Company shall provide services for preparation and maintenance of the contaminated soils stockpile area to comply with storm water and air quality regulations. The Company shall provide a front end loader with an operator to move the soil within the contaminated soils stockpile area during excavation activities, a water truck with an operator as needed, and transportation of the soils from the Symphony Park site to the appropriate soils remediation or disposal facility.
- (c) The Company shall provide its own electric power, potable water, operations water and sanitary facilities at its own cost. The Company shall coordinate with the Project Manager and the CEM for stockpile management activities. The Company will be notified a minimum of 48 hours prior to excavation work on-site. Following notification of laboratory test results and authorization to haul, the Company will have a maximum of 48 hours to mobilize labor and equipment and begin hauling the designated soils to the appropriate remediation or disposal facility.

- (d) Per the SWMP, the Company shall develop its own site-specific Health and Safety Plan based on the duties, site-specific hazards, and job hazards. The plan at a minimum should address the following: hazards commonly associated with the Company's work; health and safety training; medical surveillance program; hazard evaluation; air and personal monitoring; personal protective equipment; site control; decontamination; safe work practices; emergency procedures; and standard operating procedures. All employees and subcontractors, including waste handlers, waste haulers and emergency response subcontractors, who have the potential to be exposed to hazardous substances, health hazards or safety hazards, and their supervisors and management responsible for site work, must receive appropriate training in accordance with local, state and federal regulations, including but not limited to 29 CFR 1910.120 in the federal OSHA requirements. Contractors and subcontractors are responsible for the identification and implementation of the appropriate training of their employees. There may also be railway safety training requirements for work bordering UPRR tracks.
- (e) The company shall be responsible for the preservation of archaeological and paleontological objects and any objects of antiquity encountered during the work. When such objects are encountered, the Company shall immediately cease operations and notify the Project Manager. Operations shall be rescheduled to avoid the section until removal of the artifacts or gathering of historical data by the appropriate authority has been accomplished.
- (f) When the Company's work encroaches on any sidewalk, walkway or crosswalk area, the Company shall take special precautions to protect pedestrians' safety, including provisions to separate pedestrian traffic from the work area and from vehicular traffic. When pedestrian traffic is routed onto the roadway the Company shall use portable precast concrete barrier rails to separate pedestrian traffic as required. All portable precast concrete barrier rails shall be butted tight and pinned in accordance with the requirements of NDOT Standard Drawing R-8.7.1 entitled "Portable Precast Concrete Barrier Rail."

The Company shall cooperate with and given written notice to all emergency agencies, public entities, residents, homeowners, homeowner associations, businesses or schools that will be affected by any part of the work, particularly concerning temporary interruptions to vehicle access. Notice of the approximate schedule and explanation of work shall be distributed at least 7 days prior to commencement of the work. A second written notice, as well as verbal notice including door-to-door communication shall be made at least 24 hours prior to work to remind all affected parties. The Company shall notify by phone the following agencies: Metro Dispatch, Fire Department Dispatch, Ambulance Dispatch Center, Citizen's Area Transit, Clark County School District, Nevada Dept of Transportation, City of Las Vegas Public Works, City of Las Vegas Public Information Specialist, City of Las Vegas Traffic Engineering Division, United States Postal Service, and Republic Services. The City shall receive a copy of all notifications for acceptance.

- (g) The Company shall provide for the drainage of storm water, and such water as may be applied or discharged on the site in the performance of the work. Drainage facilities shall be adequate to prevent damage to the work, the site and adjacent property. The Company shall prevent erosion of soil on the site and adjacent property resulting from its work. The Company shall initiate effective measures prior to the commencement of cleaning, grading, excavation or other activities that will disturb the natural protection of the soil. The Company shall be responsible for protecting and preserving public and private property from damage directly or indirectly caused by drainage or storm water runoff leaving the project, including downstream properties if damage is a result of the Company's actions in diverting or redirecting existing natural runoff patterns.
- (h) Dust that originates from the Company's operations, either inside or outside the work site, shall be controlled at all times by the Company in accordance with federal, state and local laws, ordinances and regulations at the sole expense of the Company. The Company shall obtain all necessary permits on this subject.
- (i) The Company shall be responsible for answering and resolving any conflicts that may arise between a homeowner or business owner and himself during the work.

C-2 Stockpile Management

To avoid the potential of cross contamination, soils shall be stockpiled separately based on their classification by the CEM into the following categories: clean, legally clean, contaminated non-hazardous and RCRA hazardous soils. It is unknown how much excavation will be required at the Symphony Park site, and thus the quantity of soil generated is unknown. The Company understands that multiple stockpile containment areas may be needed over the course of this project. The minimum containment area shall be 1,100 square yards and may extend to

10,000 square yards. Containment areas, once constructed, may be expanded so long as the integrity of the liner and berm is maintained to ensure that no water or contaminated soils escape the containment area.

C-3 Stockpile Materials

(a) Protective Liner

An impervious liner is required to prevent runoff from entering or exiting the containment area and impacting the surrounding soils. The liner shall consist of a minimum double layer of 6 mils visqueen with 12 inches of overlap at the seams. The seams shall be taped. A minimum of 6 inches of soil shall be used as a cover to prevent equipment tearing the liner.

(b) Visqueen Cover

At the direction of the Project Manager, the Company shall cover contaminated non-hazardous and RCRA hazardous soils with plastic visqueen sheeting, minimum 6 mils, when not being handled. This may include any time excavations by the on-site developers or hauling activities by the Company are not being performed. The cover shall be adequately anchored such that it is not damaged by wind and does not allow volatile organic compounds or soil to escape the barrier. The cover shall be maintained during any down time by the excavators, while awaiting orders to remove soil, or any time site activities are not active. If the cover is damaged or the anchoring is compromised, the Company shall correct the situation within 4 hours of notification. The cover is reusable as long as it remains in good condition.

C-4 Stockpile Operations

(a) Containment Areas

Containment areas shall be prepared with a perimeter berm a minimum of three feet high, but not too high to prevent loading of trucks parked outside the containment area. Berm materials shall consist of clean soil, pre-cast concrete separators (i.e. K rail or Jersey rail), or hay bales. The area must be cleared of all objects which could puncture the protective liner. The liner shall be laid flat in the containment area, overlapping the berm along the perimeter and anchored at the top of the berm. The containment area must be sufficiently constructed and maintained to prevent soils and water from exiting or entering the area. A single entrance point into the bermed area shall be constructed and sufficiently ramped so that the storage area can be entered by rubber-tired loading equipment, used by loaded haul trucks to dump into the bermed area, and used for loading material from the ramp into empty haul trucks. The entrance point also shall not allow storm water runoff into or out of the storage area. An example of a soil storage area is shown in the SWMP in Appendix B, Plate B-2.

Once a containment area is no longer required and the stockpiles have been removed, the containment area shall be removed. The Company shall properly dispose of the liner material and remove the berm materials. The ground surface shall be graded in a manner to restore the surface to its pre-containment area condition.

(b) Placement of Soils

All contaminated non-hazardous and RCRA hazardous soils shall be screened by the CEM, segregated and placed within the containment area by the Company. A rubber tired front end loader shall be required to move soil within the stockpile management area during excavation activities at the site. The Company shall document on-site activities through daily written reports submitted to and verified by the Project Manager.

(c) Dust Control

Any time the soils are uncovered and the stockpile area is being handled, the Company shall ensure that water is applied as often as needed to ensure there is no hazard of blowing soil from the containment area, and shall follow all dust control measures outlined in the Dust Control Permit or by the Project Manager.

Any time the soils are uncovered and the stockpile area is not being handled, the Company shall ensure that adequate water is applied twice per working day to ensure there is no hazard of blowing soil from the containment area, and shall follow all dust control measures outlined in the Dust Control Permit or by the Project Manager. Water shall be applied once in the morning and once in the afternoon of each working day. Additional water shall be applied as needed on high wind days. Additional water needs for high wind days shall be determined jointly by the Project Manager and Company Representative.

(d) Hazardous Material

Soil or water contaminated with any constituent that is regulated by the NDEP or the EPA above the RCRA Hazardous Waste threshold shall be defined as hazardous material.

The Company shall coordinate with the CEM to make periodic inspection of the project for potential hazardous materials. In addition, when potential hazardous material is encountered, the Company shall:

- 1) Immediately contact the CEM, Project Manager and NDEP.
- 2) Have the CEM inspect the potential hazardous material and, if required, inspect for the removal and disposal of the hazardous material.
- 3) If required by the Project Manager, remove and dispose of the hazardous material as directed by the CEM.

C-5 Transportation of Contaminated Soils

(a) Loading and hauling contaminated non-hazardous soil

The Company shall be responsible for loading contaminated non-hazardous soil from the containment area into haul trucks, and transporting to the Las Vegas Paving Soils Remediation facility at the southwest corner of Bucyrus Erie Street and Colton Avenue. All loads shall be documented with a weigh ticket and shall require transport under a non-hazardous waste manifest or bill of lading sheet as required by the remediation facility. The Project Manager will coordinate preparation of the manifest/bill of lading. The Company shall provide the Project Manager with two copies of each weigh ticket by the close of business Monday for all loads that were transported the week proceeding. Remediation services will be contracted directly by the City and the remediation facility; the Company is responsible for loading, transportation and unloading only.

(b) Loading and hauling RCRA hazardous soil

RCRA hazardous soils shall be transported by a licensed hazardous material transporter to the U.S. Ecology facility in Beatty, Nevada under hazardous waste manifests. The manifest must be prepared and processed in accordance with USEPA, NDEP and DOT regulations. The Project Manager will coordinate preparation of the manifest. In addition, a Land Disposal Restriction Certification/Notification may be required for the acceptance of the waste by the facility. The Company shall be responsible for loading the hazardous soil from the containment area into haul trucks, transporting to the facility, and unloading. The Company shall provide the Project Manager with two copies of a weigh ticket for each load by the close of business Monday for all loads that were transported for the week proceeding. Disposal services will be contracted directly by the City and the disposal facility; the Company is responsible for loading, transportation and unloading only.

C-6 Pollution Control

The Company shall prevent, control and abate water and air pollution at the project site, and shall minimize damage to the site, adjacent property, and streams or other bodies of water. This work shall consist of temporary pollution control measures specified in this Contract or as directed by the Project Manager.

Pollution Control work includes creating a Dust Control Mitigation Plan (DCMP), obtaining all necessary approvals for the DCMP, obtaining a Dust Control Permit for Construction Activities, payment of all fees associated with the project dust control, and all work necessary to comply with the DCMP and the requirements of Section 94 of the Clark County Department of Air Quality Regulations, most recently adopted. Any fines or penalties levied by the Clark County Department of Air Quality and Environmental Management due to violations of the project Dust Control Permit requirements are the sole responsibility of the Company and shall be paid by the Company.

The Company shall be aware of NDEP requirements for the control of storm water runoff during work on this project. The Company shall be responsible to obtain a permit from NDEP should the work activities disturb more than one acre at any given time. Company shall apply for, pay for and gain approval of the required permit from the local authority in a timely manner so as not to affect the project schedule. The Company shall comply with the requirements of the permit and shall bear all associated costs. Application forms are available at the local NDEP offices but must be properly submitted to the Carson City, Nevada offices of the State of Nevada Water Pollution Control Division.

If the City suffers damages, including but not limited to delays and fines as a result of the Company's failure to obtain a required permit or for non-compliance with the requirements of a permit, the Company shall reimburse the City for such damages, and the City may withhold amounts equal to the damages from the Company's payments. Failure of the Company to obtain required permits in a timely manner shall not be justification for project delays.

C-7 Submittals

The Company shall submit one copy of each of the following items to the Project Manager:

1	Name and 24 hour mobile telephone number of Superintendent, plus another contact person and telephone number.	Update as needed.
2	Name and title of Company Representative	To execute orders or directions of the Project Manager without delay, who can receive correspondence and instruction, as well as sign modifications.
3	Name and telephone number of Company's safety officer	To receive notification of any safety concerns or accidents.
4	Copy of Construction Water Permit	Permit from Las Vegas Valley Water District to use a hydrant as a water source. Due prior to beginning the work.
5	Copy of General NPDES Permit	If work activities will disturb one or more acres and flow will discharge into the Las Vegas Wash.
6	Copy of Clark County Dust Control Permit	Prior to beginning work requiring a dust control permit. Permit from Clark County Dept of Air Quality and Environmental Management.
7	Daily Heavy Equipment Record of Use	Furnish to Project Manager copies of Records of Use
8	Weigh Tickets for material hauled to/from site	Furnish to Project Manager copies of each weigh ticket
9	Hazardous Waste Manifest Form	Furnish to Project Manager before transporting to US Ecology facility in Beatty, NV.

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

FOR THE COMPANY: Las Vegas Paving Corporation
David C. Breault
4420 South Decatur Boulevard
Las Vegas, Nevada 89103
Fax: (702) 257-9436

- (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 the 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 [R]

- (a) The City designates Scott Carter 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. The Project Manager shall not direct the Company's means, methods, techniques, sequences or procedures of work, or the safety precautions and program incident thereto, and will not be responsible for the Company's failure to perform the work in accordance with the Contract. The Project Manager will not be responsible for the acts or omissions of the Company, any subcontractor, any of their agents or employees, or any other persons at the site or otherwise performing any of the work.
- (b) The Company designates David C. Breault 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 [R]

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 or in the event of non-performance 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.

The Company warrants that it (i) is familiar with requirements of the Contract, (ii) has investigated the site and satisfied itself regarding the character of work and local conditions that may affect it or its performance, (iii) is satisfied that the work can be performed and completed as required in this Contract, (iv) accepts all risks directly or indirectly connected with the performance of the Contract, (v) has not been influenced by any statement or promise other than those contained in the Contract, (vi) is experienced and competent to perform the Contract, (vii) is familiar with all general and special laws, ordinances and regulations that may affect the work, its performance, or those persons employed therein, and (viii) is familiar with tax and labor regulations and with rates of pay that may affect the work. Warranty requirements shall exist in a direct extension from the manufacturer to the City as well as from the Company to the City.

D-4 Intellectual Property Rights [R]

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

D-5 Licenses/Registrations/Permits [R]

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. The Company shall determine, pay for and secure all necessary permits, inspections and utilities necessary for the proper execution and completion of Contract services including, as applicable, Pollution Control and Water District permits.

D-6 Order of Precedence [R]

Any paragraph or clause in this Contract which may be in conflict or inconsistent with any other paragraph or clause shall be void to the extent of such conflict or inconsistency, and the more stringent shall govern.

D-7 Responsibility for the Work, Materials and Security

Until completion of the project, the Company shall have the charge and care of the work and of the materials used therein. The Company shall at all times conduct all operations to avoid the risk of loss, theft or damage by vandalism, sabotage or other means to any property. The Company shall promptly take all reasonable,

necessary and adequate precautions against any conditions which involve a risk of loss, theft or damage to its property, the City's property, the work site, or utilities. The Company shall continuously inspect all its work, materials, equipment and facilities to discover any such conditions, and shall be solely responsible for such conditions. The Company shall rebuild, repair, restore and make good all injuries, losses, or damages to any portion of the work, site, utility operations, or adjacent property occasioned by any cause before completion of the work, and shall bear the expense thereof.

The Company shall cooperate with the City on all security matters, and shall promptly comply with any project security requirements established by the City. Such requirements shall not relieve the Company of its responsibility to maintain proper security for all its work, materials, equipment and facilities, nor shall they limit the Company's obligation to undertake all reasonable actions required to establish and maintain secure conditions.

The Company shall prepare and maintain accurate reports of incidents of loss, theft or vandalism, and shall furnish these reports to the City when requested. It is the Company's obligation to undertake all reasonable actions required to establish and maintain secure conditions.

The Company shall prepare and maintain accurate reports of incidents of loss, theft or vandalism, and shall furnish these reports to the City when requested.

D-8 Cleaning Up

The Company shall at all times keep the work area in a neat, clean and safe condition. Upon completion of any portion of services, Company shall promptly remove all its equipment, temporary structures and surplus materials not to be used at or near the same location during later stages of work. On completion of services and before final payment is made, the Company shall at its own expense dispose of all plant, buildings, rubbish, unused materials, and other equipment and materials belonging to it or used in the performance of the services, to the satisfaction of the City in accordance with all applicable federal, state and local laws, ordinances and codes. The Company shall leave the premises and work site in a neat, clean and safe condition. In the event the Company fails to comply with this clause, the City may accomplish the clean-up, and the cost for such may be withheld from any payments due the Company.

D-9 Supervision

The Company shall supervise and direct the services, using its best skill and attention. The Company shall be solely responsible for all means, methods, techniques, sequences and procedures, and for coordinating all portions of Contract services.

D-10 Safety and ADA Compliance

The Company shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with Contract services. The Company shall take all reasonable precautions for the safety of all its employees and all other persons who may be affected by Contract services. The Company's Safety Officer shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

- (a) all employees engaged in the work and other persons who may be affected thereby;
- (b) all work and all materials or equipment to be used therein, whether in storage or on the project site; and
- (c) other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the work.

The Company shall erect, install, employ and maintain as required by the conditions and progress of the work all necessary safeguards. Company's safety duties shall continue until a "Notice of Completion" has been issued by the Project Manager. All work shall comply with the Americans with Disabilities Act (ADA) as amended to date.

D-11 Examination of Contract Documents and Site of Work

The Company represents that it has studied all surveys and investigative reports about potential conditions pertaining to the site of work, including the SWMP, and has performed such additional surveys and investigations as it deems necessary to complete the work at the Contract price. The Company shall not be relieved of any liability under the Contract for any loss sustained as a result of variances between conditions indicated and the

actual conditions encountered during the progress of the work. The Company is aware that high levels of petroleum hydrocarbons may be present in the area.

D-12 Working Hours and Days

Normal working hours for City employees is 7:00 am to 3:30 pm, Monday through Friday, except the following holidays: New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Nevada Day, Veteran's Day, Thanksgiving Day, day after Thanksgiving, and Christmas Day. The Project Manager may not approve any work completed during his absence.

The Company shall pay for the overtime of any City employee or contractor requested by the Company to perform inspection or testing, or who as a result of the Company's operation is required to perform inspections or testing beyond the normal working hours of the established working day listed above. Overtime rates shall be actual time and one half hourly wages of the employee affected.

The Company shall not be required to pay for overtime of City employees or contractors who, as a result of a request by the City, are required to perform inspections or testing beyond normal working hours.

D-13 Cooperation Between Companies

The City reserves the right at any time to contract and perform other or additional work on or near the work covered by this Contract. In this case, each contractor shall conduct his work so as not to interfere with or hinder the progress or completion of the work of other contractors. Contractors shall cooperate with each other as directed by the City. Each contractor shall assume all liability, financial or otherwise, in connection with his contract, and shall protect and save harmless the City from any and all damages or claims that may arise because of inconvenience, delay or loss experienced by the contractor because of the presence of other contractors. The Company shall arrange its work, equipment and materials so as not to interfere with the operations of other contractors. Company shall join its work with that of the others in an acceptable manner and in proper sequence. Company shall afford subcontractors and separate contractors reasonable opportunity for introduction and storage of their materials and equipment on site.

If any part of the Company's work depends on the work of the City or any other contractor, the Company shall, prior to proceeding with the work, promptly report to the Project Manager any apparent discrepancies or defects that render it unsuitable. Failure of the Company to report shall constitute an acceptance of the city's or other contractors' work as fit and proper to receive the Company's work, except as to defects that may subsequently become apparent in such others' work. Costs caused by defective or untimely work shall be borne by the responsible party, or by the Company if it did not give notice as required above. Should the Company wrongfully cause damage to the work or property of the City or other contractors on site, the Company shall promptly remedy such damage. The Company agrees to make no claim for damages due to correction of defective or untimely work or due to remedies of wrongful damage for which the Company is responsible. Should the Company wrongfully cause damage to the work or property of any separate contractor, the Company shall attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute. If such separate contractor sues or initiates an arbitration proceeding against the City on account of damage alleged to have been caused by the Company, the Company shall defend such proceedings at the Company's expense. If judgment or award against the City arises therefrom, the Company shall satisfy it and shall reimburse the City for all attorneys' fees and court or arbitration costs which the City has incurred.

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

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 costs for services requested by the City and actually performed by the Company.

E-4 Suspension for Convenience

The City may, without cause, order the Company in writing to suspend, delay or interrupt services, in whole or in part, for such period of time as the City may determine. The City will make an adjustment for any increase in the cost of performance of Contract services, including profit on the increased cost of performance, caused by such suspension, delay or interruption. No adjustment will be made to the extent that:

- (i) Performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Company is responsible; or
- (ii) An equitable adjustment is made or denied under another provision of this Contract.

E-5 Termination for Default [R]

- (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, including, if applicable, delivering any required goods, or documentation within the time specified in this Contract or any extension;
 - (ii) Make progress, so as to endanger performance of this Contract;
 - (iii) Maintain insurance coverage as required under this Contract;
 - (iv) Provide sufficient workmen, materials or equipment to ensure the prompt completion of services within expected timeframes;
 - (v) Observe any laws, ordinances, rules or regulations pertaining to the services;
 - (vi) Maintain solvency, as evidenced by allowing a judgment to stand against it for a period of five days, being adjudged insolvent, bankrupt, or committing an act of bankruptcy or insolvency;
 - (vii) Perform any of the other provisions of this Contract; or
 - (viii) Remedy a material breach of any provision of this Contract within the time allowed for that remediation.

- (b) The City's right to terminate this Contract under (a)(i) through (vii) above, may be exercised if the Company does not cure such failure within seven 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 a 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 any 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 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-6 Insurance: [R]

- (a) The Company shall procure and maintain, at its own expense, during the entire term of the Contract, the following coverages:
 - (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 not 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 in 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.
- (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 issued by 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 ITS with a certificate of insurance as evidence that all insurance requirements have been met. The Company or insurance carrier shall provide the City with 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

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 and terminate the Contract if the breach is not remedied, 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 approved by the City shall be required to procure, maintain and submit proof of insurance to the City of the same insurance requirements specified above, and as required in this paragraph.
- (g) The Company is encouraged to purchase any additional insurance it deems necessary.
- (h) The Company is required to remedy all injuries to persons and damage or loss to any public or private property, vegetation, fences, signs, etc. 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-7 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") 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 this 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.

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-8 Assignment [CAO-7/24/08]

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

E-9 Waiver [CAO-7/24/08]

Waiver of any 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-10 Taxes/Compliance with Laws [R]

- (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, the Immigration Reform and Control Act of 1986, and all state and federal laws prohibiting or relating to discrimination by reason of race, sex, age, religion or national origin.

E-11 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, shall have the right to inspect and audit (including the right to copy or transcribe) the books and records of the Company pertaining to performance of this Contract during normal business hours. City will provide prior written notice to Company of audit and inspection. If the books and records are not located in Clark County, Company agrees to deliver them to the City, or to an address designated by the City within Clark County. In lieu of such delivery, Company may elect to reimburse City for costs of travel (including transportation, lodging, meals and other related expenses) to inspect and audit the books and records at Company's office. If the books and records provided to City are incomplete, 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 Company's office. Company's failure to remedy the deficiency shall constitute a material breach of this Contract. 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) find 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-12 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 corporation 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-13 Severability [CAO-7/24/08]

The invalidity, illegality, or unenforceability of any provision of this Contract, or the occurrence of any event rendering any provision of this Contract void, shall in no way affect the validity or enforceability of any other 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 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. 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-14 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-15 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-16 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-17 Conflict of Interest (City Officials) [CAO-7/24/08]

- (a) An official of the City who is authorized 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 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-18 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 and all supporting documents are deemed to be public records.

E-19 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 it 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 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 and the City, in its sole discretion, may seek to quash the demand.
- (c) The obligations of confidentiality shall survive the termination of this Contract.

E-20 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-21 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 on the expenditure of monies for the services required under this Contract.

E-22 Changes – Fixed-Price Services [CAO-7/24/08]

- (a) The City may at any time, by written order 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 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 request for 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-23 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.

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

APPROVED AS TO FORM:

John S. Ridilla 8/2/10
Deputy City Attorney Date

John S. Ridilla
Deputy City Attorney

LAS VEGAS PAVING CORPORATION

DAVID C. BREault, Environmental Manager

"Company"