City of Las Vegas

CITY COUNCIL AGENDA

COUNCIL CHAMBERS · 400 STEWART AVENUE · PHONE 229-6011
CITY OF LAS VEGAS INTERNET ADDRESS: www.lasvegasnevada.gov
COUNCIL MEMBERS: OSCAR B. GOODMAN, MAYOR (At-Large)
COUNCILMAN GARY REESE, MAYOR PRO TEM (Ward 3)
STEVE WOLFSON (Ward 2), LOIS TARKANIAN (Ward 1), STEVEN D. ROSS (Ward 6)
RICKI Y. BARLOW (Ward 5), STAVROS S. ANTHONY (Ward 4)

Facilities are provided throughout City Hall for convenience of persons with disabilities. For meetings held in the Council Chambers, sound equipment is available for persons with hearing impairments. If you need an accommodation to attend and participate in this meeting, please call the City Clerk's office at 229-6311 and advise of your need at least 48 hours in advance of the meeting. The City's TDD number is 386-9108.

September 15, 2010

Morning Session begins at 9:00 a.m.
Afternoon Session begins at 1:00 p.m.

ALL ITEMS ON THIS AGENDA ARE SCHEDULED FOR ACTION UNLESS SPECIFICALLY NOTED OTHERWISE.

THESE PROCEEDINGS ARE BEING VIDEO RECORDED AS WELL AS PRESENTED LIVE ON KCLV, CABLE CHANNEL 2, AND ARE CLOSED CAPTIONED FOR OUR HEARING IMPAIRED VIEWERS. THE COUNCIL MEETING, AS WELL AS ALL OTHER KCLV PROGRAMMING, CAN BE VIEWED ON THE INTERNET AT www.kclv.tv. THE PROCEEDINGS WILL BE REBROADCAST ON KCLV CHANNEL 2 AND THE WEB THE WEDNESDAY OF THE MEETING AT 8:00 PM, AND ALSO ON FRIDAY AT 4:00 AM, SATURDAY AT 7:00 PM, SUNDAY AT 7:00 AM AND THE FOLLOWING MONDAY AT 1:00 PM.

DUPLICATE AUDIO CD'S AND DUPLICATE AUDIO/VIDEO DVD'S MAY BE AVAILABLE AT A COST OF $5.00 EACH THROUGH THE CITY CLERK'S OFFICE.

NOTE: CELLULAR PHONES ARE TO BE TURNED OFF DURING THE COUNCIL MEETING.

CEREMONIAL MATTERS

1. CALL TO ORDER
2. ANNOUNCEMENT RE: COMPLIANCE WITH OPEN MEETING LAW
3. INVOCATION –
4. PLEDGE OF ALLEGIANCE
5. RECOGNITION OF THE EMPLOYEE OF THE MONTH
6. RECOGNITION OF HISPANIC HERITAGE MONTH
7. RECOGNITION OF NATIONAL PREPAREDNESS MONTH
8. RECOGNITION OF THE NEVADA YOUTH ALLIANCE
9. RECOGNITION OF THE 25TH ANNIVERSARY OF SAFEKEY
10. RECOGNITION OF THE MOUNTAIN RIDGE LITTLE LEAGUE STATE CHAMPIONS

DRAFT

BUSINESS ITEMS - MORNING

11. Any items from the morning session that the Council, staff and/or the applicant wish to be stricken or held in abeyance to a future meeting may be brought forward and acted upon at this time

12. Approval of the Final Minutes by reference of the regular City Council meeting of August 18, 2010

CONSENT AGENDA

MATTERS LISTED ON THE CONSENT AGENDA ARE CONSIDERED TO BE ROUTINE AND HAVE BEEN RECOMMENDED FOR APPROVAL BY THE SUBMITTING DEPARTMENTS. ALL ITEMS ON THE CONSENT AGENDA MAY BE APPROVED IN A SINGLE MOTION. HOWEVER, IF A COUNCIL MEMBER SO REQUESTS, ANY CONSENT ITEM MAY BE MOVED TO THE DISCUSSION PORTION OF THE AGENDA AND OTHER ACTION, INCLUDING POSTPONEMENT OR DENIAL OF THE ITEM, MAY TAKE PLACE.

ADMINISTRATIVE - CONSENT

13. Approval of First Amendment to Restated and Amended License Agreement for Construction and Agreement to Grant Easements between City Parkway V, Inc., and N.W.H. II, LTD., generally located within the Las Vegas Technology Center at Tenaya Way and Cheyenne Avenue (APNs 138-15-612-012 and 138-15-612-013) - Ward 1 (Tarkanian)

FIELD OPERATIONS - CONSENT

14. Approval of a Grant of Easement from the City of Las Vegas to Nevada Power Company d/b/a NV Energy to cancel and supersede the Recorded Right of Entry previously on record and continue to allow NV Energy access to the site for electrical systems needs located in the vicinity of Bruce Street and Washington Avenue, known as Heritage Park, APN 139-26-301-005 - Ward 5 (Barlow)

15. Approval of a Grant of Easement from the City of Las Vegas to Nevada Power Company d/b/a NV Energy to cancel and supersede the Recorded Right of Entry previously on record and continue to allow NV Energy access to the sites for electrical systems needs located in the vicinity of Mojave Road and Bonanza Road, known as Animal Foundation of Nevada and Fire Training Center, APNs 139-25-405-008 & 139-25-801-004 - Ward 3 (Reese)

FINANCE & BUSINESS SERVICES - ADMINISTRATION CONSENT

16. Approval of Service and Material Checks/Payroll Checks/Wire Transfers/Other Checks and Investments

FINANCE & BUSINESS SERVICES - BUSINESS SERVICES CONSENT

17. Approval of a Special Event Alcoholic Beverage License for 3 Wall Ball, LLC, Location: 2121 South Las Vegas Boulevard (parking lot across from Stratosphere Tower Hotel & Casino), Dates: September 23 - 26, 2010, Type: Special Event General, Event: World 3 Wall Ball Championships (Raquetball/Handball Tournament), Responsible Person in Charge: Mike Coulter - Ward 3 (Reese)

18. Approval of a Special Event Alcoholic Beverage License German American Social Club, Location: 401 South 4th Street, Date: October 16, 2010, Type: Special Event General, Event: Oktoberfest, Responsible Person in Charge: Eugene Gries - Ward 3 (Reese)

19. Approval of a Special Event Alcoholic Beverage License for Innerout Inc., dba Charlie's Bar Down Under, Location: 1950 North Buffalo Drive, Date: September 25, 2010, Type: Special Event General, Event: Fall BBQ, Responsible Person in Charge: Gary Heckethorn - Ward 1 (Tarkanian)

20. Approval of a Special Event Alcoholic Beverage License for Saint Anne Catholic School/Church, Location: 1813 South Maryland Parkway, Date: October 2, 2010, Type: Special Event General, Event: Funfair 2010, Responsible Person in Charge: Dr. James Muchinski - Ward 3 (Reese)

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21. Approval of a Special Event Alcoholic Beverage License for Southern Nevada Association of Pride, Inc., Location: Blue Moon Resort, 2651 Westwood Drive, Date: September 18, 2010, Type: Special Event General, Event: Men's T Dance, Responsible Person in Charge: Dennis Shaull - Ward 1 (Tarkanian)

22. Approval of an extension of a Temporary Restaurant Service Bar License, Donna Maria, Inc., dba Donna Maria Summerlin, 3205 North Tenaya Way, Neriza Johnson, Pres, 100% - Ward 4 (Anthony)

23. Approval of an extension of a Temporary Tavern License, Dona Maria, Inc., dba Dona Maria Tamales, 910 South Las Vegas Boulevard, Neriza Johnson, Pres, 100% - Ward 3 (Reese)

24. Approval of an extension of a new Restricted Gaming License, Dona Maria, Inc., dba Dona Maria Tamales, 910 South Las Vegas Boulevard, Neriza Johnson, Pres, 100% - Ward 3 (Reese)

25. Approval of a Change of Ownership and Change of Business Name for a Tavern License, From: Jersey's LLC, dba Jerseys' Bar & Grill, To: Nevada Restaurant Services, Inc., dba Dotty's 64, 4760 West Sahara Avenue, Suite 1, Richard Estey, Pres, Secy, Treas, Dir, 100% - Ward 1 (Tarkanian)

26. Approval of a new Restricted Gaming License subject to confirmation of approval by the Nevada Gaming Commission, Nevada Restaurant Services, Inc., dba Dotty's 64, 4760 West Sahara Avenue, Suite 1, Richard Estey, Pres, Secy, Treas, Dir, 100% - Ward 1 (Tarkanian)

27. Approval of a Change of Ownership, Change of Business Name, and Change of Location for a Tavern License subject to the provisions of the planning and fire codes and Health Dept. regulations, From: Gourmet Cigars Ltd., dba Gustav Mauler Gourmet Tobacconist (Non-operational), To: RMTWO, Inc., dba Molly's, 6430 Sky Pointe Drive, Suite 130, Randy C. Miller, Pres, Dir, 50% and Richard M. Gonzales, Treas, Secy, Dir, 50% - Ward 6 (Ross)

28. Approval of a new Restricted Gaming License subject to confirmation of approval by the Nevada Gaming Commission, RMTWO, Inc., dba Molly's, 6430 Sky Pointe Drive, Suite 130, Randy C. Miller, Pres, Dir, 50% and Richard M. Gonzales, Treas, Secy, Dir, 50% - Ward 6 (Ross)

29. Approval of a new Slot Route Operator for a Restricted Gaming License subject to confirmation of approval by the Nevada Gaming Commission, RP Slots, LLC, db at Decatur Liquor, 546 South Decatur Boulevard - Ward 1 (Tarkanian)

30. Approval of a new Restricted Gaming License subject to confirmation of approval by the Nevada Gaming Commission, Gill Enterprises, Inc., db at 7 Eleven Store #32826C, 920 North Buffalo Drive - Ward 1 (Tarkanian)

31. Approval of a new Restricted Gaming License subject to confirmation of approval by the Nevada Gaming Commission, Haecke, LLC, dba Mr. D's Sports Bar & Grill, 1810 South Rainbow Boulevard, Kelly J. Cotton, Managing Mmbr, 100% - Ward 1 (Tarkanian)

32. Approval of a new Slot Route Operator for a Restricted Gaming License subject to confirmation of approval by the Nevada Gaming Commission, RP Slots, LLC, db at Decatur Drug Restaurant, 544 South Decatur Boulevard - Ward 1 (Tarkanian)

33. Approval of a Package Liquor License for a Change of Ownership, From: Rachad Khalil, To: San Jorge, LLC, dba Wash and Shop, 2880 East Bonanza Road, Nina Massis, Mgr, 25% and Rimoun Massis, Mgr, 75% - Ward 3 (Reese)

34. Approval of a new Slot Route Operator for a Restricted Gaming License subject to confirmation of approval by the Nevada Gaming Commission, RP Slots, LLC, db at Wellcare Pharmacy Decatur, 542 South Decatur Boulevard - Ward 1 (Tarkanian)

35. Approval of an extension of a Temporary Burglar Alarm Service License for a Change of Ownership and Change of Business Name, From: Security Associates International, Inc., dba Security Associates International, Inc., To: Castlerock Security, Inc., dba Castlerock Security, Inc., 2101 South Arlington Heights Road, Suite 150, Brian E. Johnson, Pres, CEO, James M. German, Senior VP, Donald D. Agee II, VP, and Christian Becker, VP - Illinois

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36. Approval of an extension of a Temporary Massage Establishment License, CF3, LLC, dba Canyon Falls Spa & Salon, 7331 West Lake Mead Boulevard, Suite 103, William R. Schonsheck, Managing Mmbr, 40%, Ryan Schonsheck, Managing Mmbr, 30%, and Adam Rimmel, Mmbr, 30% - Ward 1 (Tarkanian) [NOTE: This is an ancillary license to an existing beauty salon - Canyon Falls Spa & Salon]

37. Approval of a Change of Business Name and Change of Location for a Pawnbroker License and a Class II Secondhand Dealer License, Cash America Inc. of Nevada, From: Stoney's Pawn Shop, 126 South 1st Street, To: Super Pawn, 307 South Decatur Boulevard, Dennis Weese, Pres, John Linscott, Exec VP, Austin Nettle, VP, Treas, Thomas Bessant Jr., Exec VP, CFO, and David Clay, VP - Ward 1 (Tarkanian)

38. Approval of a new Pistol Permit License, Super Pawn, 307 South Decatur Boulevard, Dennis Weese, Pres, John Linscott, Exec VP, Austin Nettle, VP, Treas, Thomas Bessant Jr.., Exec VP, CFO, and David Clay, VP - Ward 1 (Tarkanian)

39. Approval of a Change of Business Name and Change of Location for a Psychic Arts and Science License subject to the provisions of the fire code, From: Jodi Ann Hazzard, dba Jodi Ann Hazzard, 6848 West Charleston Boulevard, To: Jodi Ann, dba Jodi Ann, 800 North Rainbow Boulevard, Suite 208, Jodi Ann, Owner, 100% - Ward 1 (Tarkanian)

40. Approval of an extension of a Temporary Psychic Arts and Science License, Scarlett Lee, dba Scarlett Lee, 425 Fremont Street, Scarlett Lee, 100% - Ward 3 (Reese)

FINANCE & BUSINESS SERVICES - PURCHASING & CONTRACTS CONSENT

41. Approval of award of Agreement No. 110037-DC, Prime Design Services for Las Vegas Boulevard Widening I-515 to Owens - Department of Public Works - Award recommended to: THE LOUIS BERGER GROUP, INC. ($1,150,000 - Road and Flood Capital Projects Fund) - Ward 5 (Barlow)

42. Approval of award of Agreement No. 110039-DC, Construction Manager as Agent for Bonanza Trail Phase II located west of Rainbow Boulevard along Westcliff Drive to Lorenzi Street and east of Jones Boulevard and north of US 95 to Decatur Boulevard - Department of Public Works - Award recommended to: CH2M HILL, INC. ($600,000 - Parks and Leisure Activities Capital Projects Fund) - Wards 1 and 5 (Tarkanian and Barlow)

43. Approval of award of Agreement No. 110036-DC, Prime Design Services for Main Street Improvements US 95 to Owens - Department of Public Works - Award recommended to: PARSONS TRANSPORTATION GROUP, INC. ($461,707.60 - Road and Flood Capital Projects Fund) - Ward 5 (Barlow)

44. Approval of award of Bid No. 09.1730.01-LED, Las Vegas Wash Middle Branch Storm Drain Improvements Decatur Boulevard to Elkhorn Road and the construction conflicts and contingency reserve set by Finance and Business Services - Department of Public Works - Award recommended to: MEADOW VALLEY CONTRACTORS, INC. ($24,975,369.50 - Road and Flood Capital Projects Fund) - Ward 6 (Ross)

45. Approval of award of Amendment No. 2 to Agreement No. 050593-DD, Engineering Design Services for ITS Communications Infrastructure located on the Rancho Drive Corridor from Sahara Avenue to Rainbow Boulevard and the construction conflicts and contingency reserve set by Finance and Business Services - Department of Public Works - Award recommended to: ORTH-RODGERS & ASSOCIATES, INC. ($115,225.41 - Traffic Improvements Capital Projects Fund) - Wards 1 and 2 (Tarkanian and Wolfson)

46. Approval of award of Bid No. 07.1730.04-LED, Bonanza Trail Phase 2 located west of Rainbow Boulevard along Westcliff Drive to Lorenzi Street and east of Jones Boulevard and north of US 95 to Decatur Boulevard and the construction conflicts and contingency reserve set by Finance and Business Services - Department of Public Works - Award recommended to: WELLS CARGO, INC. ($4,889,440.75 - Parks and Leisure Activities Capital Projects Fund) - Wards 1 and 5 (Tarkanian and Barlow)

47. ABEYANCE ITEM - Approval of Contract No. 110013-JL, Legal Consulting Services for Symphony Park located at 100 South Grand Central Parkway - APNs 139-34-110-002 and 104 - City Parkway V, Inc. - Award recommended to: SANTORO, DRIGGS, WALCH, KEARNEY & THOMPSON, LTD (not-to-exceed $270,000 - City Parkway V Operating Fund) - Ward 5 (Barlow)

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NEIGHBORHOOD SERVICES - CONSENT

48. Approval of an agreement with the Department of Housing and Urban Development (HUD) to receive an Earmark Award in the amount of $200,000 for the Foreclosure Prevention Partnership program - All Wards

PUBLIC WORKS - CONSENT

49. Approval of a Sewer Connection agreement with NDL Group, Inc. on behalf of First Christian Methodist Episcopal Church, owner and Interlocal Contract with Clark County Water Reclamation District (Torrey Pines Drive and Cheyenne Avenue, APN 138-11-408-014) - County (near Ward 5 - Barlow)

50. Approval of an encroachment request from Martin & Martin Civil Engineers on behalf of Acquest Vegas, LLC, owner (Alexander Road and Rancho Drive) - Ward 6 (Ross)

51. Approval of a Grant of Easement from the City of Las Vegas to NV Energy for a portion of the Northeast Quarter, of the Northwest Quarter of Section 21, Township 20 South, Range 61 East, Mount Diablo Meridian, with regard to the Martin Luther King Jr. Boulevard Improvement project - Assessor Parcel Number 139-21-199-025 - Ward 5 (Barlow)

52. Approval of Interlocal Contract 661 between the City of Las Vegas and the Regional Transportation Commission of Southern Nevada (RTC) to proceed with funding for the engineering design of the Main Street/Commerce Street One-Way Couplet ($1,250,000 - RTC) - Wards 3 and 5 (Reese and Barlow)

RESOLUTIONS - CONSENT

53. R-61-2010 - Approval of a Resolution Making Provisional Order and Directing that the Notice of Public Hearing thereon be given regarding: Special Improvement District No. 1519 Sidewalk Infill - Oakey Boulevard (west of Rancho Drive) and 11th Street (north of Charleston Boulevard) - Wards 1 and 3 (Tarkanian and Reese)

54. R-62-2010 - Approval of Resolution confirming that the City Manager or a designee is authorized to approve and execute certain types of documents related to City interests in property – All Wards

DISCUSSION/ACTION ITEMS

ADMINISTRATIVE - DISCUSSION

55. ABEYANCE ITEM - Discussion and possible action to authorize the City of Las Vegas to withdraw as a member entity of the Clean Water Coalition and other matters related thereto - All Wards

56. ABEYANCE ITEM - Discussion and possible action regarding the First Addendum to the Second Amendment to the Interlocal Cooperative Agreement Establishing the Clean Water Coalition and other matters related thereto - All Wards

FINANCE & BUSINESS SERVICES - BUSINESS SERVICES DISCUSSION

57. Discussion and possible action regarding a Three Month Review of a Tavern License, Red Label Bar, Inc., dba Red Label Bar & Lounge, 332 West Sahara Avenue, Nely Petkova, Pres, 100% - Ward 3 (Reese)

58. Discussion and possible action regarding a Six Month Review of a Beer/Wine/Cooler Off-sale License and a Restricted Gaming License, Bidi, Inc., dba Vegas Market 3, 6711 Alexander Road, Suites 103 & 104, Haitham Bidi, Pres, Secy, Treas, Dir, 100% - Ward 4 (Anthony)

59. Discussion and possible action regarding a Six Month Review of a Temporary Work Card for Dustin Hill, db at Foothills Ranch, 3377 North Rancho Drive - Ward 6 (Ross)

60. Discussion and possible action regarding a review of a Work Card for Gina Mourning db at Buy Low Market 4, 1061 West Owens Avenue - Ward 5 (Barlow)

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RESOLUTIONS - DISCUSSION

61. R-63-2010 - Discussion and possible action regarding a Resolution consenting to the undertakings of the City of Las Vegas Redevelopment Agency (RDA) in connection with the Entertainment Visual Improvement Program Agreement (EVIP) between the RDA and A.W. Ham, III, Trustee (Owner) and Vanguard Lounge, LLC, (Tenant and EVIP Participant) located at 516 Fremont Street (APN 139-34-611-008) to be in compliance with and in furtherance of the goals and objectives of the RDA - Ward 5 (Barlow) [NOTE: This item is related to RDA Item 5 (RA-17-2010)]

BOARDS & COMMISSIONS - DISCUSSION

62. SOUTHERN NEVADA ENTERPRISE COMMUNITY ADVISORY BOARD - Councilman Ricki Y. Barlow - Term Expiration 10/3/2007

63. PLANNING COMMISSION – Keen Ellsworth, Term Expires 6/2013 (resigned)

RECOMMENDING COMMITTEE REPORT - DISCUSSION

BILLS ELIGIBLE FOR ADOPTION AT THIS MEETING

64. ABEYANCE ITEM – Bill No. 2010-31 – Updates the regulations governing certain commercial, entertainment and solicitation activities within the Pedestrian Mall. Proposed by: Bradford R. Jerbic, City Attorney and Councilman Gary Reese

65. ABEYANCE ITEM – Bill No. 2010-34 – Revises the provisions regarding the on-site parking, storage and repair of vehicles in residential districts. (TXT-36330) Sponsored by: Councilman Steven D. Ross

66. Bill No. 2010-38 – Establishes time limits within which a member of the City Council may request reconsideration of Council action to deny a zoning-related application. (TXT-35753) Sponsored by: Councilman Steven D. Ross

67. Bill No. 2010-39 – Amends the permit requirements pertaining to group use of City parks, establishes limitations on certain law enforcement activities in City parks, provides that a portion of James Gay Park (currently a children's park) will be made available for general use, and deletes obsolete provisions relating to park use. Proposed by: Bradford R. Jerbic, City Attorney

BILLS ELIGIBLE FOR ADOPTION AT A LATER MEETING

THERE IS NO PUBLIC COMMENT ON THESE ITEMS AND NO ACTION WILL BE TAKEN BY THE COUNCIL AT THIS MEETING, EXCEPT THOSE ITEMS WHICH MAY BE STRICKEN OR TABLED. PUBLIC TESTIMONY TAKES PLACE AT THE RECOMMENDING COMMITTEE MEETING HELD FOR THAT PURPOSE.

68. Bill No. 2010-40 – Authorizes under certain circumstances an extension of time regarding the expiration of certain nonconforming uses. (TXT-38702) Sponsored by: Councilman Steven D. Ross

69. Bill No. 2010-41 – Updates the City's licensing regulations governing ice cream trucks, including revised provisions concerning hours of operation and signage. Sponsored by: Councilwoman Lois Tarkanian

1:00 P.M. - AFTERNOON SESSION

BUSINESS ITEMS - AFTERNOON

70. Any items from the afternoon session that the Council, staff and /or the applicant wish to be stricken or held in abeyance to a future meeting may be brought forward and acted upon at this time

HEARINGS - DISCUSSION

71. ABEYANCE ITEM - Hearing and possible action to consider the appeal of the Notice and Declaration of Chronic Nuisance for property located at 628 South Las Vegas Boulevard (Weedz Alternative). PROPERTY OWNER: GARCES VENTURE, LLC. BUSINESS OWNER: STEVEN J. VOGT - Ward 3 (Reese)

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72. Hearing and possible action to consider the appeal regarding the Notice and Declaration of Chronic Nuisance located at 1300 Fremont Street. PROPERTY OWNER: S P FREMONT LLC - Ward 3 (Reese)

73. Public Hearing and possible action to consider a request for a waiver and/or reduction of fees and/or civil penalties for the property located at 4105 E. Ogden Avenue in the amount up to $76,000. PROPERTY OWNERS: JUAN LOPEZ AND BRENDA CORONA - Ward 3 (Reese)

74. Hearing and possible action on a 45-day review for the vacant or abandoned buildings located at 4152 Silver Dollar Avenue Units 2, 4, 5, 7-8, 4168 Silver Dollar Avenue Units 1-4, 6-8, 4186 Silver Dollar Avenue Units 1-7. PROPERTY OWNERS: RFH LA PAZ LLC - Ward 1 (Tarkanian)

PLANNING & DEVELOPMENT

THE ITEMS LISTED BELOW, WHERE APPROPRIATE, HAVE BEEN REVIEWED BY THE VARIOUS CITY DEPARTMENTS RELATIVE TO REQUIREMENTS FOR STORM DRAINAGE AND FLOOD CONTROL, CONNECTION TO SANITARY SEWER, TRAFFIC CIRCULATION, AND BUILDING AND FIRE REGULATIONS. THEIR COMMENTS AND/OR RECOMMENDATIONS AND REQUIREMENTS HAVE BEEN INCORPORATED INTO THE ACTION.

SET DATE

75. SET DATE ON ANY APPEALS FILED OR REQUIRED PUBLIC HEARINGS FROM THE CITY PLANNING COMMISSION MEETINGS AND DANGEROUS BUILDING OR NUISANCE/LITTER ABATEMENTS

CITIZENS PARTICIPATION

76. CITIZENS PARTICIPATION: PUBLIC COMMENT DURING THIS PORTION OF THE AGENDA MUST BE LIMITED TO MATTERS WITHIN THE JURISDICTION OF THE CITY COUNCIL. NO SUBJECT MAY BE ACTED UPON BY THE CITY COUNCIL UNLESS THAT SUBJECT IS ON THE AGENDA AND IS SCHEDULED FOR ACTION. IF YOU WISH TO BE HEARD, COME TO THE PODIUM AND GIVE YOUR NAME FOR THE RECORD. THE AMOUNT OF DISCUSSION ON ANY SINGLE SUBJECT, AS WELL AS THE AMOUNT OF TIME ANY SINGLE SPEAKER IS ALLOWED, MAY BE LIMITED

COUNCIL MEMBER RECOGNITION

77. COUNCIL MEMBER RECOGNITION: COMMENTS MADE BY INDIVIDUAL CITY COUNCIL MEMBERS DURING THIS PORTION OF THE AGENDA WILL NOT BE ACTED UPON BY THE CITY COUNCIL UNLESS THAT SUBJECT IS ON THE AGENDA AND SCHEDULED FOR ACTION

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THIS MEETING HAS BEEN PROPERLY NOTICED AND POSTED AT THE FOLLOWING LOCATIONS:
City Clerk's Bulletin Board, City Hall Plaza, 2nd Floor Skybridge
Bulletin Board, City Hall Plaza, (next door to Metro Records)
Las Vegas Library, 833 Las Vegas Boulevard North
Clark County Government Center, 500 S. Grand Central Parkway
Grant Sawyer Building, 555 E. Washington Avenue

DRAFT

City of Las Vegas Agenda Item No.: **1.**

AGENDA SUMMARY PAGE
CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

SUBJECT:
CALL TO ORDER

City of Las Vegas

Agenda Item No.: **2.**

AGENDA SUMMARY PAGE
CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

SUBJECT:
ANNOUNCEMENT RE: COMPLIANCE WITH OPEN MEETING LAW

City of Las Vegas Agenda Item No.: **3.**

AGENDA SUMMARY PAGE
CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

SUBJECT:
INVOCATION –

City of Las Vegas Agenda Item No.: **4.**

AGENDA SUMMARY PAGE
CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

SUBJECT:
PLEDGE OF ALLEGIANCE

City of Las Vegas Agenda Item No.: **5.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: OFFICE OF COMMUNICATIONS
DIRECTOR: DAVID RIGGLEMAN

SUBJECT:
RECOGNITION OF THE EMPLOYEE OF THE MONTH

City of Las Vegas Agenda Item No.: **6.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: OFFICE OF COMMUNICATIONS
DIRECTOR: DAVID RIGGLEMAN

SUBJECT:
RECOGNITION OF HISPANIC HERITAGE MONTH

City of Las Vegas Agenda Item No.: **7.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: OFFICE OF COMMUNICATIONS
DIRECTOR: DAVID RIGGLEMAN

SUBJECT:
RECOGNITION OF NATIONAL PREPAREDNESS MONTH

City of Las Vegas Agenda Item No.: **8.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: OFFICE OF COMMUNICATIONS
DIRECTOR: DAVID RIGGLEMAN

SUBJECT:
RECOGNITION OF THE NEVADA YOUTH ALLIANCE

City of Las Vegas Agenda Item No.: **9.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: OFFICE OF COMMUNICATIONS
DIRECTOR: DAVID RIGGLEMAN

SUBJECT:
RECOGNITION OF THE 25TH ANNIVERSARY OF SAFEKEY

City of Las Vegas Agenda Item No.: **10.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: OFFICE OF COMMUNICATIONS
DIRECTOR: DAVID RIGGLEMAN

SUBJECT:
RECOGNITION OF THE MOUNTAIN RIDGE LITTLE LEAGUE STATE CHAMPIONS

City of Las Vegas

Agenda Item No.: **11.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: CITY CLERK
DIRECTOR: BEVERLY K. BRIDGES

☐ **Consent** ☒ **Discussion**

SUBJECT:
BUSINESS ITEMS:

Any items from the morning session that the Council, staff and/or the applicant wish to be stricken or held in abeyance to a future meeting may be brought forward and acted upon at this time

City of Las Vegas Agenda Item No.: **12.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: CITY CLERK
DIRECTOR: BEVERLY K. BRIDGES ☐ **Consent** ☒ **Discussion**

SUBJECT:
BUSINESS ITEMS:

Approval of the Final Minutes by reference of the regular City Council meeting of August 18 4, 2010

City of Las Vegas Agenda Item No.: **13.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: CITY MANAGER
DIRECTOR: ELIZABETH N. FRETWELL ☒ **Consent** ☐ **Discussion**

SUBJECT:
ADMINISTRATIVE:

Approval of First Amendment to Restated and Amended License Agreement for Construction and Agreement to Grant Easements between City Parkway V, Inc., and N.W.H. II, LTD., generally located within the Las Vegas Technology Center at Tenaya Way and Cheyenne Avenue (APNs 138-15-612-012 and 138-15-612-013) - Ward 1 (Tarkanian)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
On October 7, 2009 City Council approved the Restated and Amended License Agreement for Construction and Agreement to Grant Easements, which provided N.W.H. II, LTD., also known as McKellar Development Group, Inc., with easements and an extension to the construction commencement and completion dates. Due to the current economic climate, the developer has requested an additional 12-month extension on the construction commencement and completion dates. The new construction commencement and completion dates would be October 1, 2011 and October 1, 2013, respectively.

RECOMMENDATION:
Approval and authorization of City Parkway V, Inc., to execute the First Amendment to Restated and Amended License Agreement for Construction and Agreement to Grant Easements.

BACKUP DOCUMENTATION:
1. First Amendment to Restated and Amended License Agreement for Construction and Agreement to Grant Easements
2. Disclosure of Principals
3. Site Map

FIRST AMENDMENT TO RESTATED AND AMENDED LICENSE AGREEMENT FOR CONSTRUCTION AND AGREEMENT TO GRANT EASEMENTS

THIS FIRST AMENDMENT TO RESTATED AND AMENDED LICENSE AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____ 2010, by and between CITY PARKWAY V, INC., a Nevada not-for-profit corporation ("Licensor") and N.W.H. II LTD, A Nevada limited liability company ("Licensee").

RECITALS

WHEREAS:

A. Licensor and Licensee entered into that certain Restated and Amended License Agreement for Construction and Agreement to Grant Easements dated October 1, 2009 whereby Licensor agreed to permit Licensee to enter on to the Property for the construction of certain improvements and for construction access to the Licensee Property and the granting by Licensor of certain easements over the Property for the benefit of the Licensee Property (the "Original Agreement").

B. Licensor and Licensee desire to amend the Original Agreement as set forth in this Agreement.

C. Licensor and McKellar Development Group, Inc. entered into that certain Real Property Purchase and Sale Agreement dated April 18, 2007 (the "Purchase Agreement") pursuant to which Licensor sold the Property to Licensee, as assignee of said McKellar Development Group, Inc.

D. Licensor and Licensee mutually desire to provide an extension for the commencement and completion of construction of the project required to be developed pursuant to the Purchase Agreement.

Now, therefore, Licensor and Licensee hereby agree as follows:

1. **Extension of Project Commencement and Completion Date**. Licensor and Licensee hereby agree that the dates as set forth in Section 5.c. of the Purchase Agreement for the commencement and completion of construction of the project required pursuant to the Purchase Agreement are hereby respectively extended until October 1, 2011 and October 1, 2013. Except as provided in this paragraph, the Purchase Agreement shall remain in full force and effect in all respects.

2. **Term**. This Agreement shall have a term commencing on the date hereof and automatically terminating on the earlier of (i) completion of the Improvements and (ii) October 1, 2013.

3. **Effect**. Except as provided in this Agreement, the Original Agreement remains in full force and respect in all respects. In the event of any conflict between this Agreement and the Original Agreement, this Agreement shall govern and control.

4. **Captions**. The captions appearing at the commencement of the sections hereof are descriptive only and for convenience in reference to this Agreement and in no way whatsoever define, limit or describe the scope or intent of the Agreement, nor in any way affect this Agreement.

5. **Counterparts; Facsimile Signatures**. This Agreement may be executed in counterparts. Each of said counterparts, when so executed and delivered, shall be deemed an original and, taken together, shall constitute

but one and the same instrument. This Agreement may be executed by a facsimile of the signature of any party, with the facsimile signature having the same force and effect as if this Agreement had been executed by the actual signature of any party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first set forth above.

LICENSOR

CITY PARKWAY V, INC, a Nevada corporation

By_____
Elizabeth Fretwell, President

ATTEST:

_____

_____, Title

APPROVED AS TO FORM:

_____

Date: 8-11-10

LICENSEE

N.W.H. II LTD, a Nevada limited liability company

By: _____
James A. McKellar, Jr. Manager

CERTIFICATE
DISCLOSURE OF OWNERSHIP/PRINCIPALS

1. Definitions

"City" means the City of Las Vegas.

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

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

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

2. Policy

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

3. Instructions

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

4. Incorporation

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

DISCLOSURE OF OWNERSHIP/PRINCIPALS

Block 1	Contracting Entity
N.W.H. II LTD.	
Name	
Address	3340 S. Topaz, #240 Las Vegas, NV
Telephone	(702) 737-1312
EIN or DUNS	20-8884645

Block 2	Description:
Subject Matter of Contract/Agreement:	N.W.H. II LTD. Land Purchase Las Vegas Technology Center
RFP #:	N/A

Block 3 Type of Business

☐ Individual ☐ Partnership ☒ Limited Liability Company ☐ Corporation

Block 4 Disclosure of Ownership and Principals

In the space below, the Contracting Entity must disclose all principals (including partners) of the Contracting Entity, as well as persons or entities holding more than one-percent (1%) ownership interest in the Contracting Entity.

	FULL NAME/TITLE	BUSINESS ADDRESS	BUSINESS PHONE
1.	James A. McKellar, Jr. - President	3340 S. Topaz, #240, Las Vegas, NV	(702) 737-1312
2.			
3.			
4.			
5.			
6.			
7.			
8.			

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

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

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

Name of Attached Document: _____

Date of Attached Document: _____ Number of Pages: -0-

I certify, under penalty of perjury, that all the information provided in this Certificate is current, complete, and accurate.

James A. McKellar, Jr. Name

August 5, 2010
Date

State of Nevada
County of Clark

This instrument was acknowledged before me on

August 5, 2010 (date) by

_____ (name of person)

Rebeccah Alexander
Notary Public -

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
REBECCAH ALEXANDER
No 03-85554-1
My Appointment Expires Dec 7, 2011

Site Map


Subject Parcel
Approx. 2.40 Ac.
US HIGHWAY 95
TENAYA WAY
CASCADE VALLEY COURT

City of Las Vegas Agenda Item No.: **14.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FIELD OPERATIONS
DIRECTOR: LARRY HAUGSNESS ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a Grant of Easement from the City of Las Vegas to Nevada Power Company d/b/a NV Energy to cancel and supersede the Recorded Right of Entry previously on record and continue to allow NV Energy access to the site for electrical systems needs located in the vicinity of Bruce Street and Washington Avenue, known as Heritage Park, APN 139-26-301-005 - Ward 5 (Barlow)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
This Grant of Easement cancels and supersedes the Recorded Right of Entry previously on record and will continue to allow NV Energy access to the site for electrical facilities needs.

RECOMMENDATION:
Staff recommends approval

BACKUP DOCUMENTATION:
1. Grant of Easement
2. Recorded Right-of-Entry

APN: 139-26-301-005

WHEN RECORDED MAIL TO:
Land Services
NV Energy
P.O. Box 98910 MS 9
Las Vegas, NV 89151-0001

GRANT OF EASEMENT

THE CITY OF LAS VEGAS, a political subdivision of the State of Nevada, ("**Grantor**") for One Dollar ($1.00) and other and good valuable consideration, receipt of which is hereby acknowledged, grants and conveys to Nevada Power Company, a Nevada corporation, d/b /a NV Energy ("**Grantee**"), its successors and assigns, a perpetual right and easement:

1. to construct, operate, add to, modify, maintain and remove communication facilities and electric line systems for the distribution of electricity underground, consisting of cables, conduit, duct banks, manholes, vaults, transformers (aboveground or underground), service boxes/meter panels (aboveground or underground), cabinets (aboveground or underground), bollards (aboveground), and other equipment, fixtures, apparatus, and improvements ("**Utility Facilities**") upon, over, under and through the property described in Exhibit "A" and shown on Exhibit "B" attached hereto and by this reference made a part of this Grant of Easement ("**Easement Area**");

2. for the unrestricted passage of vehicles and pedestrians within, on, over and across the Easement Area;

3. for the ingress of vehicles and pedestrians to and the egress of vehicles and pedestrians from, the Easement Area; and

4. to remove, clear, cut or trim any obstruction or material (including trees, other vegetation and structures) from the surface or subsurface of the Easement Area as Grantee may deem necessary or advisable for the safe and proper use and maintenance of the electric line systems and communication facilities in the Easement Area.

Grantee will be responsible for any damages, proximately caused by Grantee negligently constructing, operating, adding to, maintaining, or removing the Utility Facilities, to any improvements owned by Grantor and to any tangible personal property. However, this paragraph does not apply to, and Grantee is not responsible for, any damages caused to obstructions or materials being removed, cleared, cut or trimmed when Grantee exercises its rights under numbered paragraph 4 above. Nor does this paragraph apply to,

RBT

and Grantee is not responsible for, any damages proximately caused by Grantor's negligent or intentional actions or omissions, including but not limited to Grantor's failure to comply with the National Electrical Safety Code, Occupational Safety and Health Administration requirements and chapter 455 of the Nevada Revised Statutes.

Grantor covenants for the benefit of Grantee, its successors and assigns, that no building, structure or other real property improvements will be constructed or placed on or within the Easement Area without the prior written consent of Grantee, such structures and improvements to include, but not be limited to, drainage, trees, bridges, and signage. Grantee and Grantor must document Grantee's consent by both signing Grantee's standard, recordable use agreement. Grantor retains, for its benefit, the right to maintain, use and otherwise landscape the Easement Area for its own purposes; provided, however, that all such purposes and uses do not interfere with Grantee's rights herein and are in all respects consistent with the Grantee's rights herein, Grantee's electrical practices, and the National Electrical Safety Code.

If Grantee determines that the easement area is no longer needed for its electrical systems, this easement shall terminate after Grantor requests and Grantee executes and records a written relinquishment of the easement.

THIS GRANT OF EASEMENT CANCELS AND SUPERSEDES THE RIGHT OF ENTRY RECORDED IN BOOK 20100723 AS DOCUMENT NO. 01215 IN THE OFFICIAL RECORDS OF CLARK COUNTY, NEVADA.

CITY OF LAS VEGAS

RBT

_____

BY: OSCAR B. GOODMAN
TITLE: MAYOR

APPROVED AS TO FORM

John S. Ridilla
Deputy City Attorney

John S. Ridilla
_____
DEPUTY CITY ATTORNEY

ATTEST:

_____
BEVERLY K. BRIDGES, CMC
CITY CLERK

STATE OF _____)

COUNTY OF _____)
This instrument was acknowledged before me on _____, 20____ by Oscar B. Goodman as Mayor of the City of Las Vegas.

_____
Signature of Notarial Officer

Notary Seal:

RW# 0219-10rbt
Proj. # 75350
Project Name: Old Mormon Fort
Reference Document: 19891130:00321
GOE_DIST

RATIFIED AND CONFIRMED

_____

JAMES R. SAAVEDRA
DIRECTOR OF LAND SERVICES

RBT

RW# 0219-10rbt
Proj. # 75350
Project Name: Old Mormon Fort
Reference Document: 19891130:00321
GOE_DIST

Exhibit A

The above referred to parcel of land in the County of Clark, State of Nevada, is that portion of the Southwest Quarter (SW1/4) of Section 26, Township 20 South, Range 61 East, M.D.B.&M., described as follows:

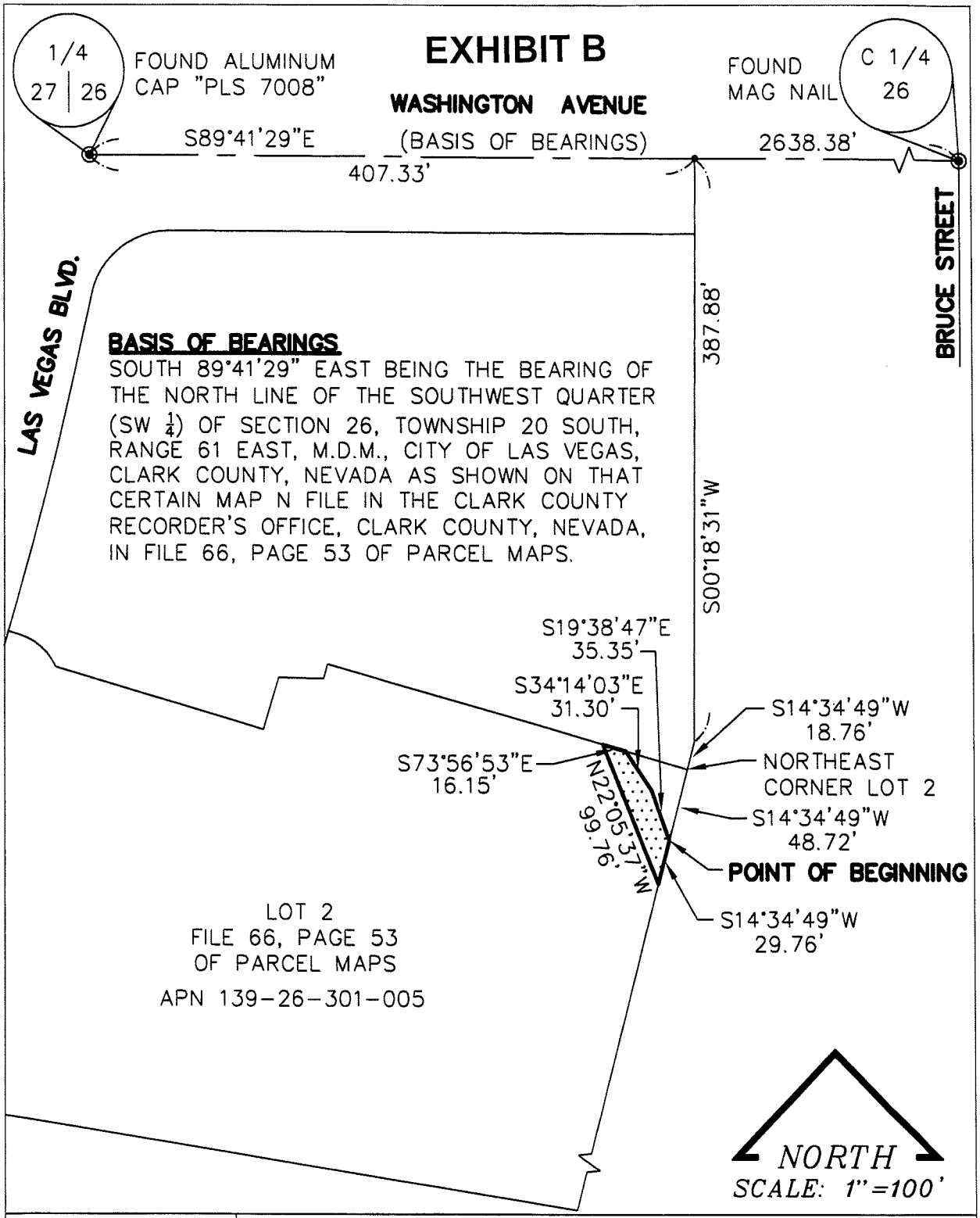
That portion of Lot Two (2) as shown on map filed in Book 66 of Parcel Maps, Page 53 recorded September 26, 1990 in Book 19900926 as Document No. 00824 in the Official Records of Clark County, Nevada described as follows:

COMMENCING at the Northeast corner of said Lot Two (2), thence along the east line thereof South 14°34'49" West 48.72 feet to the POINT OF BEGINNING;
Thence continuing along said east line South 14°34'49" West 29.76 feet;
Thence departing said east line North 22°05'37" West 99.76 feet to a point on the northerly boundary line of said Lot Two (2);
Thence along said northerly boundary line South 73°56'53" East 16.15 feet;
Thence departing said northerly boundary line South 34°14'03" East 31.30 feet;
Thence South 19°38'47" East 35.35 feet to the Point of Beginning.

RBT

Description created by Roger Trestrail
Nevada Power Company dba NV Energy
2215 E. Lone Mountain Road
North Las Vegas, Nevada
Work Order # 75350

EXHIBIT B



NEVADA POWER.	NEVADA POWER COMPANY P.O. BOX 98910 LV, NV 89151, 6226 WEST SAHARA AV., (702) 367-5000		
TITLE: OLD MORMON FORT	DESCRIPTION: EXHIBIT MAP TO ACCOMPANY LEGAL DESCRIPTION	SEC:26 T:20 S R:61 E SURVEYOR: NS/BB/AA DRAWN BY: RH CHECKED BY: JE	DATE: 9-27-07 PROJECT ID: 75350

Inst #: 201007230001215
Fees: $17.00
N/C Fee: $25.00
07/23/2010 11:59:52 AM
Receipt #: 437297
Requestor:
NEVADA POWER COMPANY
Recorded By: ANI Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN# 139-26-301-005

RECORDING REQUESTED BY:

Nevada Power Company
P.O. Box 98910
Las Vegas, Nevada 89151-0001
Attn: Land Services Dept.
Mail Station #9

4C

COPY

Right of Entry
(Title on Document)

WHEN RECORDED, MAIL TO:

NEVADA POWER COMPANY
P.O. Box 98910
Las Vegas, Nevada 89151-0001
ATTN: Land Services Dept.
Mail Station 9

This page added to provide additional information required by NRS 111.312
Sections 1-2 (Additional recording fee applies)

WO# 75350
RW 146-98lc/dak(rbt)

RIGHT OF ENTRY

I (We) **CITY OF LAS VEGAS, a municipal corporation**
for and in consideration of One Dollar ($1.00) receipt of which is hereby acknowledged, permission is hereby granted to NEVADA POWER COMPANY and/or their agents and/or contractors to enter in and upon land described as **a portion of the Southwest Quarter (SW 1/4) of Section 26, Township 20 South, Range 61 East, M.D.M., Clark County, Nevada,** for the purpose of installing, energizing and maintaining electrical facilities over, under, across and upon said premises as shown on Nevada Power Company Work Request Number: **75350** APN: **139-26-301-001** ROE: **146-98lc/dak**
Job Name: **Old Mormon Fort**

SEE ATACHED EXHIBIT "A"

NEVADA POWER COMPANY will pay for damages, if any, sustained to the above described property as a result of the negligence of NEVADA POWER COMPANY and/or their agents and/or contractors related to the above described Work Request.

When a standard easement is prepared upon completion of the work on (my, our) property, (I, we) will execute your standard form GRANT OF EASEMENT, to describe the area and location of the work.

This agreement shall be binding upon my successors, heirs and assigns.

WITNESS my ~~four~~ hand(s) this 2nd day of June, 19 98.

CITY OF LAS VEGAS

BY: RICHARD D. GOECKE
TITLE: Director, Public Works

BY:
TITLE:

MAIL TO
LAND SECTION
NEVADA POWER COMPANY
P.O. BOX 230
LAS VEGAS, NV 89151

STATE OF NEVADA)
COUNTY OF CLARK)

On this 2nd day of June,
19 98, before me, Carol S. Sullivan
a Notary Public in and for said State,
personally appeared
Richard D. Goecke
personally known (or proven
satisfactorily) to me to be the person
who executed the above instrument, and
acknowledged to me that _he_ executed
the same for the purposes herein stated.

Carol S. Sullivan
Notary Public

CAROL S. SULLIVAN
Notary Public - State of Nevada
Appointment Recorded in Clark County
My Appointment Expires Feb. 14, 2001
90-2347-1

EXPIRES FEB. 14, 2001
90-2347-1

Notary Public Statement and/or Seal
roe:rev. 11/22/95

ROE 146-98lc/dak
Job Name: Old Mormon Fort

Exhibit A

The above referred to parcel of land in the County of Clark, State of Nevada, is a portion of the Southwest Quarter (SW1/4) of Section 26, Township 20 South, Range 61 East, M.D.B.&M., described as a portion of Lot Two (2) as shown on map filed in Book 66 of Parcel Maps, Page 53 recorded September 26, 1990 in Book 19900926 as Document No. 00824 in the Official Records of Clark County, Nevada.

City of Las Vegas Agenda Item No.: **15.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FIELD OPERATIONS
DIRECTOR: LARRY HAUGSNESS ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a Grant of Easement from the City of Las Vegas to Nevada Power Company d/b/a NV Energy to cancel and supersede the Recorded Right of Entry previously on record and continue to allow NV Energy access to the sites for electrical systems needs located in the vicinity of Mojave Road and Bonanza Road, known as Animal Foundation of Nevada and Fire Training Center, APNs 139-25-405-008 & 139-25-801-004 - Ward 3 (Reese)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
This Grant of Easement cancels and supersedes the Recorded Right of Entry previously on record and will continue to allow NV Energy access to the sites for electrical facilities needs.

RECOMMENDATION:
Staff recommends approval

BACKUP DOCUMENTATION:
1. Grant of Easement
2. Recorded Right of Entry

APN: 139-25-405-008 & 139-25-801-004

WHEN RECORDED MAIL TO:
Land Services
NV Energy
P.O. Box 98910 MS 9
Las Vegas, NV 89151-0001

THIS GRANT OF EASEMENT CANCELS AND SUPERCEDES THE RIGHT OF ENTRY AUTHORIZATIONS GRANTED TO NEVADA POWER COMPANY BY DOCUMENT RECORDED AUGUST 2, 2004 IN BOOK 20040802 AS DOCUMENT NO. 04523, AND BY DOCUMENT RECORDED AUGUST 26, 2004 IN BOOK 20040826 AS DOCUMENT NO. 03218 OFFICIAL RECORDS, CLARK COUNTY, NEVADA.

GRANT OF EASEMENT

THE CITY OF LAS VEGAS, a political subdivision of the State of Nevada, ("**Grantor**") for One Dollar ($1.00) and other and good valuable consideration, receipt of which is hereby acknowledged, grants and conveys to Nevada Power Company, a Nevada corporation, d/b /a NV Energy ("**Grantee**"), its successors and assigns, a perpetual right and easement:

1. to construct, operate, add to, modify, maintain and remove communication facilities and electric line systems for the distribution of electricity underground, consisting of cables, conduit, duct banks, manholes, vaults, transformers (aboveground or underground), service boxes/meter panels (aboveground or underground), cabinets (aboveground or underground), bollards (aboveground), and other equipment, fixtures, apparatus, and improvements ("**Utility Facilities**") upon, over, under and through the property described in Exhibit "A" attached hereto and by this reference made a part of this Grant of Easement ("**Easement Area**");

2. for the unrestricted passage of vehicles and pedestrians within, on, over and across the Easement Area;

3. for the ingress of vehicles and pedestrians to and the egress of vehicles and pedestrians from, the Easement Area; and

4. to remove, clear, cut or trim any obstruction or material (including trees, other vegetation and structures) from the surface or subsurface of the Easement Area as Grantee may deem necessary or advisable for the safe and proper use and maintenance of the electric line systems and communication facilities in the Easement Area.

Grantee will be responsible for any damages, proximately caused by Grantee negligently constructing, operating, adding to, maintaining, or removing the Utility Facilities, to any improvements owned by Grantor and to any tangible personal property. However, this paragraph does not apply to, and Grantee is not responsible for, any damages caused to obstructions or materials being removed, cleared, cut or trimmed when Grantee exercises its rights under numbered paragraph 4 above. Nor does this paragraph apply to, and Grantee is not responsible for, any damages proximately caused by Grantor's negligent or intentional actions or omissions, including but not limited to Grantor's failure to comply with the National Electrical Safety Code, Occupational Safety and Health Administration requirements and chapter 455 of the Nevada Revised Statutes.

Grantor covenants for the benefit of Grantee, its successors and assigns, that no building, structure or other real property improvements will be constructed or placed on or within the Easement Area without the prior written consent of Grantee, such structures and improvements to include, but not be limited to, drainage, trees, bridges, and signage. Grantee and Grantor must document Grantee's consent by both signing Grantee's standard, recordable use agreement. Grantor retains, for its benefit, the right to maintain, use and otherwise landscape the Easement Area for its own purposes; provided, however, that all such purposes and uses do not interfere with Grantee's rights herein and are in all respects consistent with the Grantee's rights herein, Grantee's electrical practices, and the National Electrical Safety Code.

If Grantee determines that the easement area is no longer needed for its electrical systems, this easement shall terminate after Grantor requests and Grantee executes and records a written relinquishment of the easement.

CITY OF LAS VEGAS

_____
BY: OSCAR B. GOODMAN
TITLE: MAYOR

APPROVED AS TO FORM

John S. Ridilla
DEPUTY CITY ATTORNEY

John S. Ridilla
Deputy City Attorney

ATTEST:

_____
BEVERLY K. BRIDGES
CITY CLERK

APN: 139-25-405-008 & 139-25-801-004
RW# 0022a-10yb
Proj. # 175856
Project Name: Regional Animal Campus
Reference Document: Bk 61, Pg. 79 Inst. 330751
GOE_DIST

STATE OF _____)

COUNTY OF _____)
This instrument was acknowledged before me on _____, 20____ by Oscar B. Goodman as Mayor of the City of Las Vegas.

_____
Signature of Notarial Officer

Notary Seal:

RATIFIED AND CONFIRMED

_____
JAMES R. SAAVEDRA
DIRECTOR OF LAND SERVICES

Exhibit A

APN: 139-25-405-008 & 139-25-801-004

The above referred to parcels of land, situate in the City of Las Vegas, State of Nevada are those portions located within the Southwest Quarter of the Southeast Quarter (SW¼ SE¼) and the Southeast Quarter of the Southwest Quarter (SE¼ SW¼) of Section 25, Township 20 South, Range 61 East, M.D.M., Clark County, Nevada, described as follows:

PARCEL 1:
COMMENCING at the Northeast corner of Lot 2 per File 100, Page 68 of Parcel Maps, recorded June 4, 2001 as Instrument No. 01341 in Book 20010604, Official Records, Clark County, Nevada;
Thence North 88°41'34" West, 308.39 feet to the POINT OF BEGINNING;
Thence continuing North 88°41'34" West, 28.49 feet, to a point hereinafter referred to as POINT "A";
Thence continuing North 88°41'34" West, 66.99 feet;
Thence North 01°18'26" East, 17.00 feet;
Thence South 88°41'34" East, 63.78 feet to a point hereinafter referred to as POINT "B";
Thence continuing South 88°41'34" East, 31.70 feet,
Thence South 01°18'26" West, 17.00 feet to the point of beginning.

CENTERLINE 1:
A strip of land 20.00 feet in width being 10.00 feet on each side of the following described centerline:

BEGINNING at said POINT "A":
Thence South 02°28'47" East, 48.33 feet, to a point hereinafter referred to as POINT "C";
Thence South 13°00'59" East, 21.00 feet to the point of ending.

CENTERLINE 2:
A strip of land 10.00 feet in width being 5.00 feet on each side of the following described centerline:

BEGINNING at said POINT "C":
Thence South 89°04'52" East, 97.95 feet;
Thence South 85°39'12" East, 65.68 feet;
Thence North 80°18'43" East, 22.81 feet to the point of ending.

The sideline boundaries of Centerlines 1 and 2 are to be shortened or lengthened so as to intersect at all angle points, to begin at the south line of the above described Parcel 1 and terminate at right angles.

CENTERLINE 3:
A strip of land 10.00 feet in width being 5.00 feet on each side of the following described centerline:

BEGINNING at said POINT "B":
Thence North 35°47'31" East, 9.69 feet;
Thence North 00°52'02" East, 28.05 feet;

Thence North 03°27'45" West, 119.81 feet;
Thence North 00°01'24" East, 238.33 feet to a point hereinafter referred to as POINT "D";

Thence continuing North 00°01'24" East, 14.38 feet to the point of ending, being the south right of way line of Harris Avenue (60.00 feet wide) also being the North line of Lot 1 per File 106, Page 75 of Parcel Maps, recorded March 8, 2004 as Instrument No. 01785 in Book 20040308, Official Records, Clark County, Nevada.

The sideline boundaries of Centerline 3 are to be shortened or lengthened so as to intersect at all angle points, to begin at the north line of Parcel 1 and terminate at the South right of way line of Harris Avenue.

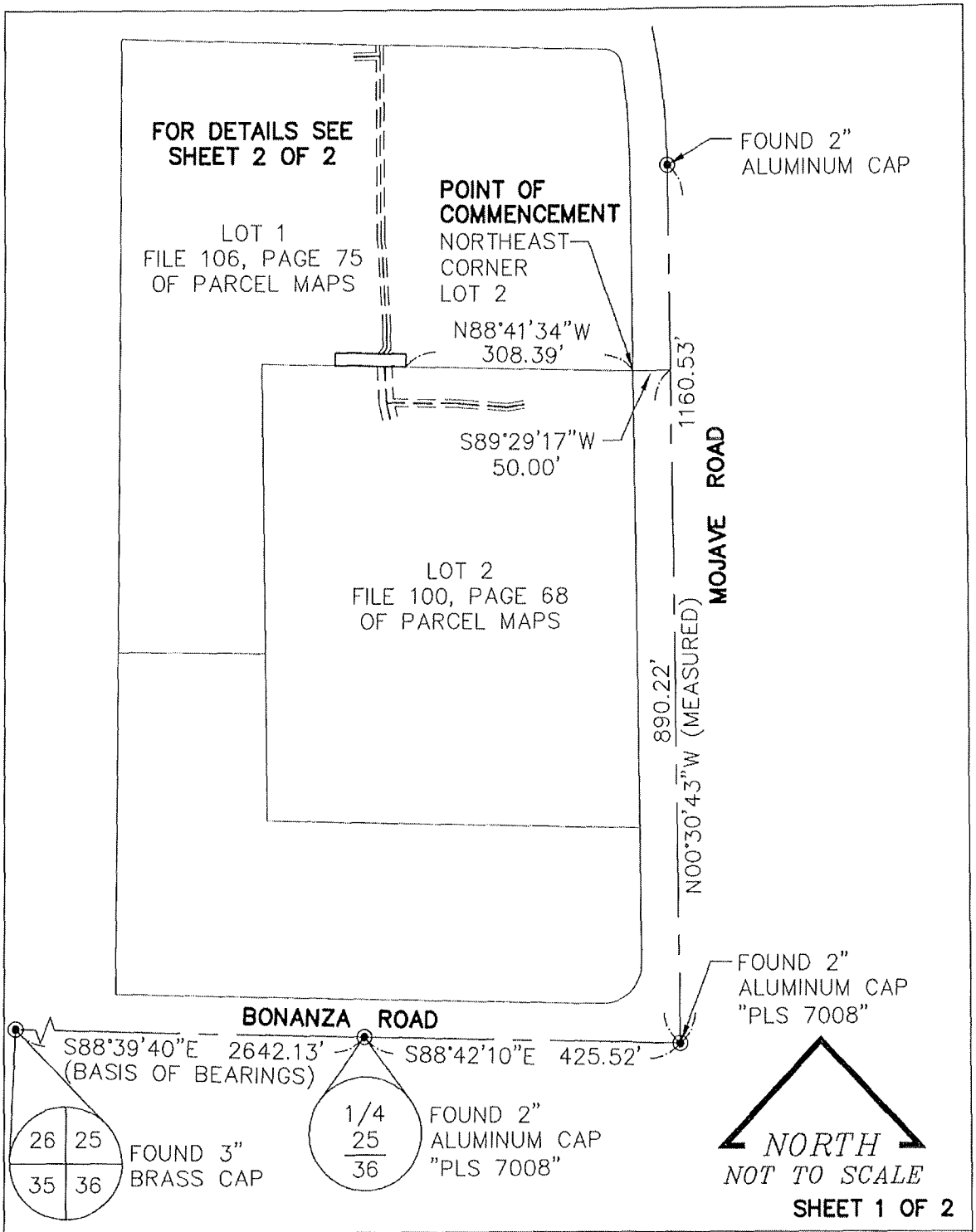
CENTERLINE 4:
A strip of land 10.00 feet in width being 5.00 feet on each side of the following described centerline:

BEGINNING at said POINT "D":
Thence South 87°33'40" West, 35.32 feet to the point of ending.

The sideline boundaries of Centerline 4 are to be shortened or lengthened so as to intersect at all angle points.

END OF LAND DESCRIPTION
NOTE: this land description is provided as a convenience and is not intended for the purpose of subdividing and not in conformance with Nevada Revised Statues.

This legal description was created by:
Yolanda Benito
NV Energy

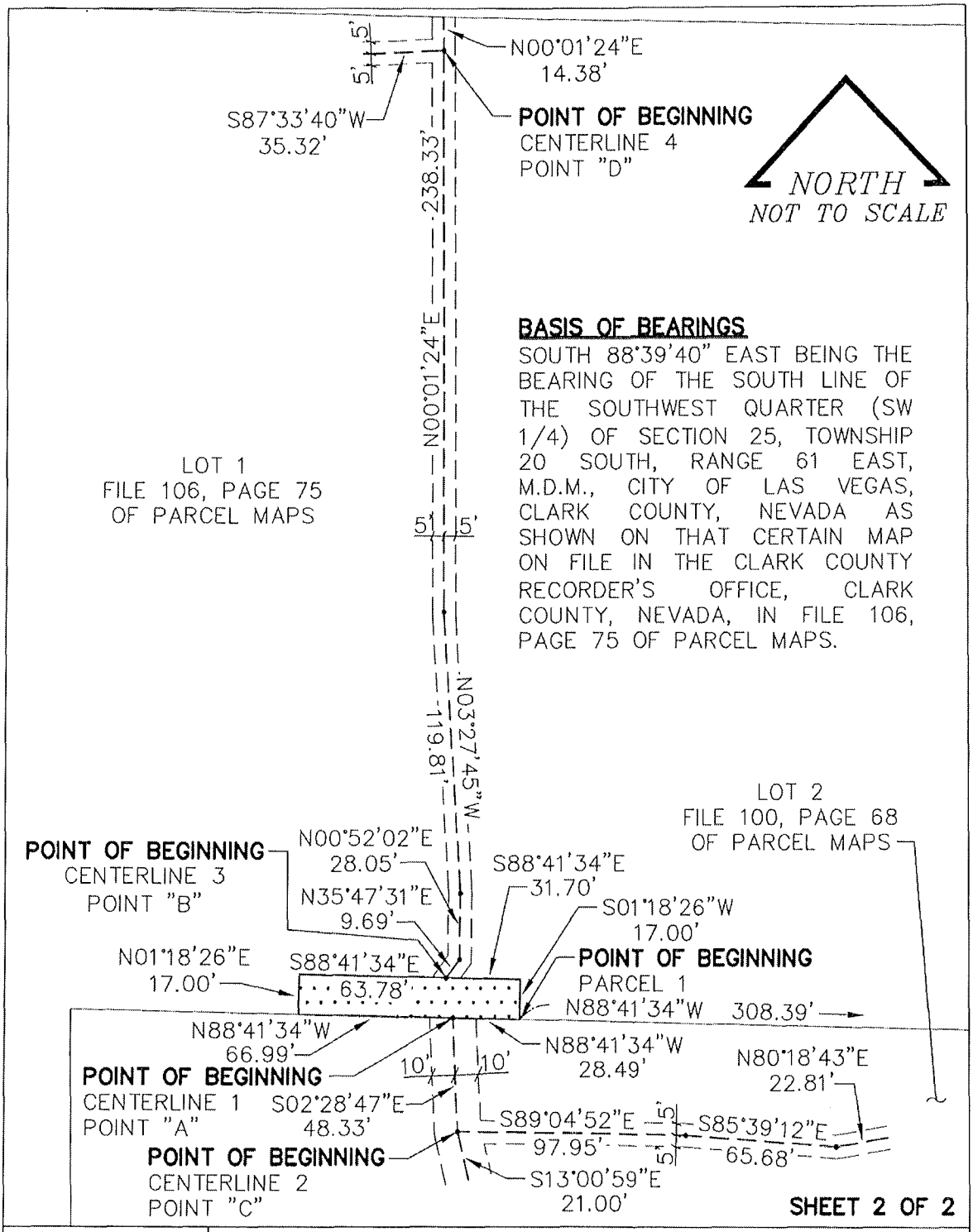


SHEET 1 OF 2

EXHIBIT TO ACCOMPANY LAND DESCRIPTION

NVEnergy
nvenergy.com

PROJECT: REGIONAL ANIMAL CAMPUS	SEC: 25 T: 20 S., R: 61 E. SURVEYOR: RS/DW DRAWN BY: RH CHECKED BY: LYZ	DATE: 1-7-09 PROJECT ID: 175856



SHEET 2 OF 2

NVEnergy
nvenergy.com

EXHIBIT TO ACCOMPANY LAND DESCRIPTION

PROJECT: REGIONAL ANIMAL CAMPUS	SEC: 25 T: 20 S., R: 61 E. SURVEYOR: RS/DW DRAWN BY: RH CHECKED BY: LYZ	DATE: 1-7-09 PROJECT ID: 175856

20040802-0004523
Fee: $15.00
08/02/2004 14:03:26 T20040073597
Req: NEVADA POWER COMPANY
Frances Deane N/C: $0.00
Clark County Recorder Pgs: 2

Assessor's Copy

APN: 139-25-801-004
139-25-405-008

WHEN RECORDED MAIL TO:
Land Services MS 9
Nevada Power Company
P.O. Box 98910
Las Vegas, NV 89151-0001

PN-22-1236

RIGHT OF ENTRY

2

I (We) **CITY OF LAS VEGAS, a municipal corporation**, for and in consideration of One Dollar ($1.00) receipt of which is hereby acknowledged, do hereby grant and convey to NEVADA POWER COMPANY, its successors and/or assigns and/or their agents and/or contractors the right to enter in and upon said grantor's land described as **Lot 2 per File 100 of Parcel Maps, Page 68 and Lot 1 per File 106 of Parcel Maps, Page 75, being a portion of the South Half (S1/2) of Section 25, Township 20 South, Range 61 East, M.D.M., Clark County, Nevada,** for the purpose of constructing, installing, energizing and maintaining electrical facilities over, under, across and upon those portions of said premises, as delineated and drawn on Nevada Power Company Work Request Number: **175856** ROE: **217-04km** Job Name: **Regional Animal Campus**

NEVADA POWER COMPANY will pay for damages, if any, sustained to the above described property as a result of the negligence of NEVADA POWER COMPANY and/or their agents and/or contractors related to the above described Work Request.

Upon completion of the project, as delineated and drawn on said Work Request Number, and constructed pursuant to this Right-of-Entry, the grantor, its successors and/or assigns hereby agree to sign and execute Nevada Power Company's standard form GRANT OF EASEMENT describing the permanent easement area to be retained over said premises.

WITNESS my (our) hand(s) this 21ST day of JULY, 2004.

CITY OF LAS VEGAS

David Roark

BY: David Roark
TITLE:

BY:
TITLE:

STATE OF Nevada)

COUNTY OF Clark)

On this 21st day of July, 2004, before me, a Notary Public, personally appeared David Roark personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) who executed this instrument as Manager of Real Estate on behalf of the CITY OF LAS VEGAS, and acknowledged to me that the CITY OF LAS VEGAS executed it.

Pamela Samuolis
Notary Public

PAMELA SAMUOLIS
Notary Public State of Nevada
No. 00-63724-1
My appt. exp. July 11, 2008

Notary Statement and/or Seal

WR# 175856 ROE: 217-04km

ASSESSOR COPY

City of Las Vegas Agenda Item No.: **16.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of Service and Material Checks/Payroll Checks/Wire Transfers/Other Checks and Investments

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☒ **Budget Funds Available**
Amount: $78,449,725.54
Funding Source: All Funds
Dept./Division: Finance and Business Services

PURPOSE/BACKGROUND:
In compliance with the City's Municipal Code, Chapter 4.12, this is an informational item that provides the dollar amount of disbursements processed by the Finance and Business Services Department.

RECOMMENDATION:
None

BACKUP DOCUMENTATION:
Summary of Cash Expenditures for the period 08/16-08/31/10

City of Las Vegas

Summary of Cash Expenditures

For period of 8/16-8/31/10

Total Services & Materials Checks :	**$16,953,976.50**
Total Services & Materials EFT Payments :	**$13,784,572.77**
Total Wire Transfers:	**$41,368,586.01**
Total Payroll Checks:	**$6,342,590.26**
Grand Total:	**$78,449,725.54**

I hereby certify that I have reviewed the above amounts and approved them for payment as being in compliance with all applicable laws to the best of my knowledge and belief.

Mark R. Vincent
Chief Financial Officer

Beverly K. Bridges, MMC
City Clerk

On September 15, 2010, the City Council approved the above cash expenditures.

Oscar B. Goodman
Mayor

	Check Dates	Total	
A/P & Travel Check Runs	8/16 - 8/31/10	$16,480,092.86	
A/P Wire transfers	8/16 - 8/31/10	$0.00	
Metro Check (wired)	8/16 - 8/31/10	$0.00	
A/P EFT Payments	8/16 - 8/31/10	$13,784,572.77	
Bi-State	8/16 - 8/31/10	$41.97	
Inmate Trust	8/16 - 8/31/10	$7,203.02	
Muni Court	8/16 - 8/31/10	$18,231.00	
Redevelopment	8/16 - 8/31/10	$99,532.84	
WF-LV Centennial	8/16 - 8/31/10	$13.64	
Witness Fees		0.00	
Workers Comp	8/16 - 8/31/10	$348,861.17	
Write offs to unclaimed monies	8/16 - 8/31/10		
		Payment Register Report Total :	**$30,738,549.27**

Payroll Check Runs			
Checks	8/1 - 8/15/10	$347,397.58	
Direct Deposit	8/1 - 8/15/10	$5,979,641.56	
Third Party	8/1 - 8/15/10	$15,551.12	
			$6,342,590.26
Electronic Payments/AP Wires			
	8/1 - 8/15/10	41,368,586.01	
			$41,368,586.01
		Total Cash Expenditures	**$78,449,725.54**

City of Las Vegas Agenda Item No.: **17.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a Special Event Alcoholic Beverage License for 3 Wall Ball, LLC, Location: 2121 South Las Vegas Boulevard (parking lot across from Stratosphere Tower Hotel & Casino), Dates: September 23 - 26, 2010, Type: Special Event General, Event: World 3 Wall Ball Championships (Raquetball/Handball Tournament), Responsible Person in Charge: Mike Coulter - Ward 3 (Reese)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of a Special Event Alcoholic Beverage License. Event times are 7:00 a.m. - 11:59 p.m. Estimated attendance is 800. Security provided by Stratosphere Hotel Security.

RECOMMENDATION:
Recommend approval.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **18.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a Special Event Alcoholic Beverage License German American Social Club, Location: 401 South 4th Street, Date: October 16, 2010, Type: Special Event General, Event: Oktoberfest, Responsible Person in Charge: Eugene Gries - Ward 3 (Reese)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of a Special Event Alcoholic Beverage License. Event time is 2:00 p.m. - 10:00 p.m. Estimated attendance is 1,000. Security provided by Allied Barton Security Services.

RECOMMENDATION:
Recommend approval.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **19.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a Special Event Alcoholic Beverage License for Innerout Inc., dba Charlie's Bar Down Under, Location: 1950 North Buffalo Drive, Date: September 25, 2010, Type: Special Event General, Event: Fall BBQ, Responsible Person in Charge: Gary Heckethorn - Ward 1 (Tarkanian)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of a Special Event Alcoholic Beverage License. Event time is 5:00 p.m. - 11:00 p.m. Estimated attendance is 300. Security provided by Becker Gaming.

RECOMMENDATION:
Recommend approval.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **20.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a Special Event Alcoholic Beverage License for Saint Anne Catholic School/Church, Location: 1813 South Maryland Parkway, Date: October 2, 2010, Type: Special Event General, Event: Funfair 2010, Responsible Person in Charge: Dr. James Muchinski - Ward 3 (Reese)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of a Special Event Alcoholic Beverage License. Event time is 10:00 a.m. - 10:00 p.m. Estimated attendance is 1,000. Security provided by American Security Protection.

RECOMMENDATION:
Recommend approval.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **21.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a Special Event Alcoholic Beverage License for Southern Nevada Association of Pride, Inc., Location: Blue Moon Resort, 2651 Westwood Drive, Date: September 18, 2010, Type: Special Event General, Event: Men's T Dance, Responsible Person in Charge: Dennis Shaull - Ward 1 (Tarkanian)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of a Special Event Alcoholic Beverage License. Event time is 12:00 p.m. - 8:00 p.m. Estimated attendance is 100. Security provided by in house staff.

RECOMMENDATION:
Recommend approval.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **22.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of an extension of a Temporary Restaurant Service Bar License, Donna Maria, Inc., dba Donna Maria Summerlin, 3205 North Tenaya Way, Neriza Johnson, Pres, 100% - Ward 4 (Anthony)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of an extension of a Temporary Restaurant Service Bar License.

RECOMMENDATION:
Recommend approval of an extension of the temporary license with the authority of the director or designee to issue a permanent license upon receipt of a favorable investigative report and subject to the following conditions:

1. No alcoholic beverages shall be sold before 11:00 a.m.
2. There shall be a three alcoholic beverage maximum per customer prior to 4:00 p.m. during weekdays.
3. The restaurant shall not remain open after 10:00 p.m.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **23.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of an extension of a Temporary Tavern License, Dona Maria, Inc., dba Dona Maria Tamales, 910 South Las Vegas Boulevard, Neriza Johnson, Pres, 100% - Ward 3 (Reese)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of an extension of a Temporary Tavern License.

RECOMMENDATION:
Recommend approval of an extension of the temporary license with the authority of the director or designee to issue a permanent license upon receipt of a favorable investigative report.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **24.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of an extension of a new Restricted Gaming License, Dona Maria, Inc., dba Dona Maria Tamales, 910 South Las Vegas Boulevard, Neriza Johnson, Pres, 100% - Ward 3 (Reese)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of an extension of a new Restricted Gaming License for 2 slots.

RECOMMENDATION:
Recommend approval of an extension of the temporary license with the authority of the director or designee to issue a permanent license upon receipt of a favorable investigative report.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **25.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a Change of Ownership and Change of Business Name for a Tavern License, From: Jersey's LLC, dba Jerseys' Bar & Grill, To: Nevada Restaurant Services, Inc., dba Dotty's 64, 4760 West Sahara Avenue, Suite 1, Richard Estey, Pres, Secy, Treas, Dir, 100% - Ward 1 (Tarkanian)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of a Change of Ownership and Change of Business Name for a Tavern License.

RECOMMENDATION:
Recommend approval.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **26.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a new Restricted Gaming License subject to confirmation of approval by the Nevada Gaming Commission, Nevada Restaurant Services, Inc., dba Dotty's 64, 4760 West Sahara Avenue, Suite 1, Richard Estey, Pres, Secy, Treas, Dir, 100% - Ward 1 (Tarkanian)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of a new Restricted Gaming License for 15 slots.

RECOMMENDATION:
Recommend approval subject to confirmation of approval by the Nevada Gaming Commission.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **27.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a Change of Ownership, Change of Business Name, and Change of Location for a Tavern License subject to the provisions of the planning and fire codes and Health Dept. regulations, From: Gourmet Cigars Ltd., dba Gustav Mauler Gourmet Tobacconist (Non-operational), To: RMTWO, Inc., dba Molly's, 6430 Sky Pointe Drive, Suite 130, Randy C. Miller, Pres, Dir, 50% and Richard M. Gonzales, Treas, Secy, Dir, 50% - Ward 6 (Ross)

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of a Change of Ownership, Change of Business Name, and Change of Location for a Tavern License.

RECOMMENDATION:
Recommend approval subject to the provisions of the planning and fire codes and Health Dept. regulations.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **28.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a new Restricted Gaming License subject to confirmation of approval by the Nevada Gaming Commission, RMTWO, Inc., dba Molly's, 6430 Sky Pointe Drive, Suite 130, Randy C. Miller, Pres, Dir, 50% and Richard M. Gonzales, Treas, Secy, Dir, 50% - Ward 6 (Ross)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of a new Restricted Gaming for 15 slots.

RECOMMENDATION:
Recommend approval subject to confirmation of approval by the Nevada Gaming Commission.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **29.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a new Slot Route Operator for a Restricted Gaming License subject to confirmation of approval by the Nevada Gaming Commission, RP Slots, LLC, db at Decatur Liquor, 546 South Decatur Boulevard - Ward 1 (Tarkanian)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of a new Slot Route Operator for a Restricted Gaming for 15 slots.

RECOMMENDATION:
Recommend approval subject to confirmation of approval by the Nevada Gaming Commission.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **30.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a new Restricted Gaming License subject to confirmation of approval by the Nevada Gaming Commission, Gill Enterprises, Inc., db at 7 Eleven Store #32826C, 920 North Buffalo Drive - Ward 1 (Tarkanian)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of a new Restricted Gaming License for 5 slots.

RECOMMENDATION:
Recommend approval subject to confirmation of approval by the Nevada Gaming Commission.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **31.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a new Restricted Gaming License subject to confirmation of approval by the Nevada Gaming Commission, Haecke, LLC, dba Mr. D's Sports Bar & Grill, 1810 South Rainbow Boulevard, Kelly J. Cotton, Managing Mmbr, 100% - Ward 1 (Tarkanian)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of a new Restricted Gaming License for 15 slots.

RECOMMENDATION:
Recommend approval subject to confirmation of approval by the Nevada Gaming Commission.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **32.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a new Slot Route Operator for a Restricted Gaming License subject to confirmation of approval by the Nevada Gaming Commission, RP Slots, LLC, db at Decatur Drug Restaurant, 544 South Decatur Boulevard - Ward 1 (Tarkanian)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of a new Slot Route Operator for a Restricted Gaming for 15 slots.

RECOMMENDATION:
Recommend approval subject to confirmation of approval by the Nevada Gaming Commission.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **33.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a Package Liquor License for a Change of Ownership, From: Rachad Khalil, To: San Jorge, LLC, dba Wash and Shop, 2880 East Bonanza Road, Nina Massis, Mgr, 25% and Rimoun Massis, Mgr, 75% - Ward 3 (Reese)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of a Package Liquor License for a Change of Ownership.

RECOMMENDATION:
Recommend approval.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **34.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a new Slot Route Operator for a Restricted Gaming License subject to confirmation of approval by the Nevada Gaming Commission, RP Slots, LLC, db at Wellcare Pharmacy Decatur, 542 South Decatur Boulevard - Ward 1 (Tarkanian)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of a new Slot Route Operator for a Restricted Gaming for 10 slots.

RECOMMENDATION:
Recommend approval subject to confirmation of approval by the Nevada Gaming Commission.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **35.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of an extension of a Temporary Burglar Alarm Service License for a Change of Ownership and Change of Business Name, From: Security Associates International, Inc., dba Security Associates International, Inc., To: Castlerock Security, Inc., dba Castlerock Security, Inc., 2101 South Arlington Heights Road, Suite 150, Brian E. Johnson, Pres, CEO, James M. German, Senior VP, Donald D. Agee II, VP, and Christian Becker, VP - Illinois

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of an extension of a Temporary Burglar Alarm Service License for a Change of Ownership and Change of Business Name.

RECOMMENDATION:
Recommend approval of an extension of the temporary license with the authority of the director or designee to issue a permanent license upon receipt of a favorable investigative report.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **36.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of an extension of a Temporary Massage Establishment License, CF3, LLC, dba Canyon Falls Spa & Salon, 7331 West Lake Mead Boulevard, Suite 103, William R. Schonsheck, Managing Mmbr, 40%, Ryan Schonsheck, Managing Mmbr, 30%, and Adam Rimmel, Mmbr, 30% - Ward 1 (Tarkanian) [NOTE: This is an ancillary license to an existing beauty salon - Canyon Falls Spa & Salon]

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of an extension of a Temporary Massage Establishment License.

RECOMMENDATION:
Recommend approval of an extension of the temporary license with the authority of the director or designee to issue a permanent license upon receipt of a favorable investigative report and subject to the following conditions:

1. No exterior signage advertising massage.
2. Square footage cannot exceed 150 sq ft.
3. Hours of operation are limited to the period between 8:00 a.m. and 9:00 p.m. and cannot exceed those of the primary business.
4. Massage therapists have valid State Massage Licenses and City Business Licenses.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **37.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a Change of Business Name and Change of Location for a Pawnbroker License and a Class II Secondhand Dealer License, Cash America Inc. of Nevada, From: Stoney's Pawn Shop, 126 South 1st Street, To: Super Pawn, 307 South Decatur Boulevard, Dennis Weese, Pres, John Linscott, Exec VP, Austin Nettle, VP, Treas, Thomas Bessant Jr., Exec VP, CFO, and David Clay, VP - Ward 1 (Tarkanian)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of a Change of Business Name and Change of Location for a Pawnbroker License and a Class II Secondhand Dealer License.

RECOMMENDATION:
Recommend approval subject to the following conditions:

1. The hours of operation shall be Monday through Saturday, 9am-7pm and Sunday noon to 5pm.
2. There shall be no firearm sales.
3. There shall be no check cashing or payday loan services provided on-site.
4. There shall be no banner signs or temporary signage allowed on the building or premises.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **38.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a new Pistol Permit License, Super Pawn, 307 South Decatur Boulevard, Dennis Weese, Pres, John Linscott, Exec VP, Austin Nettle, VP, Treas, Thomas Bessant Jr.., Exec VP, CFO, and David Clay, VP - Ward 1 (Tarkanian)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of a new Pistol Permit License.

RECOMMENDATION:
Recommend approval subject to the following conditions:

1. The hours of operation shall be Monday through Saturday, 9am-7pm and Sunday noon to 5pm.
2. There shall be no firearm sales.
3. There shall be no check cashing or payday loan services provided on-site.
4. There shall be no banner signs or temporary signage allowed on the building or premises.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **39.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a Change of Business Name and Change of Location for a Psychic Arts and Science License subject to the provisions of the fire code, From: Jodi Ann Hazzard, dba Jodi Ann Hazzard, 6848 West Charleston Boulevard, To: Jodi Ann, dba Jodi Ann, 800 North Rainbow Boulevard, Suite 208, Jodi Ann, Owner, 100% - Ward 1 (Tarkanian)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of a Change of Business Name and Change of Location for a Psychic Arts and Science License.

RECOMMENDATION:
Recommend approval subject to the provisions of the fire code and the following conditions:

1. Rates must be posted in a conspicuous place visible to patrons on a sign of at least 8" x 10" in size with lettering no smaller than 1".
2. If the licensee operates by donation or indirect method of payment, including remuneration that is at the discretion of the customer, signage shall indicate such to the patron.
3. The rates published shall be the only rates charged.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **40.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of an extension of a Temporary Psychic Arts and Science License, Scarlett Lee, dba Scarlett Lee, 425 Fremont Street, Scarlett Lee, 100% - Ward 3 (Reese)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of an extension of a Temporary Psychic Arts and Science License.

RECOMMENDATION:
Recommend approval of an extension of the temporary license with the authority of the director or designee to issue a permanent license upon receipt of a favorable investigative report and subject to the following conditions:

1. Rates must be posted in a conspicuous place visible to patrons on a sign of at least 8" x 10" in size with lettering no smaller than 1".
2. If the licensee operates by donation or indirect method of payment, including remuneration that is at the discretion of the customer, signage shall indicate such to the patron.
3. The rates published shall be the only rates charged.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **41.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of award of Agreement No. 110037-DC, Prime Design Services for Las Vegas Boulevard Widening I-515 to Owens - Department of Public Works - Award recommended to: THE LOUIS BERGER GROUP, INC. ($1,150,000 - Road and Flood Capital Projects Fund) - Ward 5 (Barlow)

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☒ **Budget Funds Available**
Amount: $1,150,000
Funding Source: Road and Flood CPF
Dept./Division: Public Works

PURPOSE/BACKGROUND:
This agreement provides for design services for traffic lanes, right of ways, pedestrian easements, utility relocations and improvements to driveways, landscaping, retaining walls, access control gates and fences and other related work. This item is exempt from the competitive bidding process pursuant to NRS 332.115.1(b), Professional Services.

PCC: D. Collins
POC: Roger Patton, P.E. - (702) 736-6632

RECOMMENDATION:
That City Council approve award of Agreement No. 110037-DC, Prime Design Services for Las Vegas Boulevard Widening I-515 to Owens to the Louis Berger Group, Inc. in the amount of $1,150,000. Authority to execute the Agreement is given to the Purchasing Manager per R-48-2006.

BACKUP DOCUMENTATION:
1. Agreement No. 110037-DC
2. Certificate - Disclosure of Ownership/Principals

PRIME DESIGN SERVICES AGREEMENT
FOR
LAS VEGAS BOULEVARD WIDENING I-515 TO OWENS

THIS AGREEMENT is made and entered into this _____ day of _____, _____, by and between the **CITY OF LAS VEGAS**, a municipal corporation within the State of Nevada (herein the "City") whose address is **400 Stewart Avenue, Las Vegas, Nevada 89101**, and fax number is **(702) 382-3232**, and **THE LOUIS BERGER GROUP, INC**, (the "Consultant"), a **Corporation**, whose address is **500 E. Amigo Court, Suite 100, Las Vegas, NV 89119**, and fax number is **(702) 736-6632**.

W I T N E S S E T H:

WHEREAS, the City intends to construct the **Las Vegas** Boulevard Widening I-515 to Owens (herein the "Project"); and

WHEREAS, the City desires to retain the Consultant who will be responsible for providing the professional services more fully described below and in the exhibits attached hereto; and

WHEREAS, the Consultant is properly licensed pursuant to NRS Chapter 623, 623A, or 625, whichever is legally required for the services to be provided within the State of Nevada, and if applicable to the Consultant's business organization, is in compliance with NRS 623.349 for architects, interior designers, and residential designers and NRS 623A.250 for landscape architects, which requires that control and no less than two-thirds ownership of the business organization or association be held by persons registered or licensed in the State of Nevada pursuant to NRS Chapters 623, 623A, or 625, and possesses the special knowledge, skills and expertise to perform the services hereinafter set forth within the time required under this Agreement.

NOW, THEREFORE, in consideration of the above premises, the parties hereto agree to the following terms, conditions and covenants set forth in Sections One through Ten hereof:

SECTION ONE
CONSULTANT RESPONSIBILITIES

1.01 ***Description of Consultant's Services.*** For the compensation set forth in Section Seven, the Consultant hereby agrees to perform the basic services set forth in the Scope of Services, **Exhibit "A"** attached hereto and incorporated herein as a part of this Agreement and, if so requested, the additional services set forth in the Additional Compensation, **Exhibit "E"** attached hereto and incorporated herein as a part of this Agreement and to provide the submittals described in the Required Submittals **Exhibit "B,"** attached hereto.

1.02 ***Performance Standards.*** In performing the services set forth in this Agreement, the Consultant shall follow the practices consistent with the generally accepted standards in the profession of the services being provided to the City pursuant to this Agreement.

1.03 ***Document Review.*** The Consultant shall be responsible for reviewing each document prepared by the Consultant and its subconsultants including, without limitation, the plans, drawings and specifications for the purpose of ensuring that such documents are technically sound, in conformance with applicable federal, state and local laws and other regulations, and do not violate or infringe upon any patent rights.

1.04 ***Waiver.*** The City's approval of any documents or services furnished by the Consultant shall not in any way relieve the Consultant of responsibility for the professional and technical accuracy of its documents or services. The City's review, approval, acceptance or payment for any of the Consultant's services shall not be construed to operate as a waiver of any rights enjoyed by the City under this Agreement or of any cause of action arising out of the performance of this Agreement. The Consultant shall remain liable for any damages to the City caused by the Consultant's negligent act or omission committed in the performance of this Agreement.

1.05 ***Designation of Consultant's Representative.*** The Consultant's representative is the individual identified in the Key Personnel List, **Exhibit "F"** attached hereto (the "Consultant Representative") to act in that capacity, who shall be responsible for the services required under this Agreement. The services specified by this Agreement shall be performed by the personnel identified in the Key Personnel List provided that such associates and employees perform under the personal supervision of the Consultant Representative.

If any person or subconsultant who is expected to provide any of the services required under this Agreement is objectionable to the City for any reason, the Consultant shall, without additional compensation, replace such person or subconsultant with someone acceptable to the City.

If the Consultant's personnel are unable to complete their responsibilities for any reason under this Agreement, or the Consultant desires for any reason to substitute personnel assigned to the Project, the Consultant agrees to obtain the approval of the City for the substitution. The City shall not unreasonably deny approval unless the City adjudges the substitution not be in the interest of the City or the Project.

If the Consultant fails to make an acceptable replacement within thirty (30) days, the City may terminate this Agreement for default as provided in Section 10.03 of this Agreement.

1.06 ***Correspondence Review.*** The Consultant shall furnish the City Representative copies of each correspondence, if any, sent to any contractor involved with the Project, and to any regulatory agencies, for approval and review prior to mailing such correspondence.

1.07 ***Cooperation with the City.*** The Consultant agrees that its officers, associates, employees and subconsultants will cooperate with the City in providing the services under this Agreement and will be, with advance notice, available for consultation with the City at such reasonable times as to not conflict with the City's other responsibilities.

1.08 ***Responsibility for Construction Document Revisions.***

A. ***Applicability.*** The Consultant's responsibility described in this Section applies only if the Consultant is responsible for providing a construction cost estimate and preparing construction documents for the Project.

B. ***Responsibility for Revisions.*** The Consultant does not warrant or represent that the bids or proposed price received by the City to construct the Project will come within the Construction Cost Budget set forth in the Scope of Services or as may be otherwise agreed upon in writing by parties. If the bids or proposed price received by the City exceeds the Construction Cost Budget, the Consultant agrees to cooperate with the City in revising the requirements of the Project as required to lower the cost to within the Construction Cost Budget and to modify the construction documents without additional compensation. In order to meet the Construction Cost Budget, the Consultant may, with the approval of the City, segregate portions of the work as separate alternate bid items so that bids received by the City to construct the Project will come within the Construction Cost Budget.

"Construction Cost Budget" as used herein means the monetary limit established by the City for construction of the Project which limit includes the cost of the Contractor's labor, materials, equipment, expenses, overhead and profit, but excludes the Project's soft costs, cost of change orders and other cost impacts encountered after award of the construction contract.

SECTION TWO
CITY RESPONSIBILITIES

2.01 ***City Representative.*** The Director of Public Works or his authorized representative identified in the Key Personnel List is hereby designated as the City's representative (the "City Representative") with respect to this Agreement. The City Representative shall have complete authority to transmit instructions, receive information, interpret and define the City's policies and decisions with respect to the services of the Consultant. The City Representative is not authorized to change or waive any of the provisions set forth in Sections 1.01 through 10.24 of this Agreement.

2.02 ***Review of Consultant's Services and Documents.*** The services to be performed by the Consultant shall be subject to periodic review by the City Representative. To prevent an unreasonable delay in the Project, the City Representative will endeavor to examine and comment in writing on the documents furnished by the Consultant including, without limitation, the plans, drawings, specifications, test results, evaluations, and reports within twenty-one (21) days of receipt of such documents, unless the Contract provides for a different review time with respect to the document.

2.03 ***Access to Records.*** The City shall, without charge, furnish a copy to, or make available for examination or use by, the Consultant, as it may request, any documents and data which the City has available including, without limitation, reports, maps, plans, specifications, surveys, records, ordinances, codes, regulations, and other documents related to the services required under this Agreement. The City shall assist the Consultant in obtaining data and documents from public agencies and from private citizens and business firms whenever the City determines that such material is necessary for the completion of the services required by this Agreement.

2.04 ***Cooperation with Consultant.*** The City agrees that its officers and employees will cooperate with the Consultant in the performance of this Agreement and will be, with advance notice, available for consultation with the Consultant at such reasonable times as to not conflict with the Consultant's other responsibilities. The City shall provide access to the Consultant on to the Project site as may be required to perform the services under this Agreement.

SECTION THREE
CHANGES TO CONSULTANT'S SERVICES

3.01 ***Requested Changes.*** The City may at any time, by written order, make a change in the services to be performed by the Consultant under this Agreement.

3.02 ***Adjustment of Compensation.*** If the change requested by the City causes an increase or decrease in the cost or time required to perform any of the services required under this Agreement, an equitable adjustment shall be made in the compensation to be paid to the Consultant under Section Seven, or in the performance schedule under Section Eight, or both, and this Agreement shall be modified in writing accordingly. Each claim for adjustment under this Section must be asserted in writing within thirty (30) days from the date of receipt by the Consultant of written notification of the change, unless the City grants in writing an extension. Provided proper notice has been given to the City as required herein, the claim for an adjustment shall be handled pursuant to the provisions of 10.20B and 10.20C of this Agreement. The failure to provide notification of the claim within the time required herein shall constitute a waiver of the right to seek any equitable or legal adjustment in compensation with respect to that change.

SECTION FOUR
ADDITIONAL SERVICES OF CONSULTANT

4.01 ***Additional Services.*** The Consultant shall provide the additional services described in the Additional Compensation if, and only if, so requested in writing by the City. Payment for the additional services will be made to the Consultant in accordance with Section Seven of this Agreement.

4.02 ***Attendance at Meetings or Public Hearings.*** The Consultant shall notify the City in advance of any additional costs which may be incurred prior to attending any meetings or public hearings as may be necessary in connection with the services performed by the Consultant under this Agreement.

SECTION FIVE
SUBCONSULTANT AGREEMENT

5.01 ***Subconsultant Provisions.*** If, with the approval of the City as required pursuant to Section 10.07, the Consultant enters into an agreement with a subconsultant for the performance of any of its obligations under this Agreement, the Consultant agrees to include in each subconsultant agreement a provision that:

(i) the Consultant agrees to pay the subconsultant when paid by the City for that portion of the services provided to the City and that no liability arises on the part of the Consultant for payment of the subconsultant services until payment has been made by the City. If the City has paid the Consultant for the subconsultant services, the subconsultant's only recourse is against the Consultant and not against the City, either through the institution of legal or equitable action or the attachment of any lien,

(ii) the subconsultant shall have no more rights against the City than that of the Consultant,

(iii) the subconsultant agrees to be bound by the terms, conditions and obligation of this Agreement unless the City has approved any deviation, change or modification in writing, and

(iv) unless otherwise approved in writing by the City Representative, the subconsultant shall obtain and maintain professional liability insurance (Errors and Omissions coverage) in connection with the subconsultant services in an amount equal to that required of the Consultant in this Agreement.

SECTION SIX
TERM OF AGREEMENT

6.01 ***Term.*** This Agreement shall commence on the day it is approved by the City (which date shall be inserted in the introductory paragraph of this Agreement) and shall remain in force and effect until the Project is completed unless terminated earlier pursuant to Section 10.02 or 10.03 of this Agreement. Such termination shall not release either party from any of its continuing obligations under this Agreement.

6.02 ***Disputes.*** This Section shall not be construed to preclude the filing of any dispute arising out of the performance of this Agreement or in connection with the subject matter hereof, nor shall this Section be construed to change the date or the time on which a cause of action arising out of the performance of this Agreement or in connection with the subject matter hereof, would otherwise accrue under the statutes of

limitation or doctrines of law.

SECTION SEVEN
COMPENSATION AND TERMS OF PAYMENT

7.01 ***Compensation: Basic Services.*** For the services to be performed by the Consultant under this Agreement and set forth in the Scope of Services, the City agrees to pay the Consultant the fee in the amount identified in the Fee Breakdown, **Exhibit "D"** attached hereto, pursuant to invoices submitted in accordance with Section 7.04 of this Agreement.

7.02 ***Compensation: Additional Services.*** For any services not set forth in the Scope of Services, the City shall pay to the Consultant either a lump sum fee, or an hourly fee based on the hourly labor rate schedule set forth in the Additional Compensation, whichever is agreed to by the parties, provided prior written approval for such services is given by the City Representative.

7.03 ***Compensation: Reimbursable Expenses.*** The Consultant agrees that all of its direct and indirect expenses are included in the fee for Basic Services and the agreed upon compensation for any Additional Services, except as may be specifically allowed for reimbursable expenses as part of the Additional Compensation.

7.04 ***Payment Invoicing.*** The Consultant may submit an invoice for payment for the services provided by the Consultant based on the manner or method of payment set forth in the Fee Breakdown. The City Representative will notify the Consultant of any problems regarding the invoice within fourteen (14) days from receipt thereof. If no response is received from the City Representative within the aforementioned period of time, the Consultant may expect payment within a period of (60) days from the date of receipt by the City. If payment has not been received within the sixty (60) days, the Consultant agrees to contact the City Representative to resolve the problem causing the delay. If resolution of the delay is not satisfactory to the Consultant, the Consultant may submit a claim pursuant to Section 10.20A of this Agreement.

7.05 ***Right to Off-Set.*** The City Representative may subtract or offset from any unpaid invoice from the Consultant any claims which the City may have for failure of the Consultant to comply with the terms, conditions or covenants of this Agreement, or any damages, costs and expenses caused by, resulting from, or arising out of the negligent act or omission of the Consultant in the performance of the services under this Agreement including, without limitation, any error or deficiency in the report or other documents prepared by the Consultant. The City Representative shall provide a written statement to the Consultant of the off-set which has been subtracted from any payment to the Consultant along with appropriate documentation and receipts, if any, and a description of the failure, error or deficiency attributed to the Consultant. If the Consultant disputes the right or amount of the off-set made by the City, the Consultant may file a claim pursuant to Section 10.20 of this Agreement.

7.06 ***Final Payment.*** Upon completion of the services required under this Agreement, and acceptance thereof by the City (which acceptance will not be unreasonably withheld), the Consultant will, within sixty (60) days of the City's acceptance, be paid the balance of any money due for such services.

SECTION EIGHT
PERFORMANCE SCHEDULE

8.01 ***Performance Schedule.*** The Consultant shall perform and complete the services required under this Agreement according to the schedule (the "Performance Schedule") set forth in the Schedule of Performance, **Exhibit "C"** attached hereto. If the performance of services is delayed or submittals are not delivered in the time period as outlined in the Performance Schedule, the Consultant shall notify the City Representative in writing of the reasons for the delay and include a plan which brings the Consultant's performance into compliance with the Performance Schedule.

SECTION NINE
AUDIT: ACCESS TO RECORDS

9.01 ***Records.*** The City shall have the right to audit the Consultant's books, records and other documents directly pertinent to the performance of this Agreement. The Consultant agrees to maintain books, records and other documents directly pertinent to performance of this Agreement in accordance with generally accepted accounting principles and practices. The Consultant shall also maintain the financial information and data used to prepare or support the invoices submitted to the City. Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards, procedures and guidelines of the City, or its designated representative. The City, or its duly authorized representatives, shall have access to such books, records, and documents for the purpose of inspection, audit and copying. The Consultant will provide proper facilities for such access and inspection.

9.02 ***Disclosure.*** The Consultant shall be afforded the opportunity for an audit entrance and exit conference and an opportunity to

comment and submit any supporting documentation on the pertinent portions of the draft audit report, and that the final audit report will include the written comments, if any, of the Consultant.

9.03 ***Period of Maintenance.*** The books, records and other documents under Sections 9.01 and 9.02 of this Agreement shall be maintained for three (3) years after the date of the final payment for the services under this Agreement. In addition, those records and other documents which relate to any arbitration, litigation or the settlement of any claim arising out of this Agreement, or to which an audit exception has been taken, shall be maintained and made available until three (3) years after the date that the arbitration, litigation or exception has been resolved.

9.04 ***Subcontract Provisions.*** The Consultant agrees to include Sections 9.01 through 9.03 of this Agreement in all its subcontracts directly related to performance of services specified in this Agreement which are in excess of $10,000.

SECTION TEN
MISCELLANEOUS PROVISIONS

10.01 ***Suspension.*** The City may suspend, without cause, the performance by the Consultant under this Agreement for such period of time as the City, in its sole discretion, may prescribe by providing written notice to the Consultant. The suspension shall be effective as of the date set forth in the written notice. With such suspension, the City agrees to pay to the Consultant the amount of compensation, based on percentage of completion of the Project, earned as of the effective date of suspension less all previous payments. The Consultant shall not provide any further services under this Agreement after the effective date of suspension until otherwise notified in writing by the City. In no event shall the City be liable to the Consultant for services in excess of the percentage of the Project completed at the time of suspension.

If, after notice to resume performance has been given by the City, the suspension was for a period in excess of ninety (90) days, which has resulted in an increase in the performance of the Agreement to the Consultant and:

(i) the Consultant was not a contributing cause for the suspension,
(ii) the Consultant has not received an equitable adjustment under another provision of this Agreement, and
(iii) the Consultant could not mitigate the increase in the performance cost,

then the Consultant's fee shall be reviewed by the City and, if justified, equitably adjusted to provide for any additional expenses resulting from the suspension.

10.02. ***Termination for Convenience.*** The City reserves the right to terminate this Agreement without cause or default on the part of the Consultant with ten (10) days' prior written notification to the Consultant served pursuant to Section 10.18 of this Agreement. In the event of termination, without cause or default, the City agrees to pay to the Consultant the reasonable value for the services performed as of the date that notification of termination is received by the Consultant. In no event shall the City be liable to the Consultant for services in excess of the percentage completed at the time of termination.

10.03 ***Termination for Cause or Other Resolution.***

A. ***Default.*** The occurrence of any of the following events shall constitute a default by the Consultant hereunder (herein "Event of Default"). If, during the term of this Agreement, the Consultant:

(i) defaults in the due observance and performance of any term, condition or covenant contained in this Agreement,

(ii) (a) voluntarily terminates operations or consent to the appointment of a receiver, trustee or liquidator of the Consultant for all or a substantial portion of its assets, (b) is adjudicated bankrupt or insolvent or files a voluntary petition in bankruptcy, or admits in writing to the inability to pay its debts as they become due, (c) make a general assignment for the benefit of creditors, (d) file a petition or answer seeking reorganization or an arrangement with creditors or take advantage of any insolvency law, or (e) if action shall be taken by the Consultant for the purpose of effecting any of the foregoing,

(iii) allows any warrant, execution or other writ to be issued or levied upon any property or assets of the Consultant which continues unvacated and in effect for a period of thirty (30) days, or

(iv) fails, in the judgment of the City, to provide the services hereunder properly and with proper dispatch in accordance with the time schedule set forth in this Agreement,

and the default continues five (5) days after written notice is given to the Consultant pursuant to Section 10.18.

B. ***City's Rights.*** Upon the occurrence of an Event of Default, and without prejudice to any other right or remedy it may have at law or equity, the City may:

(i) terminate this Agreement, suspend payment of all pending invoices otherwise due to the Consultant hereunder, and finish this Agreement by such means as deemed appropriate by the City, reserving the right to deduct from any balance due Consultant the cost of completing this Agreement. In the event the cost of finishing the Consultant's performance of this Agreement exceeds the balance due the Consultant, the excess shall be paid by the Consultant to the City within five (5) days of invoicing by the City,

(ii) terminate this Agreement, and the obligations imposed hereunder, including the obligation of any further payment for the services of the Consultant except for the reasonable value for the services performed to the date of termination, or

(iii) Continue with performance by the Consultant and serve within a reasonable time after completion of the Agreement a request to arbitrate the Event of Default as a claim or dispute pursuant to the arbitration procedure set forth in Section 10.20.

In the event that the City elects to implement (i) above, the costs and expenses of completing this Agreement shall be computed and audited by the City's designated representative. The audit shall be conducted in accordance with generally accepted accounting principles and the cost thereof shall be paid by the Consultant.

10.04 ***Ownership of Documents.***

A. ***Architectural Works.*** To the extent that the Consultant's services involves the design of an architectural work as defined herein, the Consultant shall retain all common law and statutory rights of ownership, including copyrights, to the drawings and specifications prepared by the Consultant for this Project. The Consultant is deemed to be the author of the drawings and specifications as instruments of service to the City. Notwithstanding the foregoing, the Consultant hereby grants to the City the right to use (including the right of reproduction and use in the creation of new documents) the drawings and specifications for the purpose of completing the Project or for any subsequent maintenance, repair, renovation, remodeling or addition thereto. The rights granted herein to the City shall extend and include any new consultant which the City may retain for the aforementioned purposes. The Consultant hereby releases the City, and any new consultant retained by the City for the aforementioned purposes, from any and all claims in connection with the use or reproduction of the drawings and specifications. The Consultant agrees to execute such documents reasonably deemed necessary by the City to implement the rights granted to the City pursuant to this subsection including written permission to make changes or modifications to the plans.

B. ***Other Works.*** To the extent that the Consultant's services does not involve the design of an architectural work, the City shall have all common law and statutory rights of ownership, including copyrights, to the plans, drawings, specifications and other documents (including, without limitation, design concepts and sketches, test results, evaluations, reports and studies, excepting any proprietary forms, templates, and checklists specifically listed for City ownership exclusion elsewhere in this Agreement) (collectively herein the "Documents") prepared or assembled by the Consultant, or any of its subconsultants, for this Project. The Consultant hereby releases the City, and any new consultant retained by the City from any and all claims in connection with the use or reproduction of the Documents. The Consultant agrees to execute such documents reasonably deemed necessary by the City to implement the rights granted to the City pursuant to this subsection including written permission to make changes or modifications to the plans. The Consultant shall be entitled to retain a reproducible copy of the documents furnished to the City.

C. ***Definition of Architectural Work.*** For purposes of this Agreement, "architectural work" shall have the same definition as set forth in Architectural Works Copyright Protection Act of 1990, P. L. 101-650, Title VII, Section 70 et. seq.

D. ***Delivery of Documents.*** In the event of the completion, suspension or termination of this Agreement, the City shall have the right to require delivery of any and all of the plans, drawings, specifications, and all other documents (including, without limitation, design concepts and sketches, test results, evaluations, reports and studies), including the magnetic or electronic media of the aforementioned documents, not in the possession of the City.

E. ***Confidentiality.*** The plans, drawings, specifications and other documents (including, without limitation, design concepts and sketches, test results, evaluations, reports and studies) (including the magnetic or electronic media of the aforementioned documents) which are prepared or assembled by the Consultant, or its subconsultants, under this Agreement shall not be made available to any individual or organization without the prior written consent of the City. Except for marketing pamphlets and submittals to clients, the Consultant shall not publish, submit for publication, or publicly display the Project without the written consent of the City. The obligations of confidentiality shall survive the termination of this Agreement.

F. ***Contractual Rights.*** Notwithstanding the provisions of 10.04 A above, the City is hereby licensed to use all design concepts developed by the Consultant and subconsultants under this Agreement, including the right to construct derivative works of the Project, and to use the design concepts for other projects of the City. The design concepts include, but are not limited to, the form, aesthetic appeal, site layout, the

arrangement and composition of spaces and elements, the use of colors and materials, system designs, construction methods and interior design.

10.05 ***Insurance.*** The Consultant shall procure and maintain, at its own expense, during the entire term of the Agreement, the following insurances:

A. ***Worker's Compensation Insurance.*** This insurance shall protect the Consultant and the City from employee claims based on job-related sickness, disease, or accident.

B. ***Commercial General Liability Insurance.*** This insurance shall protect the Consultant, its agents and vehicles used to provide the services required under this Agreement from claims of personal injury (including death) and property damage. Such coverage shall be in a minimum amount of $1,000,000 combined single limit for the period of time covered by this Agreement. The Consultant's general liability insurance policies shall be endorsed to include the City as an additional insured.

C. ***Commercial Automobile Liability Insurance.*** This insurance shall protect the Consultant from claims 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. The Consultant's automobile liability insurance policies shall be endorsed to include the City as an additional insured.

D. ***Professional Liability Insurance (Errors and Omissions Coverage).*** This insurance shall protect the Consultant from claims arising out of performance of professional services caused by a negligent act, error, or omission for which the insured is legally liable. Such coverage shall be in a minimum amount of $1,000,000 for the period of time covered by this Agreement.

E. ***Cancellation or Modification of Coverage.*** The Consultant's Commercial General Liability and Professional Liability Insurance Policies shall automatically include or be endorsed to cover the Consultant's contractual liability to the City under this Agreement, and with respect to its Commercial General Liability Policy, to waive subrogation against the City, its officers, agents, servants and employees. The policies shall provide that the City will be given thirty (30) days' notice in writing of any cancellation of, or material change in, the policies.

F. ***Certificates and Endorsements.*** 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. All deductibles and self-insured retentions shall be fully disclosed in the Certificate of Insurance. No deductible or self-insured retention may exceed $25,000 without the written approval of the City. The Consultant shall deliver to the City's authorized designated representative named in **Exhibit "B"** (Required Submittals) certificates indicating that such insurance is in effect before any services are provided under this Agreement and renewal certificates not less than 30 days prior to the expiration date of any policy.

G. ***Period of Coverage.*** If the insurance coverage is underwritten on a "claims made" basis, the retroactive date shall be prior to or coincident with the date of this Agreement and the Certificate of Insurance shall state that coverage is "claims made" and the retroactive date. Upon availability, the Consultant shall maintain coverage for the duration of this Agreement and for two years following completion of this Agreement.

10.06 ***Indemnity.*** Notwithstanding any of the insurance requirements set forth in Section 10.05, and not in lieu thereof, the Consultant shall defend, indemnify and hold the City, its officers, employees and agents (herein the "Indemnitees"), harmless from any and all claims (including, without limitation, patent infringement and copyrights claims), damages, losses, expenses, suits, actions, decrees, judgments, arbitration awards or any other form of liability (including, without limitation, reasonable attorney fees and court costs) (collectively herein the "Claims") which the Indemnitees may suffer as a result of, by reason of, or as a consequence of, the negligent errors, omissions, recklessness, intentional misconduct of the Consultant, its subcontractors, agents or anyone employed by the Consultant, its subcontractors or agents, in the performance of this Agreement.

As part of its obligation hereunder, the Consultant shall, at is own expense, defend the Indemnitees against the Claims which may be brought against them, or any of them, as a result of, by reason of, or as a consequence of, the negligent act or omission of the Consultant, its subcontractors or agents, for and against which the Consultant is obligated to indemnify the Indemnitees, unless the Indemnitees, or any of them elect to conduct their own defense which, in such case, shall not relieve the Consultant of its obligation of indemnification set forth herein. If the Consultant fails to do so, the Indemnitees shall have the right, but not the obligation, to defend the same and charge the direct and incidental costs of such defense (including attorney fees and court costs) against the Consultant which is proportionate to the liability of the Consultant.

If the professional liability insurer of the Consultant does not so defend the Indemnitees and the Consultant is adjudicated to be liable by a trier of fact, the trier of fact shall award reasonable attorney's fees to be paid to the Indemnitees by the Consultant in an amount which is proportionate to the liability of the Consultant. As used in this Section, "agents" means those persons who are directly involved in and acting on behalf of the City in furtherance of this Agreement or the public work to which this Agreement pertains.

10.07 ***Assignment.*** The City and the Consultant each bind itself and its partners, successors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement, except the Consultant shall not assign, sublet or transfer any obligation or benefit under this Agreement without the written consent of the City. Nothing contained herein shall be construed as creating any personal liability on the part of any officer or agent of the City.

10.08 ***Waiver.*** No consent or waiver, express or implied, by either party to this Agreement, or of any breach or default by the other in the performance of any obligations hereunder, shall be deemed or construed to be a consent or waiver of any other breach or default by such party hereunder. Failure on the part of any party hereto to complain of any act, or failure to act of the other party, or to declare that other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder. Inspection, payment, or tentative approval or acceptance by the City or the failure of the City to perform any inspection hereunder, shall not constitute a final acceptance of the work or any part thereof and shall not release the Consultant of any of its obligations hereunder.

10.09 ***Consultant Warranties.*** The Consultant hereby represents and warrants that:

(i) it is financially solvent, able to pay its debts as they mature, and is possessed of sufficient working capital to complete this Agreement; that it is experienced, competent, qualified and able to furnish the plant, tools, materials, supplies, equipment and labor which is used to perform the services contemplated by this Agreement, and that it is authorized to do business in the City of Las Vegas and the State of Nevada,

(ii) it holds a license, permit or other special license to perform the services included in this Agreement, as required by law, or employs or works under the general supervision of the holder of such license, permit or special license,

(iii) its computer hardware, software, and firmware will continue functioning without interruption, and will continue to accurately process date, time, and data necessary to the performance of this Agreement, and

(iv) it has, pursuant to the requirements of Resolution 79-99 adopted by the City Council on August 4, 1999, (effective October 1, 1999), as amended by resolution 105-99 (adopted by the City Council on November 17, 1999), disclosed on the form attached hereto as **Exhibit "G"** (Disclosure of Ownership/Principals) all of the principals, including partners, of the Consultant, as well as all persons and entities holding more than a one percent (1%) interest in the Consultant or any principals of the Consultant. If the Consultant, or its principals or partners, are required to provide disclosure under federal law (such as Securities and Exchange Commission or the Employee Retirement Income Act) and current copies of such federal disclosures are attached to **Exhibit "G,"** the requirements of this Section shall be deemed satisfied. During the term of this Agreement, the Consultant shall notify the City in writing of any material change in the above disclosure on **Exhibit "G"** within fifteen (15) days of such change.

10.10 ***Consultant's Employees.*** The Consultant shall be responsible for maintaining satisfactory standards of competency, conduct and integrity, of personnel assigned to the Project, and shall be responsible for taking such disciplinary action with respect to such personnel as may be necessary. In the event the Consultant fails to remove any employee from the work of this Agreement whom the City deems incompetent, careless or insubordinate, or whose continued employment on the work is deemed by the City to be contrary to the public interest, the City reserves the right to require such removal as a condition for the continuation of this Agreement.

10.11 ***Independent Contractor.*** It is hereby expressly agreed and understood that in the performance of the services required herein, the Consultant and any other person employed by him hereunder shall be deemed to be an independent contractor and not an agent or employee of the City.

10.12 ***Applicable Law.*** This Agreement shall be construed and interpreted in accordance with the laws of the State of Nevada.

10.13 ***Compliance with Laws.*** The Consultant shall in the performance of its obligations hereunder comply with all applicable laws, rules and regulations of all governmental authorities having jurisdiction over the performance of this Agreement including, without limitation, the Federal Occupational Health and Safety Act and all state and federal laws prohibiting and/or related to discrimination by reason of race, sex, age, religion or national origin.

10.14 ***Severability.*** In the event that any provisions of this Agreement shall be held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain valid and binding on the parties hereto.

10.15 ***Confidentiality.*** The Consultant shall treat the information relating to the Project, which has been produced by the Consultant or provided by the City, as confidential and proprietary information of the City and shall not permit its release to other parties or make any public announcement or publicity release without the City's written authorization. The Consultant shall also require each subconsultant to comply with this requirement. The submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the

Project is not to be construed as publication relieving the Consultant of its confidentiality obligation imposed herein.

10.16 ***Site Inspection.*** The Consultant represents that it has visited the location of the Project and has satisfied itself as to the general condition thereof and that the Consultant's compensation as provided for in the Agreement is just and reasonable compensation for performance hereunder including reasonably foreseen and foreseeable risks, hazards and difficulties in connection therewith based on such above-ground observations.

10.17 ***Modification.*** All modification or amendments to this Agreement are null and void unless reduced in writing and signed by the parties hereto.

10.18 ***Notice.*** Any written notice required to be given under Sections 1.01 through 10.24 of this Agreement shall be deemed to have been given when the written notice is (i) received by the party to whom it is directed by personal service (ii) telephonically faxed to the telephone number set forth in the introductory paragraph to this Agreement, provided confirmation of the transmission is received by the sender, or (iii) deposited with the United States Postal Service, postage prepaid, addressed to the City Representative or the Consultant Representative, whomever is the proper recipient, and mailed to the address set forth in the introductory paragraph to this Agreement.

10.19 ***Prohibition Against Contingent Fees.*** The Consultant warrants that no person or entity has been employed or retained to solicit or secure this Agreement with the Agreement or understanding that a commission, percentage, brokerage or contingent fee would be paid to that person. For breach or violation of this provision, the City shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the compensation to be paid to the Consultant, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

10.20 ***Claim or Dispute Resolution.***

A. ***Notice of Claim or Dispute.*** For each claim or dispute which the Consultant has against or with the City (except for any claim for an equitable adjustment under Section 3.02 which is subject to the 30-day limitation set forth therein), notice thereof must be submitted in writing to the City Representative within a reasonable time after the claim or dispute arises, but no later than thirty (30) days after final payment is made to the Consultant. The purpose of written notification is to place the City on notice so that proper measures can be taken to properly defend against the claim or dispute, and the failure to give such notice shall preclude the Consultant from subsequently arbitrating that particular claim or dispute pursuant to Section 10.20C of this Agreement, and the Consultant shall have no further recourse against the City. Pending a final decision on the claim or dispute under Sections 10.20B or 10.20C, the Consultant shall proceed diligently with the performance of this Agreement.

B. ***Resolution by Management.*** The City Representative and the Consultant Representative shall meet within a reasonable time after receipt of the written notice received pursuant to Section 10.20A in an attempt to resolve the claim or dispute to the mutual satisfaction of the parties. If the matter is not disposed of by mutual agreement between the City Representative and the Consultant Representative, the claim or dispute shall be decided by the Director of Public Works, whose decision shall be reduced to writing and mailed or otherwise furnished to the Consultant. The decision of the Director of Public Works shall be final and conclusive unless, within thirty (30) days after the date on which the Consultant receives its copy of such decision, the Consultant mails or otherwise furnishes to the Director of Public Works a written request to arbitrate the claim or dispute, in which event the parties shall proceed with the arbitration pursuant to provisions of Section 10.20B. The failure to make such request shall preclude the Consultant from proceeding any further on the claim or dispute, and the Consultant shall have no further recourse against the City.

C. ***Resolution by Arbitration.*** Upon receipt of the request to arbitrate authorized pursuant Section 10.03B or Section 10.20B, the City and the Consultant shall come to an agreement as to the appointment of an arbitrator for purposes of hearing the appeal. If the parties cannot reach an agreement, then each party shall select an arbitrator for purposes of the appeal, and the two shall select a third arbitrator within 20 days of their appointment. If the selected arbitrators are unable to agree upon the third arbitrator, the third arbitrator shall be selected by the American Arbitration Association or the Nevada Arbitration Association, whichever is designated by the City. Each party shall be afforded an opportunity to be heard and to offer evidence in support of or against the appeal. The decision of the arbitrator, or arbitrators, as the case may be for the determination of the appeal, shall be final, conclusive and enforceable under the laws of the State of Nevada.

D. ***Right of Consolidation.*** Any arbitration arising out of or relating to this Agreement may include, by consolidation, joinder or in any other manner, any additional party or parties who are not a party to this Agreement if so requested by the City or the Consultant. Any consent to arbitration involving an additional party or parties shall not constitute consent to arbitrate any claim or dispute not described as a part of the original arbitration unless otherwise agreed to by the parties.

E. ***Right of Joinder.*** In the event the City is named as a party to any arbitration, or the City commences an arbitration against a party other than the Consultant, which arbitration is related to, or connected with, the construction of the Project or the performance of the Consultant's services hereunder (such as, without limitation, any arbitration between the City and the Contractor awarded the contract to construct

the Project), the Consultant agrees and irrevocably consents to be joined as a party in the arbitration proceeding and to be bound by any decision resulting therefrom. The decision of the arbitrator or arbitrators, as the case may be, in the arbitration to which the Consultant has been joined as a party, shall be binding and enforceable against the parties thereto under the laws of the State of Nevada.

If the Consultant is named as an additional party by the City, the Consultant shall not be entitled to any additional compensation from the City as a result of preparing for, and participating in, the arbitration.

F. ***Discovery.*** In the event of arbitration, the parties agree that all means of discovery including, but not limited to, depositions and interrogatories, will be afforded to the parties involved in the arbitration, and the appointed arbitrator shall have all authority to impose sanctions against either party for failing to comply with the rules of discovery provided under the Nevada Rules of Civil Procedure.

G. ***Award Final.*** The award rendered by the arbitrator shall be final, and judgment may be entered upon its accordance with applicable law in any court having jurisdiction thereof.

H. ***Mediation.*** Subsequent to the commencement of any arbitration pursuant to Section 10.20C, and prior to any decision arising therefrom, the parties may endeavor with written mutual consent to settle disputes by mediation in accordance with the mediation rules of the mediation service agreed by the parties. The cost of the mediation shall be shared equally by the parties.

10.21 ***Attorney Fees.*** The prevailing party in any litigation or arbitration brought to enforce the provisions of this Agreement shall be entitled to reasonable attorney fees and court costs.

10.22 ***Calendar Day.*** All references in this Agreement to days are to calendar days unless otherwise indicated.

10.23 ***Exhibits.*** All exhibits referenced in this Agreement are hereby incorporated by this reference as a part of this Agreement. Any conflict between the provisions of this Agreement and the Exhibits incorporated herein shall be governed by the provisions of this Agreement.

10.24 ***Counterparts; Electronic Delivery.*** This Agreement 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.

10.25 ***Agreement Version.*** This document incorporates the standard provisions for the City's Professional Services Agreement updated as of April 8, 2008.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

CITY OF LAS VEGAS

By _____
Kathleen C. Rainey, Manager, Purchasing & Contracts

ATTEST

_____
Beverly K. Bridges, MMC, City Clerk Date

APPROVED AS TO FORM

John S. Ridilla 8/27/10
Deputy City Attorney Date

John S. Ridilla
Deputy City Attorney

CONSULTANT

By _____
Roger Patton, P.E., The Louis Berger Group, Inc

LIST OF EXHIBITS

EXHIBIT " A " SCOPE OF SERVICES

EXHIBIT " B " REQUIRED SUBMITTALS

EXHIBIT " C " PERFORMANCE SCHEDULE

EXHIBIT " D " FEE BREAKDOWN

EXHIBIT " E " ADDITIONAL COMPENSATION

EXHIBIT " F " KEY PERSONNEL LIST

EXHIBIT " G " DISCLOSURE OF OWNERSHIP/PRINCIPALS

EXHIBIT "A"

SCOPE OF SERVICES

ARTICLE 100: GENERAL INFORMATION

100.1 Project Overview

100.1.1 Project Overview Description

The Las Vegas Boulevard Widening Project, I-515 to Owens, entails upgrading Las Vegas Boulevard to better accommodate vehicles, transit and pedestrians and to better serve the Cultural Corridor and Scenic Byway, including, but not limited to:

1. Reconstruction of Las Vegas Boulevard to accommodate 3 lanes of traffic in each direction between I-515 and Owens Avenue, including design approximately 450-feet north of Owens Avenue and 600-feet south of I-515 to accommodate pavement and lane transitions;
2. Identification of right of way and pedestrian easement requirements for ultimate 120' corridor;
3. Offset sidewalk with landscaped amenity zone adjacent to publically owned property;
4. Pepetuation of dedicated right-turn lanes where they currently exist;
5. Bus turnouts for high volume bus stops;
6. Traffic signal modifications with FAST communications and fiber optic interconnect for entire project length;
7. Underground facilities for future traffic signal at Searles Avenue;
8. Median islands with landscaping between Washington Avenue and Owens Avenue;
9. Replacement of existing storm drain in Las Vegas Boulevard between I-515 and Owens Avenue to accommodate 10-year dry lane criteria, including associated facilities such as manholes and drop inlets;
10. Any utilty relocations associated with the above improvements,
11. Any off-site improvements associated with the above improvements, such as driveways, landscaping, retaining walls, access control gates and fences;
12. Replacement of cultural corridor improvements and Downtown Centennial Plan improvements such as sidewalk treatments, directional signage and banners.

100.2 Construction Cost Budget

100.2.1 Construction Cost Budget: Not applicable

100.3 Project Contact Information

100.3.1 The City Engineer or their authorized representative is hereby designated as the City's Representative with respect to this Agreement. The City's Representative shall have complete authority to transmit instructions, receive information, interpret and define the City's policies and decisions with respect to the services of the Consultant. All inquiries concerning the project should be directed to the City Engineer or his authorized representative and the Consultant should not contact internal units of the City unless directed to do so. This policy is effective throughout the life of the project.

100.3.2 The Consultant's Representative is hereby designated as the Consultant's Project Manager listed in Exhibit "F", who shall be responsible for the services required under this Agreement. All of the services specified by this Agreement shall be performed by the Consultant's Representative, or by the associates and employees identified in the Consultant's proposal provided that such associates and employees perform under the personal supervision of the Consultant's Representative. All employees identified in the Consultant's cost proposal shall be subject to approval by the City's Representative. Should the Consultant's Representative, or any associate or employee, be unable to complete his or her responsibility for any reason, the Consultant will replace the employee with a qualified person approved by the City. If the Consultant fails to make a required replacement within thirty (30) days, the City may terminate this Agreement for default.

100.4 Plan Control and Standards

100.4.1 All plans, designs, specifications and estimates shall conform to the City standard practices, which are based on the latest edition of the following documents:

100.4.1.1 Policy on Geometric Design of Highways and Streets (AASHTO)

100.4.1.2 Uniform Standard Specifications for Public Works' Construction, Off-Site Improvements, Clark County Area, Nevada

100.4.1.3 Uniform Standard Drawings for Public Works' Construction, Off-Site Improvements, Clark County Area, Nevada, Volume I and Volume II
100.4.1.4 Nevada Department of Transportation (NDOT) Standard Plans for Road and Bridge Construction and NDOT Standard Specifications for Road and Bridge Construction
100.4.1.5 Manual on Uniform Traffic Control Devices
100.4.1.6 Clark County Regional Flood Control District's Hydrologic Criteria and Drainage Design Manual
100.4.1.7 Las Vegas Valley Flood Control Master Plan Update (MPU), current edition
100.4.1.8 Central Neighborhood Flood Control Master Plan, Volume I & II, March 2005
100.4.1.9 Las Vegas Valley Water District (LVVWD) Rules and Regulations
100.4.1.10 Uniform Design and Construction Standards for Water Distribution Systems, Clark County, Nevada
100.4.1.11 Design and Construction Standards for Wastewater Collection Systems, Southern Nevada
100.4.1.12 Freeway and Arterial System of Transportation (FAST) standards
100.4.1.13 City of Las Vegas Downtown North Land Use Plan
100.4.1.14 Scenic Byway Corridor Management Plan

100.4.2 The design criteria for the following agencies will also be adhered to: City of Las Vegas Sanitary Sewer Planning, Traffic Engineering, and Flood Control; Clark County Regional Flood Control District ("CCRFCD"); Nevada Department of Transportation ("NDOT"); Las Vegas Valley Water District ("LVVWD"); and local utility providers.

100.5 Changes to Scope of Services

100.5.1 If increased scope or workload is encountered, the Consultant is to notify the City in writing and receive written confirmation to proceed prior to the performance of any work related to the increased scope or workload.

100.5.2 The City Engineer or their authorized representative may at any time, only be written order, make changes which may result in an increase or decrease in the services to be performed by the Consultant. If the changes requested by the City cause an increase or decrease in the cost or time required to perform any of the services required hereunder, an equitable adjustment shall be made in the compensation to be paid to the Consultant under Section Seven, or in the time of performance under Section Eight, or both, and this Agreement shall be modified in writing accordingly. Any claim for adjustment under this Section must be asserted in writing within thirty days from the date of receipt by the Consultant of written notification of the changes to the services to be provided by the Consultant unless the City grants in writing a further period of time. Failure to assert such claim within the time limit provided herein shall constitute a waiver of any right to seek any equitable adjustment in compensation with respect to that change.

100.6 Responsibilities of the Consultant

100.6.1 The Consultant shall provide a set of Plans and Special Provisions, for the project described in Section 100.1.1, that are whole and complete, technically accurate, biddable and constructable, meeting the City's reasonable needs and expectations. All design, re-design, coordination, permitting, quality control review, meeting attendance, bid phase assistance, travel, reproduction, computer use or similar items that could reasonably be anticipated which are not limited or excluded elsewhere in this contract or listed specially in additional services, shall be provided by the Consultant for the basic services fee agreed to herein whether they are specifically listed in this scope of services or not.

100.6.2 The Consultant agrees to include in all its subcontracts related to the Project, and require the same of all subconsultant contracts at all tiers, the provisions of this Agreement related to the City's and Consultant's rights (including copyright), ownership and uses of the concepts, designs, documents, intellectual property, and tangible property.

100.6.3 Where the Consultant specifies materials and equipment by brand names, provide two (2) or more brand names with model numbers for each item specified and state "or approved equal". Where less than two suitable brand names/model numbers are commercially available state "or approved equal" and provide required documentation per NRS requirements to support single source selection.

100.6.4 Prior to each design submittal, check all documents for technical accuracy, compliance with applicable codes and ordinances, complete incorporation of all design review comments, and coordination within and between design disciplines. Each submittal shall be in accordance with the appropriate submittal requirements listed herein. Incomplete submittals shall be rejected. All costs associated with the re-submittal shall be borne by the Consultant.

100.6.5 The Consultant shall without additional compensation correct or revise any error or deficiencies in the plans, drawings, specifications or other related documents prepared by the Consultant.

100.6.6 The Consultant shall be responsible for all coordination with its subconsultants. Each submittal to the City shall be organized by discipline and shall be thoroughly crosschecked to avoid conflicts between Consultant and subconsultant documents. Vague references to project requirements on other discipline's plans shall not be permitted. Where references to others' plans are necessary for direction, reference notes shall specifically state the drawing number or specification section, as appropriate. It shall be the Consultant's responsibility to advise each subconsultant of this requirement.

100.6.7 The professional services to be rendered by the Consultant under this Agreement shall be in conformance with applicable federal, state and local statutes, acts, rules, codes, ordinances, laws and regulations. These include but are not limited to the Americans with Disabilities Act (ADA) guidelines and requirements including conformance to any ADA provisions and guidelines that have been issued in "final form" regardless of their adoption by the Department of Justice, municipal ordinances, and any other applicable Federal, state and local acts, rules, laws or regulations.

100.6.8 All work, including but not limited to drawings, specifications, and calculations, shall be provided by the Consultant for each and every part of the Project. When complying with NRS 338.140 by listing multiple manufacturers in the specifications, the Consultant shall review options with the City and select the most available, standard, or economical manufacturer's model to fully engineer and include in the bid documents. Should the contractor propose one of the other manufacturers listed in the specifications after award, the cost of the other listed manufacturer's affect on the documents and the construction shall be borne by the contractor, except that the Consultant shall have the duty to cooperate with the contractor in reviewing the proposal for design compliance (including the contractor provided structural calculations) and providing revisions to the Consultant's documents as required to accommodate the proposed change. Such revisions to the Consultant's documents may be an Additional Service, which shall be approved in writing by the City prior to the Consultant making any revisions and charged to the contractor by change order.

100.6.9 The Consultant acknowledges the City's requirement to incorporate the City's "Instructions to Bidders", "General Conditions" and "Division One", incorporated herein by reference, into the Contract Documents prepared for bidding for the Project covered by this Agreement. The Consultant further agrees to perform in accordance with the obligations stated in these referenced documents and agrees to include this provision in all sub-consultant contracts. The Consultant acknowledges familiarity with the City's standard format, terms and conditions of these documents and that such document examples were made available to the Consultant upon request, prior to signing this Agreement.

100.6.10 The City's approval of any documents or services furnished by the Consultant shall not in any way relieve the Consultant of responsibility for the professional and technical accuracy of its documents or services. The City's review, approval, acceptance or payment for any of the Consultant's services shall not be construed to operate as a waiver of any rights enjoyed by the City under this Agreement or of any cause of action arising out of the performance of this Agreement. The Consultant shall remain liable in accordance with the terms of this Agreement and applicable law for the damages to the City caused by the Consultant's negligent act or omission committed in the performance of this Agreement.

100.6.11 Plan and Special Provision Production and Submission

100.6.11.1 All Drawings shall be prepared using AutoDesk's AutoCAD Release 2004 or newer release in accordance with industry accepted standards. Specifications shall be prepared in City standard format using the software program Microsoft Word 2000 or newer release. The use of any other software for plan or specifications production requires prior written approval from the City's Representative.

100.6.11.2 All drawing submittals, except the final submittal, submitted by the Consultant will be printed on white bond paper. The final construction drawings will be printed on 4 mil, double matte mylar. All full size reproducible copies will be on 24" x 36" sheets (with 22" x 34" border) and all half size reproducible copies shall be on 11"x17" sheets (representing true half size of the full size plans). **Plans that do not meet these requirements will not be accepted.**

100.6.11.3 Special Provision format will follow the City standard provided to the Consultant. Special Provisions shall be stamped and signed by the appropriate design professional. **Special Provisions that do not meet these requirements will not be accepted.**

100.6.11.4 Within five business days of each hard copy design submittal, for each design submittal, the Consultant will submit electronic files of the AutoCAD files, including drawings and data files, and an Adobe Portable Document Format (PDF) file, 11"x17" print size, for each plan sheet submitted. In addition, the Consultant will submit electronic files of the Special Provisions in Microsoft Word format and one comprehensive Adobe PDF file, with appropriate formatting, of the entire set of Special Provisions. All electronic files shall be submitted on either a CD-ROM or a DVD disk that can be read by any industry standard hardware. **If electronic files are not submitted within five business days of the hard copy design submittal, the City will consider the design submittal incomplete and may reject the submittal in its entirety. If rejected all costs for the resubmittal shall be borne by the Consultant.**

100.6.11.5 Prior to any electronic submittal, the Consultant shall, using commercially available software with current virus definitions, certify that electronic submittals are free of electronic "viruses", "worms", "Trojan horses", and other programs or data stored on the host computer or the electronic submittal. Should the City choose to check incoming electronic submittals for such afflictions, utilizing commercially available software and at the first indication of such an affliction, the entire electronic submittal will be considered unacceptable and will be returned to the Consultant. The Consultant shall remove the unwanted programs or the unwanted programs or data and further verify the integrity of the electronic submittal. The Consultant shall bear the expense of correction, checking and re-submittal and shall not be released from submittal requirements.

100.6.12 Cost Estimates

100.6.12.1 The Consultant shall prepare and provide a detailed Construction Cost Estimate with each submittal. The cost estimate shall be prepared in City standard format using the software program Microsoft Excel 2000 or newer release. The Consultant will provide unit costs, quantities and other estimating parameters for each component or work, reflecting current market conditions and costs. The Consultant will reconcile each successive estimate to the one provided at the preceding submittal. The Consultant shall incorporate appropriate contingencies based on the completed level of design. **If the cost estimate is not included in the design submittal, the City will consider the design submittal incomplete and may reject the submittal in its entirety. If rejected all costs for the resubmittal shall be borne by the Consultant.**

100.6.13 Construction Change Orders

The City has a formal construction contract change order approval process. Proposed change orders are negotiated and reviewed by City Engineering and Construction Management staff (and the construction management consultant when one has been retained). Change orders are then reviewed for approval by the City Change Order Committee. Part of that approval process will be checking a box on the Change Oder Tracking Form indicating the reason for the change order based on information available to the committee at that time. If the change order appears to relate to a consultant design deficiency then either the Reason Code box "E&O Value" or "E&O No Value" will be checked. "E&O" value will be checked if it appears the apparent design deficiency results in added cost to the project but all, or a substantial part, of that cost would have been incurred in the original bid if the deficiency did not exist. "E&O No Value" will be checked if it appears that little or no cost to the project would have occurred if the deficiency did not exist. The City may use this data, as well as any other relevant data, in exercising its rights under this agreement to seek compensation for Consultant errors and omissions.

The City will make reasonable efforts to copy all approved change orders (with the tracking form included) and construction change directives to the consultant In order to provide the consultant an opportunity to prevent similar instances from occurring on future projects, to allow the consultant to review the potential for similar instances to occur during the progress of this project (and to work with City and Contractor to minimize the potential for future financial impacts when possible regardless of the reason code box checked) and to give advance notice to Consultant to prepare for potential financial impacts to the Consultant and/or for the Consultant to provide documentation to the City as whether the appropriate reason code box has been checked.

There may, at times, be a benefit for the consultant to review change orders or construction change directives prior to final negotiation and approval. This could provide the consultant with an opportunity, prior to finalization, to determine that a proposed change order or construction change directive may be excessively priced, not a legitimate change in the scope of the Contractor's work, outside of the Consultant's scope of work, detrimental to the Consultant's design, uncoordinated with the Construction Documents, potentially harmful to public safety, or a violation of codes, laws and regulations. Therefore the City will make reasonable efforts to notify the consultant of possible change orders or construction change directives prior to final negotiation and approval. And to, when appropriate, request the consultant to sign acknowledgement and concurrence on the final change order or construction change directive or to make formal revisions to the plans and/or specifications. However, given time constraints and the need to limit Contractor delay claims (that can often quickly exceed the cost of the change order), advance notice to the consultant is not always possible or practical. And, in fact, potential change order work, including force account work, is sometimes allowed to proceed prior to any change order being drafted or reason code applied by City.

100.6.14 The Consultant shall be responsible for performing all work necessary to complete the following schedule of work, more fully described in the following sections:

Upon written agreement with both parties an intermediate design submittal may be changed in definition of percentage complete without change to the basic service fee amounts (for example changing the 70% submittal to a 50% submittal). The written agreement would detail any resulting change in billing schedule. Should an additional submittal be requested by the City (for example adding a 50% submittal in addition to a 30% and a 90% submittal) this work would be paid for in accordance with Section 3.01, 3.02 and 7.02 of this Agreement.

100.6.14.1 Article 200 – Preliminary and General Items

100.6.14.2 Article 300 – 30% Design Phase

100.6.14.3 Article 400 – 70% Design Phase

100.6.14.4 Article 500 – 90% Design Phase

100.6.14.5 Article 600 – 100% Design Phase

100.6.14.6 Article 700 – Bid Phase

100.6.14.7 Article 800 – Construction Phase

100.6.14.8 Article 900 – Post Construction Phase

100.7 Responsibilities of the City

100.7.1 The City shall be responsible for the following:

100.7.1.1 Shall furnish a copy to, or make available for examination or use by, without a fee, the Consultant, any documents and data which the City has available including, reports, maps, plans, specifications, surveys, records, ordinances, codes, regulations, other documents related to the services required under this Agreement. The City shall assist the Consultant in obtaining data and documents from public agencies and from private citizens and business firms whenever the City determines that such material is necessary for the completion of the services required by this Agreement.

100.7.1.2 Access arrangements for the Consultant to enter upon City owned property as required to perform their services.

100.7.1.3 Acquire any property, authorizations to enter property, easements, or other project rights required to construct the Project

100.7.1.4 Provide and conduct bidding activities, including printing and distribution of bid and construction documents, except as specifically required to be provided by the Consultant in this Scope of Work

100.7.2 The City's Review Process

100.7.2.1 Upon receipt of any documents furnished by the Consultant, the City Representative shall conduct a preliminary review of such documents and determine whether the documents comply with the scope of the Project. After the preliminary review, if the City Representative determines that the documents are insufficient, inadequate, or incomplete, the City shall notify the Consultant and request documents which are professionally complete and appropriate for each service phase submitted. The decision by the City Representative in this matter shall be final.

100.7.2.2 If the City Representative determines, after requesting the Consultant to provide corrected and professionally complete Phase submittals, that the documents remain insufficient, inadequate, or incomplete, the City may: (i) declare the Consultant in default, or (ii) demand a letter of explanation from the Consultant as to the reason the furnished documents are insufficient, inadequate or incomplete. If the City elects the second option, the Consultant, at Consultant's own expense, shall furnish additional sets of all documents that are sufficient, adequate and complete in the discretion of the City Representative for review by the City. The Consultant, at Consultant's own expense, shall attend any meeting, whether formal or informal, including the City Council meeting when requested by City to explain the reason the Consultant presented inadequate, insufficient, or incomplete documents to the City, and the delay, if any, that such submittal and re-submittal may cause in completion of the Project.

100.7.2.3 The City's review period in the Project Schedule shall not begin until the City Representative determines that the documents presented by Consultant fully comply with the requirements. After the City Representative determines that the documents comply with such requirements, the City shall begin a review of the documents.

100.7.2.4 After the City reviews the documents, one or several set(s) of the documents shall be returned to the Consultant with comments and corrections noted thereon. The Consultant shall make the changes necessitated by the corrections or other comments into the documents, and return the correction set(s) with the corrected documents, together with written responses to the City's correction(s), comments(s), and change(s), which state the action taken and reason for such action for each item presented by the City.

ARTICLE 200: PRELIMINARY AND GENERAL ITEMS

200.1 Project Management

200.1.1 Project management will include work necessary for communication and completion of the project tasks on time and within budget. The Consultant's Project Manager or their primary duties will not be reassigned without the written consent of the City's Project Manager. The Consultant's staff will have the training and expertise necessary for the work tasks to which they are assigned.

200.1.2 The Consultant will provide invoices in the standard format provided by the City's Representative. Invoices will be accompanied by a cover letter explaining the general status of the project, including at a minimum the work completed to date, the anticipated remaining efforts and required schedule changes; progress report form; supporting data for direct expenses (when specified expenses are allowed per Exhibit D, herein); and an updated project status report reflecting Scope of Work activities identified by the City Representative.

200.1.3 On a weekly basis, or a time frame approved by the City's Representative, the Consultant's Project Manager will update the City Representative with regards to the status of the project schedule, budget and general status/progress. This task is in addition to Design Progress Meetings and may be performed in a phone, email or mailed correspondence as approved by the City Representative.

200.2 Kick-Off Meeting and Design Progress Meetings

200.2.1 Consultant shall prepare an agenda and schedule and attend a kick-off meeting with the City and other agencies as required within ten calendar days of the issuance of the Notice to Proceed. This meeting will be held to review the scope of work, discuss data and information provided by the City, review the project schedule (prepared by the Consultant using Microsoft Project or software approved by the City's Representative), introduce key personnel, establish lines of communications and clarify the City's and other government agency requirements for the Project, and identify any missing data and information necessary to proceed with the Project. Within five business days following the kick-off meeting, the Consultant will prepare and distribute draft meeting minutes to the City's Project Manager and meeting attendees (an e-mail to the City's Representative of the draft minutes is acceptable). The Consultant shall prepare and distribute final meeting minutes after the draft meeting minutes are approved by the City's Representative.

200.2.2 Deliverables: Project Kick-Off Meeting Agenda and copies for distribution at Kick-Off Meeting; Project Kick-Off Meeting Minutes.

200.2.3 Consultant shall attend approximately twenty (20) progress/coordination meetings to be held with the City, other relevant agencies and utility companies. Design Progress meetings shall be conducted on a monthly basis, or a time frame approved by the City's Representative, at the City's offices and will be attended by the Consultant's Project Manager, Project Engineer and other key personnel as determined to be necessary. Consultant shall prepare an agenda for each of the progress meetings. Within five business days following the progress/coordination meeting, Consultant shall prepare and distribute draft meeting minutes to the City's Representative and meeting attendees (an email to the City's Project Manager and meeting attendees of the draft minutes is acceptable). The Consultant shall prepare and distribute final meeting minutes after the draft meeting minutes are approved by the City's Representative and after receipt of comments from all meeting attendees.

200.2.4 Deliverables: Design Progress Meeting Agenda and copies for distribution at Design Progress Meetings; Design Progress Meeting Minutes.

200.3 Utility and Agency Coordination

200.3.1 Consultant shall coordinate with all utilities and agencies having facilities within the limits of or adjacent to the Project throughout the duration of the project, this includes attendance to all related meetings. The Consultant will contact the utility companies and other governmental agencies early in the project to obtain information relating to the location, size and type of facilities owned by that Utility. The Consultant shall perform utility potholes, identify potential utility conflicts and meet with the affected utilities to ensure timely resolutions for the utilities conflicts. Utility companies and agencies to be contacted by the Consultant shall include, but are not limited to, the following:

200.3.1.1 Clark County Regional Flood Control District ("CCRFCD")

200.3.1.2 Clark County Department of Public Works

200.3.1.3 City of Las Vegas departments, including but not limited to, Fire Services, Flood Control, Parks, Collection System Planning, Traffic Engineering, Field Operations, and Land Development

200.3.1.4 Las Vegas Valley Water District ("LVVWD") and Southern Nevada Water Authority ("SNWA")

200.3.1.5 Freeway and Arterial System of Transportation ("FAST")

200.3.1.6 Utility providers, including but not limited to, Nevada Energy Transmission and Distribution, Century Link, Cox Communications, Southwest Gas Corporation, AT&T Fiber Optic Cable, American Fiber Systems (AFS)

200.3.1.7 Nevada Department of Transportation ("NDOT") and

200.3.1.8 Woodlawn Cemetery 1500 N. Las Vegas Boulevard

200.3.1.9 Other local and state agencies as required.

200.3.2 The Consultant shall prepare a utility conflict schedule and pothole plan to advise the City's Representative of any utility conflicts, coordinate utility requests for information, monitor status of proposed utility projects within the projects limits and meet as required with utility companies to resolve conflicts. Major utility relocation design plans may be required. Unless otherwise mentioned in this scope of services, they will be paid for separately under Additional Services Tasks upon separate authorization by the City.

200.3.2.1 Preparation of minor utility relocation plans, by the Consultant and coordination for incorporation of those prepared by the Utility Companies themselves that were anticipated by the Consultant, or reasonably should have been, at the time of this agreement shall be considered incidental to this task and no other applicable design tasks.

200.3.2.2 Coordination with utilities, incorporation of utility plans, and preparation of designs by the Consultant in relation to new services, connections for City facilities (such as power service for street lights and traffic signals and water hookups for City irrigation lines) that were anticipated by the Consultant, or reasonably should have been, at the time of this agreement shall be considered incidental to this task and no other applicable design tasks.

200.3.2.3 Nothing in this section shall be construed as preventing this Exhibit "A" from specifically detailing the Consultant's scope for anticipated minor utility relocations and/or new service connections with individual tasks identified and associated man hours and costs shown in Exhibit "D" when warranted.

200.3.3 The Consultant shall coordinate with the City of Las Vegas' Land Development Services Section for current projects, encroachment agreements, covenants running with the land and any other mapping that may have an impact on the project.

200.3.4 The Consultant shall submit design plans for review from the various utility companies for the 30%, 70%, 90% and Pre-Final submittals.

200.3.5 The Consultant shall submit design plans for review and obtain approval signatures from the various utility companies on final mylar prints prior to submitting to the City of Las Vegas.

200.3.6 Consultant shall notify the City of any required utility, application, permit and review fees, which will be paid for by the City.

200.3.7 The City's Representative shall give approval of documents prior to being submitted to any regulatory agency for permit review and approval.

200.3.8 City Engineer's Office is NOT A REGULATORY AUTHORITY. The Consultant does hereby acknowledge, understand and agree that the City Engineer's Office, acting as the City's representative for purposes of the Project, does not have any control, authority or influence over the decisions or requirements of other departments of the City acting in a regulatory capacity including, but not limited to, the Building Department, Fire Department, and Planning Department of the City of Las Vegas. The City's representative acts in a capacity similar to that of a representative working for a private property owner which is to ensure that the City receives a quality product, delivered on schedule, for a fair price. Furthermore, the City Engineer's Office does not speak or act for any regulatory authority, nor does any regulatory authority speak or act for the City Engineer's Office. The Consultant agrees that its relationship with the regulatory authorities having jurisdiction over the Project is separate from its relationship with the City, and that the Consultant's interaction with each regulatory authority is to be conducted without assistance from the City.

200.4 Project Permits

During the design process, the Consultant shall provide a permit matrix which will determine the permits needed for the Project.. Consultant shall prepare all permit applications and correspondence as required by the regulating agencies and assist the City in obtaining

required permits. Any required permit not contemplated in this scope of work will be paid for separately under Additional Services upon separate authorization by the City.

The following permits are anticipated for this project :

- NDOT Occupancy Permit – The consultant will coordinate with the Nevada Department of Transportation (NDOT) regarding Occupancy Permit issues. The Consultant shall apply for and obtain a NDOT Occupancy Permits, including any time extensions, as applicable.

- North Las Vegas – The consultant will coordinate with the City of North Las Vegas regarding permit requirements at Owens Avenue and apply for and obtain said permits, including any time extensions, as necessary.

200.4.1 Deliverables: One (1) Matrix of required permits updated at the 30%, 70% and 90% submittals; copies of correspondence with permit agencies; preparation of permit applications and response to comments necessary for permit approval.

ARTICLE 300: 30% DESIGN PHASE

300.1 Survey

300.1.1 Control Survey. Control surveys for the project will include aerial panels and establishing a ground coordinate system. The control survey will be tied to the City's established horizontal and vertical control network. Existing monuments within the project limits will be tied into this control network. Consultant will establish roadway alignments from control information found in the field and record information.

300.1.2 Design Survey. Aerial mapping and field design surveys will be used to develop engineering base sheets and digital terrain models (DTM). All aerial mapping and DTM will be produced from aerials flown at an altitude to produce 1 inch to 40 feet horizontal scale with one-foot contour intervals per National Mapping Accuracy Standards. One-foot interval contours will be developed utilizing a digital terrain program and the aerial mapping. The City's Master Plan of Streets and Highways (MSH-29859) includes an 82-foot wide collector, known as Cultural Vista Parkway, between Maryland Parkway and Las Vegas Boulevard. The aerial mapping limits shall include this area. Topographic surveys of existing features will be completed in the field to supplement aerial mapping. Specifically these tasks shall include, but are not limited to, the following:

300.1.2.1 Research existing surveys, parcel maps, ownership records, and other records as necessary to obtain needed data in preparation of all existing rights-of-way and easements and control drawings. Also included is work associated with resolving dual centerline issues as applicable.

300.1.2.2 Set panel locations for control in obtaining aerial topography. Topographic mapping to be at 1" = 40' horizontal with a contour interval of 1-foot, based upon a published City benchmark

300.1.2.3 Establish both horizontal and vertical control for the Project including preparation of a horizontal control drawing sealed by a Nevada Professional Land Surveyor to identify, as a minimum, horizontal and vertical control points, Project alignment centerline indicating bearings, distances and control point coordinates

300.1.2.4 Establish Project coordinate system

300.1.2.5 All survey shall be in ground coordinates and tied to state plane coordinates (horizontal) and NAVD 88 (vertical)

300.1.2.6 Conduct field survey to identify and locate existing improvements as necessary to supplement aerial topography. Collect field survey data within the construction limits of the project, including but not limited to, existing edge of pavement, culvert and storm drain sizes and elevations, drop inlet locations, lengths and invert elevations, manhole lids and invert elevations, and gutter flow line, top of curb, back of sidewalk elevations, water valves, visible surface utilities and pothole hubs. In areas where it is anticipated that storm drain construction will require full street reconstruction, obtain field survey shots at 50-foot intervals along the top of curbs and street centerline, plus shots at edges of driveways, transitions, and curb returns. Field survey shall extend a minimum of 100 feet for minor street intersections and 150 feet for major street intersections beyond curb returns of adjacent street.

300.1.2.7 The Consultant will coordinate any required private property access with the City's Representative.

300.1.3 Record of Survey. The Consultant shall provide a Record of Survey to be reviewed by City of Las Vegas' City Surveyor. City Surveyor must approve the Record of Survey prior to recordation with the Clark County Recorder. Research available record information, parcel maps,

subdivision maps and records of survey to establish a record alignment of the Project. Use this record alignment as a basis to assist in locating existing monuments, during the field survey phase of this Project. The City will not accept the 30% design submittal unless the Record of Survey is formally submitted and approved in writing by the City Surveyor.

300.1.4 Deliverables: The Consultant shall submit three (3) copies of the Record of Survey to the City. Consultant shall record the "approved" Record of Survey with the Clark County Recorder.

300.2 Right-of-Way

300.2.1 Consultant will use the City's Right-of-Way Plats, Title Reports that the City has on file, Parcel Maps, Records of Survey, plats and any other documentation necessary to identify and establish the right-of-way limits. Consultant will establish existing property lines and label all lots with the current owners name and APN and encumbrances in areas where right-of-way is to be acquired for 2 conditions: the "existing right-of-way design" and the "ultimate 120-foot right-of-way design". The "existing right-of-way design" shall be defined to mean a roadway design for the project limits that requires no additional right-of-way, or very little to accommodate 3 travel lanes in each direction while maintaining the existing median islands and where possible, placing the curb line at the ultimate curb line location for the "120-foot right of way design"; it is noted that 3 lanes in each direction cannot be accomplished south of McWilliams Avenue. Consultant will identify any additional right-of-way to be acquired. *Consultant will prepare right-of-way drawings showing existing rights-of-way and easements and proposed rights-of-way and easements for both designs. Consultant shall coordinate with the City's Right-of-Way Section in the preparation of a right-of-way property schedule* (all rights to be obtained or vacated, easements, rights of entry, construction easements as well as current status of the City's acquisitions) and regularly review and redline this schedule as to current status in coordination with the City's Right-of-Way Section. Where existing property is to be disturbed by construction, Consultant shall prepare 8 ½" X 11" exhibits showing the location of Authorization to Enter Property (AEP)/Temporary Construction Easement (TCE) areas and include the nature of the construction. For all AEPs, TCEs, easements or rights-of-way that must be acquired for either design condition, consultant may be asked to prepare legal descriptions with property maps showing topographic areas, easements and vesting by the City and will be paid for separately under Additional Services Tasks upon separate authorization by the City.

300.2.2 The City will provide all Title Reports for properties in which right-of-way or easements will be required for the Project, and as needed to prepare the existing right-of-way map.

300.2.3 Based on the 30% design, the Consultant will identify any additional right-of-way, including permanent right-of-way and easements and AEP/TCE's to be acquired for both the "existing right-of-way design" and the "ultimate 120-foot right-of-way design". A summary of proposed right-of-way acquisition will be provided by the Consultant in Microsoft Excel 2000 format in the format provided by the City Representative. During the 30% design review, the City will work with the Consultant to finalize project right-of-way requirements.

300.2.4 30% Submittal. Consultant shall prepare two (2) 24" x 36" exhibits, at a minimum 1" = 100' scale, that shall show schematically the project and identify all existing right-of-way and existing easements. Areas identified (preliminarily) for proposed right-of-way acquisition for both the "existing right-of-way design" and the "ultimate 120-foot right-of-way design" shall be shown on an exhibit and differentiated from existing right-of-way by color coding. In addition, Consultant shall provide a right-of-way property schedule.

300.2.5 70% Submittal. Consultant shall prepare 24" x 36" exhibits that shall show all needed right-of-way, easements, AEP/TCE's, etc. for the "existing right-of-way design" at the 70% level. The Consultant shall update the right-of-way property schedule, outlined in 300.2.1, to create an acquisition status table showing parcel numbers, acquisition type, acquisition status, property owner and contact information which will become the "acquisition status table".

300.2.6 90% Submittal. Consultant shall update the 24" x 36" exhibits to show the acquired right-of-way, easements and AEP/TCE's. The "acquisition status table" shall be updated and submitted to the City for review.

300.2.7 100% Submittal. Consultant shall update the 24" x 36" exhibits to show the acquired right-of-way, easements and AEP/TCE's. The "acquisition status table" shall be updated and submitted to the City for review. Consultant shall clearly identify, in the acquisition table, any right-of-way, easements or AEP/TCE's that have not been acquired and an explanation for not having acquired the right-of-way, easement or AEP/TCE's.

300.2.8 Prior to Bid. Prior to bid the Consultant shall cross check the right-of-way map verses the acquisition table and provide a letter summarizing the result of the check and identifying any right-of-way, easements or AEP/TCE's not yet acquired.

300.2.9 Deliverables: Deliverables are as described in sections 300.2.1, 300.2.2, 300.2.3, 300.2.4, 300.2.5, 300.2.6 and 300.2.7.

300.3 Records Review, Information Research and Analysis of Data

300.3.1 Consultant shall review data and information from the City including assessor's maps, parcel maps, improvement plans, drainage studies, utility plans, geotechnical studies, aerial topographic mapping and land development mapping currently being processed by the City which will likely affect the Project. Consultant shall provide ongoing supplemental research of public records during Project development.

300.3.2 The Consultant will review all data collected to determine impact/significance with regard to the Project and incorporate useful information into the Project documents. The Consultant will also identify deficiencies in the data collected and make recommendations for additional information needed for the successful completion of the project.

300.3.3 The Consultant will conduct field investigations, as necessary during the length of the project, to determine the location of collection facilities, establishment of problem flooding areas, existing drainage facilities, utilities, street improvements and other appurtenant items that may help in the development of the Project design. The Consultant will take pictures during the field investigation to document field conditions throughout the Project.

300.4 Utility Potholing

300.4.1 Utility Potholing work for the Project shall include gathering horizontal and vertical location information (potholing) on subsurface utilities that may be in conflict with the Project improvements. A total of fifty (50) potholes are anticipated to be performed for this Project. This task shall include the refinement of the utility conflict information, identification of utility relocation by others and incorporate subsurface utility engineering into the Contract Drawings. Potholes will be surveyed for horizontal location and shown on the plans. Patching of potholes will meet City of Las Vegas and NDOT (if applicable) requirements, including hot patches, polymer bag mix or concrete plug. No cold patches will be utilized.

300.4.2 For utilities that are concrete encased, Consultant will require the pothole sub-consultant to perform two potholes: one to identify the top of the encasement and one to identify the bottom of the encasement. The two potholes will be performed on either side of the encasement to determine the width of the encasement.

300.4.3 Consultant shall provide full-time inspection during the pothole process to confirm that the sub-consultant has accurately located and correctly identified the utilities to be investigated.

300.4.4 Deliverables: One (1) Matrix of utility conflicts and summary updated at the 70% and 90% submittals.

300.5 Geotechnical Investigation - Consultant shall provide geotechnical services to include research, field investigation, material testing, and analysis to develop geotechnical recommendations for the design and reconstruction of the existing roadway.

300.5.1 It is anticipated that the Geotechnical Investigation Report(s) may include, but is not limited to the following:

- Review pertinent background data, including in-house geotechnical data, readily available geotechnical reports, stereoscopic aerial photographs, published geologic maps, soils data, and literature.
- Perform a site reconnaissance along the subject road alignments to evaluate the existing pavement conditions. Areas that exhibit significant pavement deterioration and cracking will be documented. Pavement cores will be taken at 300 to 500 foot centers to determine the actual existing pavement section(s) and substantiate the pavement rehabilitation or replacement recommendations.
- For field geotechnical investigations, a traffic control plan shall be formulated and submitted to the City for approval. Proper signage and barricading will be implemented for field studies.
- Boring depths shall be taken at 20-foot minimum depth. Perform laboratory testing on samples.
- Identify the corrosive characteristics of the soil.
- Locate ground water elevations at each of the borings if the groundwater level is above the bottom of the boring;
- Identify caliche and cemented soil deposits depth and make recommendations for excavation methods.
- Provide geotechnical recommendations for use in design of foundations, including allowable bearing capacity, passive pressure, coefficient of friction and estimated settlements, lateral resistance of the soil, recommendations for lateral support, excavated slope stability and data on excavated materials encountered and groundwater levels.
- Make recommendations for pavement section, excavation and backfill requirements for bedding, pipe zone, trench backfill, asphalt pavement resurfacing and fill placement, suitability of existing soils for use as backfill materials and asphalt pavement. Make recommendation for cut/fill slopes and percent shrinkage for embankment.
- Make recommendations for type of cement for concrete in contact with onsite soils, structural recommendations, and other conditions applicable to the Project.
- Prepare a hydro-geological report and provide groundwater samples and monitoring wells in areas where shallow groundwater is discovered. This report, the groundwater sampling and the monitoring wells will be considered an Additional Service.

- Make recommendation for trench patching.

300.5.2 The Consultant shall prepare a written report presenting the findings, conclusions, and geotechnical recommendations for the design and construction of the proposed improvements, including recommendations regarding pavement section thickness based on AASHTO design criteria, structural bearing capacity, earthwork and backfill requirements.

300.5.3 It is understood that the City may make and distribute copies of reports and boring logs as necessary in connection with the Project without incurring obligation for additional compensation.

300.5.4 Deliverables: The Consultant shall provide seven (7) bound copies of the draft and the final Geotechnical Investigation Reports to the City's Representative for review and one bound copy of the draft and the final Geotechnical Investigation Reports to the RTC.

300.6 30% Design Phase Plans

300.6.1 Consultant shall prepare 30% plans for 2 conditions: the "existing right-of-way design" and the "ultimate 120-foot right-of-way design". The "existing right-of-way design" shall be defined to mean a roadway design for the project limits, I-515 to Owens Avenue, that requires no additional right-of-way, or very little, to accommodate 3 travel lanes in each direction while maintaining the existing median islands and where possible, placing the curb line at the ultimate location for the "ultimate 120-foot right of way design"; it is noted that 3 lanes in each direction cannot be accomplished south of McWilliams Avenue. The "ultimate 120-foot right-of-way design" will be used for City planning purposes and no further design shall be done for this condition after the 30% submittal.

300.6.2 The "existing right-of-way design" shall include research and design to determine if and how portions of the "ultimate 120-foot right-of-way design" can be accommodated on publically owned parcels within the project limits. Where possible, the definition for "existing right-of-way design" will include the widened areas that conform to the ultimate design.

300.6.3 The City's Master Plan of Streets and Highways (MSH-29859) includes an 82-foot wide collector, known as Cultural Vista Parkway, between Maryland Parkway and Las Vegas Boulevard. Design for this segment of roadway, if requested by the City, will be paid for as an additional service. Sewer line inspection, cctv, assessment report with recommendations, repair and/or replacement design may be warranted and will be paid for as an additional service. Additional work will be conducted only upon separate authorization by the City under Additional Design Services.

300.6.4 The 30% plans are to be prepared for the limits and configurations as agreed on and directed by the City of Las Vegas. The north arrow on all plan sheets shall point to the top or right side unless otherwise approved by the City. The plan and profile sheets shall be at 1″ = 40′ scale (or other scale as directed or approved by the Engineer) and appropriate vertical scale with stationing from left to right. All lettering shall be of sufficient size and clarity to permit easy reading when reduced to one-half (1/2) scale.

The 30% submittal will include, but is not limited to, the following:

- Permit Matrix
- Record of Survey and approval from City Surveyor
- Right-of-Way Exhibit for both conditions
- Utility Conflicts Matrix and Summary
- Draft Geotechnical Data Report and Draft Hydrogeologic Report if applicable
- 30% Design Phase Plans of both conditions
- 30% Construction Cost Estimate for both conditions

300.6.5 Deliverables: Submit twelve (12) copies of the half scale plans (11″ x 17″) and two (2) copies of full size plans (24″ x 36″) to the City; Submit one (1) full size set and two (2) half size sets of the 30% Design Plans to the RTC. Submit copies of "existing right-of-way design" 30% plans to utilities (size determined by each individual Utility Company) as necessary for review by the utility companies. The Consultant will provide a distribution list.

300.7 30% Design Phase Construction Cost Estimate - a Preliminary construction cost estimate shall be prepared by the Consultant for the 30% submittal for both conditions.

300.7.1 Deliverables: Submit a 30% cost estimate to the City in both hard copy and electronic format (excel spreadsheet, pdf format will not be accepted); Submit two (2) copies of the 30% cost estimate to the RTC.

300.8 All subsequent submittals shall be based on the "existing right-of-way design" condition.

ARTICLE 400:
70% DESIGN PHASE

400.1 70% Design Phase Submittal

400.1.1 Technical Drainage Report – The consultant shall prepare a technical drainage study with recommendations in accordance with CCRFCD Hydrologic Criteria and Drainage Design Manual (HCDDM). The drainage system will be designed to include a 10-year level of protection and meet the dry lane criteria. However, both the 10-year and 100-year flows must be indentified for compliance with RTC criteria and the CCRFCD Design Manual. The Technical Drainage Report shall incorporate the following information:

- A hydrologic model using HEC-1 to establish flows for both the "existing right-of-way design" and the "ultimate 120-foot right-of-way design" condition.
- A hydraulic model for the conveyance facilities using HEC-RAS, WSPG or other appropriate engineering software. The hydraulic models shall include hydraulic grade line, energy grade line, flow velocity and depth and other pertinent hydraulic parameters for the main storm drain line and laterals.
- Drop inlet sizing calculations.
- Provide complete Storm Drain Plan and Profiles (including lateral plan and profiles) and Storm Drain Details.
- Flow split analysis at project intersections.
- 10-year and dry lane hydraulic analysis to determine the facility sizing and to determine the RTC costs.

Incorporate the location, depth of pipe, approximate slopes and inlet locations for storm drain requirements based on the results of the hydrologic review and hydraulic analysis into the Technical Drainage Report.

The Consultant shall compile all comments and written responses to comments along with all final design information, calculations and models and include in a stand-alone Final Technical Drainage Report to be used as a record for the basis of design for the project. The Final Technical Drainage Report shall include all information included in the Technical Drainage Report and all associated revisions made as applicable. This report will also include any information, calculations or models that were revised since the Initial Technical Drainage Report was submitted. The Consultant will provide a complete electronic submittal of the Final Technical Drainage Report with all associated input & output files, calculations and all associated revisions made as applicable.

400.1.2 Deliverables: Submit six (6) copies of the Draft and Final Technical Drainage Reports with recommendations to the City and two (2) copies of the Draft and Final Technical Drainage Report to RTC. Submit one (1) copy of the Draft and Final Technical Drainage Report with recommendations to the CCRFCD for concurrence.

400.2.1 Traffic Study – Consultant shall prepare a traffic study with recommendations in accordance with City and RTC requirements. The traffic study shall include the following elements:

- Obtain new AM/PM peak volume count at major intersections and ADT counts, preferably after the opening of the City of North Las Vegas (NLV) North 5th Street project;
- Recommendations for lane configurations (i.e., single or dual left turns, exclusive rights, storage lengths) based on existing and projected traffic volumes at each intersection using Synchro/HCS analysis;
- Consultant to study and evaluate existing and future access and provide recommendations to address Access Management along the corridor as related to the installation of additional median islands and storage length;
- Obtain and evaluate accident data from NDOT;
- Consultant to obtain new approach volumes and turning movement counts at intersections. Projected 2025 or 2030 volumes (whichever are applicable) shall be obtained by the Consultant from the RTC TransCAD model and shall be submitted to the City for approval prior to use. Review/compare study date from NLV North 5th Street project to ensure geometric design compatibilities.

400.2.2 Deliverables: Submit six (6) copies of the Draft and Final Traffic Study with recommendations to the City and two (2) copies of the Draft and Final Traffic Study to RTC.

400.3.1 70% Design Phase Plans – This submittal will include further refinement of the "existing right-of-way design" from the 30% Design Phase Submittal and response to comments. Plans shall be identified with the level of design with Engineer's seal in accordance with NRS 625. The 70% plans shall include, but not limited to, the following:

400.3.1.1 City Standard Cover Sheet identifying Project Participants
400.3.1.2 Note sheet with plan index, vicinity map, benchmark, and basis of bearings
400.3.1.3 Notes Sheet with General Notes, LVVWD Notes, and City of Las Vegas Sewer, Traffic, Grading, Fire Department, Street Lighting, and Encroachment Permit Notes
400.3.1.4 Abbreviations and Symbols
400.3.1.5 Survey Control Plan identifying project limits, horizontal control for centerline and rights-of-way, monumentation and sheet index
400.3.1.6 Horizontal control for centerline and right-of-way with monumentation plan
400.3.1.7 Recorded Record of Survey as part of Horizontal Control Plan (to be included in all submittals hereafter as well)
400.3.1.8 Sheet Index with key map
400.3.1.9 Typical Cross Section Sheets
400.3.1.10 Removal Plans
400.3.1.11 Roadway Plan and Profiles
400.3.1.12 Construction Details
400.3.1.13 Storm Drain Plan and Profiles (including lateral plan and profiles)
400.3.1.14 Storm Drain Details
400.3.1.15 Utility Plans
400.3.1.16 Traffic Striping and Signing Plans
400.3.1.17 Traffic Lighting Plans
400.3.1.18 Traffic Signal Plans
400.3.1.19 Structural Drawings
400.3.1.20 Special Details as required for the Project
400.3.1.21 FAST Interconnect Plans

400.3.1.22 Deliverables: Response to comments; Submit twelve (12) copies of the half scale plans (11" x 17") and two (2) copies of full size plans (24" x 36") to the City; Submit one (1) full size set and two (2) half size sets of the 70% Design Plans to the RTC. Submit copies of 70% Plans to utilities (size determined by each individual Utility Company) as necessary for review by the utility companies. The Consultant will provide a distribution list.

400.4.1 70% Design Phase Construction Cost Estimate - a Project cost estimate broken out by funding source, bid item, and plan sheet shall be prepared by the Consultant. The cost estimate breakdown by funding source may include, but is not limited to, the following: RTC (may require further breakdown within this category, i.e. RTC-Q10, RTC-Arterial Restoration Fund, etc.), CCRFCD, CLV Sanitation, CLV Municipal Arts Fund.

400.4.2 Deliverables: Submit the 70% cost estimate by funding source to the City in both hard copy and electronic format (excel spreadsheet, pdf format will not be accepted); Submit two (2) copies of the 70% cost estimate to the RTC.

400.5.1 70% Walk Through - At the direction of the City, Consultant shall schedule a walkthrough of the Project with City of Las Vegas personnel and other stakeholders (as determined by the City) during the 70% Design Phase period. The Consultant will note any changes or adjustments to the plans as needed to fit field conditions and incorporate these changes into the 90% submittal.

400.5.2 Deliverables: The Consultant shall submit a walk though Memorandum to the City's Representative to document field observations.

ARTICLE 500: 90% DESIGN PHASE

500.1 90% Design Phase Submittal

500.1.1 90% Design Phase Plans – This submittal will include further refinement of the 70% plans (including any necessary structural details) to reflect 90% completion and response to comments. The 90% plans shall include all the utility conflicts and the resolutions. The 90% plans shall include project quantity tables broken down by individual plan sheet. The 90% plans shall include construction and right-of-way lines and all encroachments onto private property with proposed improvements. The owners name, property address and assessor parcel number shall be shown.

500.1.2 Deliverables: Response to comments; Submit twelve (12) copies of the half scale plans (11" x 17") and two (2) copies of full size plans (24" x 36") to the City; Submit one (1) full size set and two (2) half size sets of the 90% Design Plans to the RTC. Submit copies of 90% Plans to utilities (size determined by each individual Utility Company) as necessary for review by the utility companies. The Consultant will provide a distribution list.

500.2.1 90% Design Phase Construction Cost Estimate - a Project cost estimate broken out by funding source, bid item, and plan sheet shall be prepared by the Consultant. The cost estimate breakdown by funding source may include, but is not limited to, the following: RTC (may require further breakdown within this category, i.e. RTC-Q10, RTC-Arterial Restoration Fund, etc.), CCRFCD, CLV Sanitation, CLV Municipal Arts Fund.

500.2.2 Deliverables: Submit the 90% cost estimate by funding source to the City in both hard copy and electronic format (excel spreadsheet, pdf format will not be accepted); Submit two (2) copies of the 90% cost estimate to RTC.

500.3.1 90% Design Phase Special Provisions - The Project Special Provisions shall be submitted utilizing the City's standard boilerplate set of Special Provisions provided. The Project Special Provisions shall use the same format as the *Uniform Standard Specifications for Public Works' Construction Off-Site Improvements Clark County Area Nevada*. All items of construction shown on the 90% Project Plans shall be represented in the Special Provisions as bid items utilizing the corresponding related specification section's nomenclature. The applicable items shall be described for the method of "Measurement" and "Payment" subsection for each section. Do not modify the City's format without prior approval by the City.

500.3.2 Deliverables: Submit five (5) copies of the bound Special Provisions to the City; Submit two (2) copies of the bound Special Provisions to RTC.

500.4.1 90% Walk Through - At the direction of the City, Consultant shall schedule a walkthrough of the Project with City of Las Vegas personnel and other stakeholders (as determined by the City) during the 90% Design Phase period. An inventory of all items of work shown on the plans will be verified and compared to field conditions. The Consultant will note any changes or adjustments to the plans as needed to fit field conditions. The Consultant will note any changes or adjustments to the plans as needed to fit field conditions and incorporate these changes into the 100% Design Phase Submittal.

500.4.2 Deliverables: The Consultant shall submit a walk though Memorandum to the City's Representative to document field observations.

500.4.3 Bidability and Constructability (B&C) - Consultant shall coordinate with a City selected B&C consultant or City in-house B&C review team. The Consultant will provide the B&C consultant or in-house B&C review team with the 90% submittal and Final Design Report (and any other documents necessary to complete the B&C review). The City may also chose to provide the B&C consultant or in-house B&C review team with earlier submittals for review. Consultant shall attend meetings and respond to comments as required to resolve disagreements on B&C comments.

500.4.4 Deliverables: The Consultant shall attend one (1) meeting and prepare a comment and response matrix and incorporate any design changes warranted by the Bidability and Constructability review.

500.4.5 Public Meetings – Consultant shall attend and provide support to the City for three (3) public meetings and prepare graphic presentation materials, including 3 photographic renderings, and backup information as necessary.

500.4.6 Deliverables: Board attendance; backup materials; presentation materials.

500.4.7 The Consultant shall finalize all permit applications and submit all required permits to the appropriate agencies.

ARTICLE 600: 100% DESIGN PHASE

600.1 100% Design Phase Submittal

600.1.1 The 100% submittal shall include all the elements of Article 500 which shall be advanced to a completed level of design and shall incorporate comments from the 90% submittal. The 100% submittal will consist of two steps: (1) a **100% pre-final (bond) submittal** will be made for final comment by the City and RTC, and (2) the Consultant will incorporate all comments on the pre-final submittal into the **100% final (mylar) submittal**. Plan set mylars and copies sealed in accordance with NRS 625, sealed Special Provisions, including Bid Proposal and Construction Cost Estimate shall be submitted to the City. The Engineer's estimate broken out by bid item, plan sheet and funding source will be submitted as a Microsoft Excel Work Sheet electronic file. The Consultant shall coordinate with utility companies and obtain all utility signatures on the Cover Sheet and elsewhere in the plans as required. Consultant shall submit a pre-mylar bond set of the final plans before preparing mylars for this project.

600.1.2 Deliverables for the 100% Pre-Final (Bond) Submittal: Response to Comments; Submit one (1) full size set (24" X 36"); four (4) half size sets (11" X 17") of the 100% Pre-Final (Bond) Submittal to the City; two (2) bound copies of the Special Provisions and 100% Pre-final

Cost Estimate by funding source to the City; Consultant shall determine if any utility companies require submittal of the 100% Pre-Final (Bond) submittal to obtain mylar signature and if so, submit accordingly.

600.1.3 Deliverables for the 100% Final (mylar) Submittal: One set of 24" X 36" mylar plan sheets stamped and signed by a Nevada P.E. which includes the cover sheet containing all approval signatures; One set of original Special Provisions (unbound) stamped and signed by a Nevada P.E. and the Word document; One copy of the City Formatted Final Cost Estimate and Bid Schedule; One copy of the Plan Sheet Index as a single Word document. Additionally, submit two copies of the half scale plans, bound Special Provisions and 100% Final Cost Estimate to RTC. Electronic copies of both the plans (AutoCAD format) and Special Provisions (Microsoft Word format) shall be submitted to the City. The Final Cost Estimate and Bid Schedule will be submitted as a Microsoft Excel Work Sheet electronic file.

ARTICLE 700: BID PHASE

700.1 Pre-Bid Conference

700.1.1 The Consultant shall attend the pre-bid conference.

700.2 Bid Requests and Responses

700.2.1 Consultant shall respond to questions raised by bidders during the bidding process. Decisions on issuing addenda will be conducted by the City. The Consultant will draft required specifications, plan changes and clarifications for the City to include in any addenda.

700.3 Bid Opening

700.3.1 The Consultant shall attend the bid opening and review the bid abstract and contractor qualifications.

700.3.2 The Consultant will comment on any bid discrepancies, evidence of unbalanced bid or contractor concerns uncovered during reviews.

ARTICLE 800: CONSTRUCTION PHASE

800.1 Pre-Construction Meeting

800.1.1 The Consultant shall attend the pre-construction meeting.

800.2 Submittal Review

800.2.1 Consultant shall review Contractor's submittals for manufacture certifications, installation instructions, shop drawings and service connections; Attend construction progress meetings, as necessary; respond to Contractor's Request for Information (RFI); assist with the processing of change orders; review Contractor's submittals (such as shop drawings, value engineering items, sample products, etc.); visit construction site to examine construction work; review claims and resolution of claims; attend final walk through; and assist with the punch list preparation.

800.3 Construction Support Services

800.3.1 The Consultant shall provide the following support services during the construction phase of the project:
800.3.1.1 Project Site Visits
800.3.1.2 Review of Submittals/Shop Drawings
800.3.1.3 Response to RFIs
800.3.1.4 Additional Design as needed
800.3.1.5 Additional Surveying as needed

ARTICLE 900: NOT USED

END OF EXHIBIT "A"

EXHIBIT "B"

REQUIRED SUBMITTALS

ARTICLE 200: GENERAL

200.1 When requested by the City electronic files shall accompany hard copies for all submittals referenced in this paragraph and unless otherwise directed by the City. All cost estimates shall be provided in Microsoft Excel format, all schedules in Microsoft Project format, all Special Provisions in Microsoft Word format, all Bid Schedules in Microsoft Excel format and all spreadsheets associated with additional service requests in Microsoft Excel format. Pdf submittals will not be accepted unless specifically requested by the City.

200.2 All submittal requirements are outlined in Exhibit A – Scope of Services. Consultant shall refer to deliverables or other submittal requirements outlined in Exhibit A.

200.3 Certificates of Insurance

The Consultant shall deliver to Insurance Tracking Services, Inc. (ITS), the City's authorized designated representative, a certificate of insurance with respect to each required policy to be provided by the Consultant under this Agreement. The required certificates must be signed by the authorized representative of the insurance company shown on the certificate with proof that such person is an authorized representative thereof, and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon.

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) shall be provided to the City upon request.

The Consultant shall promptly deliver to ITS a certificate of insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the terms specified herein. Such certificate shall be delivered to ITS not less than 30 days prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof.

END OF EXHIBIT "B"

EXHIBIT "C"

PERFORMANCE SCHEDULE

ARTICLE 300: NOTICE TO PROCEED

300.1 The start date for the Consultant's scope of services shall be, without any further notice requirement, the date of this Agreement signed by the parties. The Consultant shall perform the services required as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Scope of Service set forth in this Agreement and the compensation to the Consultant for said Scope of Services is based upon the Consultant and the City each performing its responsibilities in a timely manner.

300.2 *Performance Schedule.* The parties hereto have agreed to a general performance schedule (the "Performance Schedule") which is set forth herein. Subsequent to the execution of this Agreement, the Consultant shall furnish to the City's Representative for approval a more detailed schedule of performance (herein the "Detailed Performance Schedule").

300.3 *Revised Performance Schedule.* If the Consultant's performance is delayed or the sequence of tasks changed, the Consultant shall notify the City's Representative in writing of the reasons for the delay or the change. The Consultant shall then prepare a revised General and Detailed Performance Schedule for submission to and approval by the City's Representative.

ARTICLE 301: PERFORMANCE SCHEDULE

301.1 The maximum allowed time to complete each phase of the work is shown in the following table:

PHASE	CALENDAR DAYS TO COMPLETE	REMARKS
30% DESIGN PHASE	140	Includes fifty (50) days for topographic mapping
70% DESIGN PHASE	100	Following receipt of all comments on the 30% Design Phase
90% DESIGN PHASE	70	Following receipt of all comments on the 70% Design Phase
100% DESIGN PHASE	55	Following receipt of all comments on the 90% Design Phase
BID PHASE	n/a	
CONSTRUCTION PHASE	n/a	
POST CONSTRUCTION PHASE	n/a	
TOTAL CALENDAR DAYS TO COMPLETE:	**365**	

ARTICLE 302: DESIGN AND PERMITTING SCHEDULE DELAYS

302.1 The Consultant declares that they are experienced and knowledgeable with all governmental, agency, and utility company design approval processes, procedures, applications, fees, design standards, reviews, required corrective actions, and time schedules required for the Project, and that the schedule set forth for the Scope of Services is reasonable and achievable within these design approval parameters.

302.2 Although it is acknowledged that neither the City nor the Consultant have full control over these design approval processes, the Consultant shall be held accountable for any impacts to the City resulting from their actions or lack of actions, including but not limited to their failure to make timely submittals, their failure to routinely follow-up on submittals, their failure to notify the City of anticipated delays and required design changes, and their failure to process and re-submit comments and corrections received in a timely manner.

END OF EXHIBIT "C"

EXHIBIT "D"

FEE BREAKDOWN

ARTICLE 400: COMPENSATION AND TERMS OF PAYMENT

400.1 *General.* At the time of approval of this Agreement by the City Council, the City agrees to set aside one million one hundred fifty thousand dollars ($1,150,000) as the total appropriation for the performance of this Agreement. In no event shall the total payments to the Consultant for the services (basic services and additional compensation) provided under this Agreement exceed the aforementioned amount appropriated without prior approval of the City.

400.2 *Compensation: Basic Services (Lump Sum by Task).* The City agrees to pay the lump sum amount attributable to each task and, if applicable, each subtask, set forth in Exhibit "A" which is completed by the Consultant. The Consultant agrees to complete each task and, if applicable, each subtask, for the amount of the lump sum set forth in Exhibit "D" regardless of the number of manhours which must be expended to complete the performance of this Agreement. The total payments to the Consultant for the completion of these tasks shall not exceed eight hundred forty nine thousand seven hundred ninety four dollars ($849,794) without prior written approval from the City. Such payment is based upon the individual lump sum amounts that are identified in Exhibit "D".

400.3 *Compensation: Additional Compensation.* For the additional services set forth in Exhibit "E," the City shall pay to the Consultant either a lump sum or an hourly fee based upon the hourly rates set forth in Exhibit "E" attached hereto, whichever is approved in writing by the City's Representative. Such payment shall not exceed three hundred thousand two hundred six dollars ($300,206) without the prior written approval of the City.

BASIC SERVICES FEE BREAKDOWN

END OF EXHIBIT "D"

EXHIBT D-1 – BASIC SERVICES FEE BREAKDOWN

TASK	DESCRIPTION	PRINCIPAL-IN-CHARGE	PROJECT MANAGER	UTILITIES SPECIALIST	SR. DRAINAGE ENGINEER	SR. TRAFFIC ENGINEER	ELECTRICAL DESIGNER	DRAINAGE ENGINEER	ROADWAY ENGINEER	ENVIRON. PLANNER	SR. STRUCTURAL ENGINEER	STRUCTURAL ENGINEER	CADD MANAGER	CADD TECHNICIAN	CLERICAL	Hours Subtotal	Direct Expenses	Lump Sum Task Amounts
		$219	$150	$146	$182	$140	$95	$110	$95	$110	$146	$91	$115	$84	$77			
200	PRELIMINARY AND GENERAL ITEMS																	
200.2	Kick-Off Meeting and Progress Meetings	0	40	0	0	0	0	0	80	0	0	0	0	40	0	160	$0.00	$16,960.00
200.3	Utility and Agency Coordination	0	16	160	16	0	0	40	0	0	0	0	0	40	0	272	$0.00	$36,432.00
200.4	Project Permits	0	24	0	0	0	0	0	24	0	0	0	0	40	0	88	$0.00	$9,240.00
200	Subtotal Hours	0	80	160	16	0	0	40	104	0	0	0	0	120	0	520	$0.00	
200	Subtotal Fee	$0.00	$12,000.00	$23,360.00	$2,912.00	$0.00	$0.00	$4,400.00	$9,880.00	$0.00	$0.00	$0.00	$0.00	$10,080.00	$0.00			$62,632.00
300	30% DESIGN PHASE																	
300.1	Survey	0	8	0	0	0	0	0	32	0	0	0	4	0	0	44	$63,460.00	$68,160.00
300.2	Right-of-Way	0	24	0	0	0	0	0	100	0	0	0	4	100	0	228	$22,260.00	$44,220.00
300.3	Records Review, Information Research and Analysis of Data	0	16	16	0	0	8	32	32	0	0	0	0	0	8	112	$0.00	$12,672.00
300.4	Utility Potholing	0	8	40	0	0	0	0	0	0	0	0	0	0	0	48	$50,000.00	$57,040.00
300.5	Geotechnical Investigation	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	$29,900.00	$29,900.00
300.6	30% Design Phase Plans	4	40	160	8	200	200	200	200	0	8	8	40	480	8	1,556	$4,000.00	$171,124.00
300	Subtotal Hours	4	96	216	8	200	208	232	364	0	8	8	48	580	16	1,988		
300	Subtotal Fee	$876.00	$14,400.00	$31,536.00	$1,456.00	$28,000.00	$19,760.00	$25,520.00	$34,580.00	$0.00	$1,168.00	$728.00	$5,520.00	$48,720.00	$1,232.00		$169,620.00	$383,116.00
400	70% DESIGN PHASE																	
400.1.1	Technical Drainage Report	0	0	0	16	0	0	80	0	0	0	0	0	40	0	136	$0.00	$15,072.00
400.2.1	Traffic Study	0	16	0	0	40	0	0	20	0	0	0	0	40	16	132	$5,000.00	$19,492.00
400.3.1	70% Design Phase Plans	4	24	160	24	100	100	100	160	0	16	32	40	400	0	1,160	$11,400.00	$136,752.00
400.4.1	70% Design Phase Construction Cost Estimate	0	4	16	0	16	8	16	24	0	0	0	0	0	0	84	$0.00	$9,976.00
400.5.1	70% Walk Through	0	8	8	0	0	0	0	0	0	0	0	0	0	0	16	$0.00	$2,368.00
400	Subtotal Hours	4	52	184	40	156	108	196	204	0	16	32	40	480	16	1,528		
400	Subtotal Fee	$876.00	$7,800.00	$26,864.00	$7,280.00	$21,840.00	$10,260.00	$21,560.00	$19,380.00	$0.00	$2,336.00	$2,912.00	$4,600.00	$40,320.00	$1,232.00		$16,400.00	$183,660.00
500	90% DESIGN PHASE																	
500.1.1	90% Design Phase Plans	0	24	80	24	40	40	60	120	0	12	24	40	160	0	624	$0.00	$89,024.00
500.2.1	90% Design Phase Construction Cost Estimate	0	4	12	0	12	8	12	12	0	0	0	0	0	0	60	$9,800.00	$17,052.00
500.3.1	90% Design Phase Special Provisions	8	24	8	0	8	8	8	8	0	8	0	0	0	16	96	$0.00	$12,440.00
500.4.1	90% Walk Through	0	8	8	0	0	0	0	0	0	0	0	0	0	0	16	$0.00	$2,368.00
500.4.3	Bidability and Constructability	0	8	4		0	4	4	4	0	0	4	2	16	0	46	$0.00	$4,922.00
500.4.5	Public Meetings	8	24	0	0	0	0	0	0	16	0	0	0	96	0	144	$0.00	$15,176.00
500	Subtotal Hours	16	92	112	24	60	60	84	144	16	20	28	42	272	16	986		
500	Subtotal Fee	$3,504.00	$13,800.00	$16,352.00	$4,368.00	$8,400.00	$5,700.00	$9,240.00	$13,680.00	$1,760.00	$2,920.00	$2,548.00	$4,830.00	$22,848.00	$1,232.00		$9,800.00	$120,982.00
600	100% DESIGN PHASE																	
600.1.2	100% Pre-Final (Bond) Submittal	4	16	32	12	32	32	32	32	0	4	8	20	80	0	304	$6,500.00	$41,044.00
600.1.3	100% Final (Mylar) Submittal	4	16	0	0	0	0	0	0	0	0	0	20	40	0	80	$4,000.00	$12,936.00
600	Subtotal Hours	8	32	32	12	32	32	32	32	0	4	8	40	120	0	384		
600	Subtotal Fee	$1,752.00	$4,800.00	$4,672.00	$2,184.00	$4,480.00	$3,040.00	$3,520.00	$3,040.00	$0.00	$584.00	$728.00	$4,600.00	$10,080.00	$0.00		$10,500.00	$53,980.00
700	BID PHASE																	
700.1	Pre-Bid Conference	0	4	4	0	0	0	0	4	0	0	0	0	0	0	12	$0.00	$1,564.00
700.2	Bid Requests and Responses	0	8	8	0	12	4	12	4	0	0	4	8	16	0	76	$0.00	$8,756.00
700.3	Bid Opening	0	4	0	0	0	0	0	0	0	0	0	0	0	0	4	$0.00	$600.00
700	Subtotal Hours	0	16	12	0	12	4	12	8	0	0	4	8	16	0	92		
700	Subtotal Fee	$0.00	$2,400.00	$1,752.00	$0.00	$1,680.00	$380.00	$1,320.00	$760.00	$0.00	$0.00	$364.00	$920.00	$1,344.00	$0.00		$0.00	$10,920.00
800	CONSTRUCTION PHASE																	$0.00
800.1	Pre-Construction Meeting	0	4	4	0	0	0	0	0	0	0	0	0	0	0	8	$0.00	$1,184.00
800.2	Submittal Review	0	4	8	0	12	24	24	0	0	8	16	0	0	0	96	$0.00	$10,992.00
800.3	Construction Support Services	0	20	20	0	16	8	20	40	0	8	8	8	40	16	204	$0.00	$22,328.00
800	Subtotal Hours	0	28	32	0	28	32	44	40	0	16	24	8	40	16	308		
800	Subtotal Fee	$0.00	$4,200.00	$4,672.00	$0.00	$3,920.00	$3,040.00	$4,840.00	$3,800.00	$0.00	$2,336.00	$2,184.00	$920.00	$3,360.00	$1,232.00		$0.00	$34,504.00
	Total Basic Services Hours	32	396	748	100	488	444	640	896	16	64	104	186	1,628	64	5,806		
	Total Basic Services Fee	$7,008.00	$59,400.00	$109,208.00	$18,200.00	$68,320.00	$42,180.00	$70,400.00	$85,120.00	$1,760.00	$9,344.00	$9,464.00	$21,390.00	$136,752.00	$4,928.00		$206,320.00	$849,794.00

EXHIBIT "E"

ADDITIONAL COMPENSATION

ARTICLE 500: Additional Compensation

500.1 Reimbursable Expenses. Reimbursable Expenses are not allowed.

500.2 Upon written authorization by the City, the Consultant shall provide Additional Services which may include the following:

500.3 **Additional Design Services** – As required by the City, Consultant shall perform additional design services required for the Project.

Additional Meetings – As required by the City, Consultant shall attend, participate and support the City in additional project or public meetings.

Right-of-Way – As required by the City, Consultant shall prepare legal descriptions and exhibits in locations where additional right-of-way, easements or AEPs/TCEs are required for the Project; Consultant shall provide title reports.

Hydrogeologic Report – As required by the City, Consultant shall prepare a hydrogeologic report and provide groundwater sampling and monitoring wells.

Additional Roadway Design – As required by the City, Consultant shall provide design plans for Cultural Vista Parkway connector as depicted in the City's Master Plan of Streets and Highways.

Environmental Clearance/Permits - As required by the City, Consultant shall prepare a Section 106, 404 permit, NEPA environmental assessment, groundwater discharge permit, or other necessary required environmental permit applications.

Sewer Design – As required by the City, Consultant shall provide sewer line inspection, cctv, assessment report with recommendations, plan and profile design of new, reconstructed, or relocated sewer pipelines.

Utility Potholing – As required by the City, Consultant shall provide additional utility potholing, prepare pothole location map and obtain information for subsurface utilities.

Waterline Design – As required by the City, Consultant shall provide plan and profile design of new, reconstructed, or relocated water pipelines.

Utility Relocation- As requested by the City, Consultant shall provide utility relocation design and coordination with all utility companies. This task will include Subsurface Utility Engineering SUE.

Additional Survey – As requested by the City, Consultant shall provide additional field survey necessary for completion of other additional design services.

Landscaping and Irrigation – As requested by the City, Consultant shall provide additional design for landscaping and irrigation, including preliminary landscaping design, determination of landscaping features (may include Art, plantings and associated improvements, rock mulch, or other treatments as determined by the City) and incorporation of public involvement comments, if any.

Artistic Elements - As requested by the City, Consultant shall provide additional design for artistic signage or artistic elements, incorporation of public involvement comments, and other work necessary.

ADDITIONAL SERVICES FEE BREAKDOWN

END OF EXHIBIT "E"

EXHIBT E-1 – ADDITIONAL SERVICES FEE BREAKDOWN

TASK	DESCRIPTION	PRINCIPAL-IN-CHARGE	PROJECT MANAGER	UTILITIES SPECIALIST	SR. DRAINAGE ENGINEER	SR. TRAFFIC ENGINEER	ELECTRICAL DESIGNER	DRAINAGE ENGINEER	ROADWAY ENGINEER	ENVIRON. PLANNER	SR. STRUCTURAL ENGINEER	STRUCTURAL ENGINEER	CADD MANAGER	CADD TECHNICIAN	CLERICAL	Hours Subtotal	Direct Expenses	Lump Sum Task Amounts
		$219	$150	$146	$182	$140	$95	$110	$95	$110	$146	$91	$115	$84	$77			
500.1	ADDITIONAL SERVICES																	$300,206.00
500.3	Additional Design Services																	
	Additional Meetings																	
	Right-of-Way																	
	Hydrogeologic Report																	
	Additional Roadway Design																	
	Environmental Clearance/Permits																	
	Sewer Design																	
	Utility Potholing																	
	Waterline Design																	
	Utility Relocation																	
	Additional Survey																	
	Landscaping and Irrigation																	
	Artistic Elements																	
	Total Additional Services - Fee																	$300,206.00

EXHIBIT "F"

KEY PERSONNEL LIST

CITY PERSONNEL

Program Manager:	Jeremy Leavitt
Project Manager:	Gina Venglass

CONSULTANT'S PROJECT STAFF

The following personnel will be assigned by the Consultant to work on the Project.
Any changes require City approval.

Principal In Charge:	Roger Patton, P.E.
Project Manager:	Elizabeth Rutman, Ph.D., P.E.

CONSULTANT'S SUB-CONSULTANTS

The following subconsultants will be contracted with and utilized by the Consultant to work on the Project.
Any changes require City approval.

Aerial Mapping:	Tri-State Surveying, Ltd.
Survey:	Tri State Surveying, Ltd.
Geotechnical:	Ninyo & Moore Geotechnical and Environmental Services Consultants
Landscaping:	JW Zunino Landscape Architecture
Potholing:	TBE Group, Inc.
Environmental:	Ninyo & Moore Geotechnical and Environmental Services Consultants

END OF EXHIBIT "F"

Exhibit G
CERTIFICATE
DISCLOSURE OF OWNERSHIP/PRINCIPALS

1. Definitions

"City" means the City of Las Vegas

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

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

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

2. Policy

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

3. Instructions

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

4. Incorporation

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

Block 1 **Contracting Entity**

The Louis Berger Group, Inc.
Name
500 Amigo Court, Suite 100
Las Vegas, NV 89119
Address
702/736-6632
Telephone
22-1754524
EIN or DUNS

Block 2 **Description**

Subject Matter of Contract/Agreement

Las Vegas Boulevard Widening
I-515 to Owens

RFP #

Block 3 **Type of Business**

☐ Individual ☐ Partnership ☐ Limited Liability Company ☒ Corporation

[June 2000]

CERTIFICATE – DISCLOSURE OF OWNERSHIP/PRINCIPALS (CONTINUED)

Block 4 Disclosure of Ownership and Principals

In the space below the Contracting Entity must disclose all principals (including partners) of the Contracting Entity, as well as persons or entities holding more than one-percent (1%) ownership interest in the Contracting Entity

	FULL NAME/TITLE	BUSINESS ADDRESS	BUSINESS PHONE
1	Denish Wolff	412 Mount Kemble Avenue Morristown, NJ 07962	973/407-1000
2	Fredric Berger	2445 M Street NW Washington, DC 20037	202/331 7775
3	Francois Farhi	55 bis quai de Grenelle, 75015 Paris, France	(331) 45 78 39 39
4	Nicholas J. Masucci	412 Mount Kemble Avenue Morristown, NJ 07962	973/407-1000
5	D. James Stamatis	412 Mount Kemble Avenue Morristown, NJ 07962	973/407-1000
6	Fabrice Signol	55 bis quai de Grenelle, 75015 Paris, France	(331) 45 78 39 39
7	Ronald Frank Kuriger	412 Mount Kemble Avenue Morristown, NJ 07962	973/407-1000
8	Pat A. Quinn	412 Mount Kemble Avenue Morristown, NJ 07962	973/407-1000
9	Robert Nardi	412 Mount Kemble Avenue Morristown, NJ 07962	973/407-1000
10	Alexander Popoff	33301 Ninth Avenue South Federal Way, WA 98003	206/431-2300

The Contracting Entity shall continue the above list on a sheet of paper entitled "Disclosure of Principals – Continuation" until full and complete disclosure is made. If continuation sheets are attached, please indicate the **number of sheets** 1

Block 5 Disclosure of Ownership and Principals - Alternate

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

Name of Attached Document:
Date of Attached Document: _____ **Number of Pages:** _____

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

Roger J. Patton, P.E., Senior Vice President
Name

July 14, 2010
Date

Subscribed and sworn to before me this 14th day of July, 2010.

Notary Public

CAROL DAVID-FAJARDO
NOTARY PUBLIC
STATE OF NEVADA
APPT. No. 08-7393-1
MY APPT EXPIRES JUNE 30, 2012

[June 2000]

City of Las Vegas Agenda Item No.: **42.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:

Approval of award of Agreement No. 110039-DC, Construction Manager as Agent for Bonanza Trail Phase II located west of Rainbow Boulevard along Westcliff Drive to Lorenzi Street and east of Jones Boulevard and north of US 95 to Decatur Boulevard - Department of Public Works - Award recommended to: CH2M HILL, INC. ($600,000 - Parks and Leisure Activities Capital Projects Fund) - Wards 1 and 5 (Tarkanian and Barlow)

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☒ **Budget Funds Available**
Amount: $600,000
Funding Source: Parks and Leisure Activities CPF
Dept./Division: Public Works

PURPOSE/BACKGROUND:

This agreement provides for full service construction management, inspection, material testing and review of plans drawings and specifications on the Bonanza Trail Phase II project. This item is exempt from the competitive bidding process pursuant to NRS 332.115.1(b), Professional Services. Funding for this project is provided by the Southern Nevada Public Land Management Act (SNPLMA)

PCC: D. Collins
POC: Tony Colagiovanni, P.E. - (702) 369-6175

RECOMMENDATION:

That City Council approve award of Agreement No. 110039-DC, Construction Manager as Agent for Bonanza Trail Phase II to CH2M Hill, Inc. in the amount of $600,000. Authority to execute the Agreement is given to the Purchasing Manager per R-48-2006.

BACKUP DOCUMENTATION:

1. Agreement No. 110039-DC
2. Certificate - Disclosure of Ownership/Principals

CONSTRUCTION MANAGER AS AGENT AGREEMENT
FOR
BONANZA TRAIL PHASE II

THIS AGREEMENT is made and entered into this _____ day of _____, _____, by and between the **CITY OF LAS VEGAS**, a municipal corporation within the State of Nevada (herein the "City") whose address is **400 Stewart Avenue, Las Vegas, Nevada 89101**, and fax number is **(702) 382-3232**, and **CH2M HILL, INC.** (the "Consultant"), a **Corporation**, whose address is **2485 Village View Drive, Suite 350, Henderson, Nevada 89074**, and fax number is **(702) 369-1107**.

WITNESSETH:

WHEREAS, the City intends to construct the **Bonanza Trail** Phase II (herein the "Project"); and

WHEREAS, the Consultant is properly licensed pursuant to NRS Chapter 338, 623, 623A, 624, or 625, whichever is legally required for the services to be provided within the State of Nevada, and if applicable to the Consultant's business organization, is in compliance with NRS 623.349 for architects, interior designers, and residential designers and NRS 623A.250 for landscape architects, which requires that control and no less than two-thirds ownership of the business organization or association be held by persons registered or licensed in the State of Nevada pursuant to NRS Chapters 623, 623A, or 625, and possesses the special knowledge, skills and expertise to perform the services hereinafter set forth within the time required under this Agreement;

WHEREAS, with respect to the Project, the City intends to retain a qualified and licensed contractor (herein the "Contractor") to construct the Project having been designed and engineered by professional architects and engineers;

WHEREAS, the Consultant has not and will not take part in the design or construction of the Project;

WHEREAS, the Consultant will not be assuming the Contractor's overall responsibility for ensuring the Project is completed in a satisfactory manner, or the Contractor's responsibility for the cost, quality or timely completion of the construction;

WHEREAS, the City desires to retain the services of a qualified consultant to assist the City in the management of the construction of the Project; and

NOW, THEREFORE, in consideration of the above premises, the parties hereto agree to the following terms, conditions and covenants set forth in Sections One through Ten hereof:

SECTION ONE
CONSULTANT RESPONSIBILITIES

1.01 ***Description of Consultant's Services.*** For the compensation set forth in Section Seven, the Consultant hereby agrees to perform the basic services set forth in the Scope of Services, **Exhibit "A"** attached hereto and incorporated herein as a part of this Agreement and, if so requested, the additional services set forth in the Additional Compensation, **Exhibit "E"** attached hereto and incorporated herein as a part of this Agreement and to provide the submittals described in the Required Submittals **Exhibit "B,"** attached hereto.

1.02 ***Performance Standards.*** In performing the services set forth in this Agreement, the Consultant shall follow the practices consistent with the generally accepted standards in the profession of the services being provided to the City pursuant to this Agreement.

1.03 ***Document Review.*** The Consultant shall be responsible for reviewing each document prepared by the Consultant and its subconsultants for the purpose of ensuring that such documents are technically sound, in conformance with applicable federal, state and local laws and other regulations, and do not violate or infringe upon any patent rights.

1.04 ***Waiver.*** The City's approval of any documents or services furnished by the Consultant shall not in any way relieve the Consultant of responsibility for the professional and technical accuracy of its documents or services. The City's review, approval, acceptance or payment for any of the Consultant's services shall not be construed to operate as a waiver of any rights enjoyed by the City under this Agreement or of any cause of action arising out of the performance of this Agreement. The Consultant shall remain liable for any damages to the City caused by the Consultant's negligent act or omission committed in the performance of this Agreement.

1.05 ***Designation of Consultant's Representative.*** The Consultant's representative is the individual identified in the Key Personnel List, **Exhibit "F"** attached hereto (the "Consultant Representative") to act in that capacity, who shall be responsible for the services required under

this Agreement. The services specified by this Agreement shall be performed by the personnel identified in the Key Personnel List provided that such associates and employees perform under the personal supervision of the Consultant Representative.

If any person or subconsultant who is expected to provide any of the services required under this Agreement is objectionable to the City for any reason, the Consultant shall, without additional compensation, replace such person or subconsultant with someone acceptable to the City.

If the Consultant's personnel are unable to complete their responsibilities for any reason under this Agreement, or the Consultant desires for any reason to substitute personnel assigned to the Project, the Consultant agrees to obtain the approval of the City for the substitution. The City shall not unreasonably deny approval unless the City adjudges the substitution not be in the interest of the City or the Project.

If the Consultant fails to make an acceptable replacement within thirty (30) days, the City may terminate this Agreement for default as provided in Section 10.03 of this Agreement.

1.06 ***Correspondence Review.*** The Consultant shall furnish the City Representative copies of each correspondence, if any, sent to any contractor involved with the Project, and to any regulatory agencies, for approval and review prior to mailing such correspondence.

1.07 ***Cooperation with the City.*** The Consultant agrees that its officers, associates, employees and subconsultants will cooperate with the City in providing the services under this Agreement and will be, with advance notice, available for consultation with the City at such reasonable times as to not conflict with the City's other responsibilities.

SECTION TWO
CITY RESPONSIBILITIES

2.01 ***City Representative.*** The Director of Public Works or his authorized representative identified in the Key Personnel List is hereby designated as the City's representative (the "City Representative") with respect to this Agreement. The City Representative shall have complete authority to transmit instructions, receive information, interpret and define the City's policies and decisions with respect to the services of the Consultant. The City Representative is not authorized to change or waive any of the provisions set forth in Sections 1.01 through 10.24 of this Agreement.

2.02 ***Review of Consultant's Services and Documents.*** The services to be performed by the Consultant shall be subject to periodic review by the City Representative. To prevent an unreasonable delay in the Project, the City Representative will endeavor to examine and comment in writing on the documents furnished by the Consultant including, without limitation, test results, evaluations, and reports within twenty-one (21) days of receipt of such documents, unless the Contract provides for a different review time with respect to the document.

2.03 ***Access to Records.*** The City shall, without charge, furnish a copy to, or make available for examination or use by, the Consultant, as it may request, any documents and data which the City has available including, without limitation, reports, maps, plans, specifications, surveys, records, ordinances, codes, regulations, and other documents related to the services required under this Agreement. The City shall assist the Consultant in obtaining data and documents from public agencies and from private citizens and business firms whenever the City determines that such material is necessary for the completion of the services required by this Agreement.

2.04 ***Cooperation with Consultant.*** The City agrees that its officers and employees will cooperate with the Consultant in the performance of this Agreement and will be, with advance notice, available for consultation with the Consultant at such reasonable times as to not conflict with the Consultant's other responsibilities. The City shall provide access to the Consultant on to the Project site as may be required to perform the services under this Agreement.

SECTION THREE
CHANGES TO CONSULTANT'S SERVICES

3.01 ***Requested Changes.*** The City may at any time, by written order, make a change in the services to be performed by the Consultant under this Agreement.

3.02 ***Adjustment of Compensation.*** If the change requested by the City causes an increase or decrease in the cost or time required to perform any of the services required under this Agreement, an equitable adjustment shall be made in the compensation to be paid to the Consultant under Section Seven, or in the performance schedule under Section Eight, or both, and this Agreement shall be modified in writing accordingly. Each claim for adjustment under this Section must be asserted in writing within thirty (30) days from the date of receipt by the Consultant of written notification of the change, unless the City grants in writing an extension. Provided proper notice has been given to the City as required herein, the claim for an adjustment shall be handled pursuant to the provisions of 10.20B and 10.20C of this Agreement. The failure to provide notification of the claim within the time required herein shall constitute a waiver of the right to seek any equitable or legal adjustment in compensation with respect to that change.

SECTION FOUR
ADDITIONAL SERVICES OF CONSULTANT

4.01 ***Additional Services.*** The Consultant shall provide the additional services described in the Additional Compensation if, and only if, so requested in writing by the City. Payment for the additional services will be made to the Consultant in accordance with Section Seven of this Agreement.

4.02 ***Attendance at Meetings or Public Hearings.*** The Consultant shall notify the City in advance of any additional costs which may be incurred prior to attending any meetings or public hearings as may be necessary in connection with the services performed by the Consultant under this Agreement.

SECTION FIVE
SUBCONSULTANT AGREEMENT

5.01 ***Subconsultant Provisions.*** If, with the approval of the City as required pursuant to Section 10.07, the Consultant enters into an agreement with a subconsultant for the performance of any of its obligations under this Agreement, the Consultant agrees to include in each subconsultant agreement a provision that:

(i) the Consultant agrees to pay the subconsultant when paid by the City for that portion of the services provided to the City and that no liability arises on the part of the Consultant for payment of the subconsultant services until payment has been made by the City. If the City has paid the Consultant for the subconsultant services, the subconsultant's only recourse is against the Consultant and not against the City, either through the institution of legal or equitable action or the attachment of any lien,

(ii) the subconsultant shall have no more rights against the City than that of the Consultant,

(iii) the subconsultant agrees to be bound by the terms, conditions and obligation of this Agreement unless the City has approved any deviation, change or modification in writing, and

(iv) unless otherwise approved in writing by the City Representative, the subconsultant shall obtain and maintain professional liability insurance (Errors and Omissions coverage) in connection with the subconsultant services in an amount equal to that required of the Consultant in this Agreement.

SECTION SIX
TERM OF AGREEMENT

6.01 ***Term.*** This Agreement shall commence on the day it is approved by the City (which date shall be inserted in the introductory paragraph of this Agreement) and shall remain in force and effect until the Project is completed unless terminated earlier pursuant to Section 10.02 or 10.03 of this Agreement. Such termination shall not release either party from any of its continuing obligations under this Agreement.

6.02 ***Disputes.*** This Section shall not be construed to preclude the filing of any dispute arising out of the performance of this Agreement or in connection with the subject matter hereof, nor shall this Section be construed to change the date or the time on which a cause of action arising out of the performance of this Agreement or in connection with the subject matter hereof, would otherwise accrue under the statutes of limitation or doctrines of law.

SECTION SEVEN
COMPENSATION AND TERMS OF PAYMENT

7.01 ***Compensation: Basic Services.*** For the services to be performed by the Consultant under this Agreement and set forth in the Scope of Services, the City agrees to pay the Consultant the fee in the amount identified in the Fee Breakdown, **Exhibit "D"** attached hereto, pursuant to invoices submitted in accordance with Section 7.04 of this Agreement.

7.02 ***Compensation: Additional Services.*** For any services not set forth in the Scope of Services, the City shall pay to the Consultant either a lump sum fee, or an hourly fee based on the hourly labor rate schedule set forth in the Additional Compensation, whichever is agreed to by the parties, provided prior written approval for such services is given by the City Representative.

7.03 ***Compensation: Reimbursable Expenses.*** The Consultant agrees that all of its direct and indirect expenses are included in the fee for Basic Services and the agreed upon compensation for any Additional Services, except as may be specifically allowed for reimbursable expenses as part of the Additional Compensation.

7.04 ***Payment Invoicing.*** The Consultant may submit an invoice for payment for the services provided by the Consultant based on the manner or method of payment set forth in the Fee Breakdown. The City Representative will notify the Consultant of any problems regarding the invoice within fourteen (14) days from receipt thereof. If no response is received from the City Representative within the aforementioned period of time, the Consultant may expect payment within a period of (60) days from the date of receipt by the City. If payment has not been received within the sixty (60) days, the Consultant agrees to contact the City Representative to resolve the problem causing the delay. If resolution of the delay is not satisfactory to the Consultant, the Consultant may submit a claim pursuant to Section 10.20A of this Agreement.

7.05 ***Right to Off-Set.*** The City Representative may subtract or offset from any unpaid invoice from the Consultant any claims which the City may have for failure of the Consultant to comply with the terms, conditions or covenants of this Agreement, or any damages, costs and expenses caused by, resulting from, or arising out of the negligent act or omission of the Consultant in the performance of the services under this Agreement including, without limitation, any error or deficiency in the report or other documents prepared by the Consultant. The City Representative shall provide a written statement to the Consultant of the off-set which has been subtracted from any payment to the Consultant along with appropriate documentation and receipts, if any, and a description of the failure, error or deficiency attributed to the Consultant. If the Consultant disputes the right or amount of the off-set made by the City, the Consultant may file a claim pursuant to Section 10.20 of this Agreement.

7.06 ***Final Payment.*** Upon completion of the services required under this Agreement, and acceptance thereof by the City (which acceptance will not be unreasonably withheld), the Consultant will, within sixty (60) days of the City's acceptance, be paid the balance of any money due for such services.

SECTION EIGHT
PERFORMANCE SCHEDULE

8.01 ***Performance Schedule.*** The Consultant shall perform and complete the services required under this Agreement according to the schedule (the "Performance Schedule") set forth in the Schedule of Performance, **Exhibit "C"** attached hereto. If the performance of services is delayed or submittals are not delivered in the time period as outlined in the Performance Schedule, the Consultant shall notify the City Representative in writing of the reasons for the delay and include a plan which brings the Consultant's performance into compliance with the Performance Schedule.

SECTION NINE
AUDIT: ACCESS TO RECORDS

9.01 ***Records.*** The City shall have the right to audit the Consultant's books, records and other documents directly pertinent to the performance of this Agreement. The Consultant agrees to maintain books, records and other documents directly pertinent to performance of this Agreement in accordance with generally accepted accounting principles and practices. The Consultant shall also maintain the financial information and data used to prepare or support the invoices submitted to the City. Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards, procedures and guidelines of the City, or its designated representative. The City, or its duly authorized representatives, shall have access to such books, records, and documents for the purpose of inspection, audit and copying. The Consultant will provide proper facilities for such access and inspection.

9.02 ***Disclosure.*** The Consultant shall be afforded the opportunity for an audit entrance and exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report, and that the final audit report will include the written comments, if any, of the Consultant.

9.03 ***Period of Maintenance.*** The books, records and other documents under Sections 9.01 and 9.02 of this Agreement shall be maintained for three (3) years after the date of the final payment for the services under this Agreement. In addition, those records and other documents which relate to any arbitration, litigation or the settlement of any claim arising out of this Agreement, or to which an audit exception has been taken, shall be maintained and made available until three (3) years after the date that the arbitration, litigation or exception has been resolved.

9.04 ***Subcontract Provisions.*** The Consultant agrees to include Sections 9.01 through 9.03 of this Agreement in all its subcontracts directly related to performance of services specified in this Agreement which are in excess of $10,000.

SECTION TEN
MISCELLANEOUS PROVISIONS

10.01 ***Suspension.*** The City may suspend, without cause, the performance by the Consultant under this Agreement for such period of time as the City, in its sole discretion, may prescribe by providing written notice to the Consultant. The suspension shall be effective as of the date

set forth in the written notice. With such suspension, the City agrees to pay to the Consultant the amount of compensation earned as of the effective date of suspension less all previous payments. The Consultant shall not provide any further services under this Agreement after the effective date of suspension until otherwise notified in writing by the City. In no event shall the City be liable to the Consultant for services in excess of the percentage completed at the time of suspension.

If, after notice to resume performance has been given by the City, the suspension was for a period in excess of ninety (90) days, which has resulted in an increase in the performance of the Agreement to the Consultant and:

(i) the Consultant was not a contributing cause for the suspension,

(ii) the Consultant has not received an equitable adjustment under another provision of this Agreement, and

(iii) the Consultant could not mitigate the increase in the performance cost,

then the Consultant's fee shall be reviewed by the City and, if justified, equitably adjusted to provide for any additional expenses resulting from the suspension.

10.02. ***Termination for Convenience.*** The City reserves the right to terminate this Agreement without cause or default on the part of the Consultant with ten (10) days' prior written notification to the Consultant served pursuant to Section 10.18 of this Agreement. In the event of termination, without cause or default, the City agrees to pay to the Consultant the reasonable value for the services performed as of the date that notification of termination is received by the Consultant. In no event shall the City be liable to the Consultant for services in excess of the percentage completed at the time of termination.

10.03 ***Termination for Cause or Other Resolution.***

A. ***Default.*** The occurrence of any of the following events shall constitute a default by the Consultant hereunder (herein "Event of Default"). If, during the term of this Agreement, the Consultant:

(i) defaults in the due observance and performance of any term, condition or covenant contained in this Agreement,

(ii) (a) voluntarily terminates operations or consent to the appointment of a receiver, trustee or liquidator of the Consultant for all or a substantial portion of its assets, (b) is adjudicated bankrupt or insolvent or files a voluntary petition in bankruptcy, or admits in writing to the inability to pay its debts as they become due, (c) make a general assignment for the benefit of creditors, (d) file a petition or answer seeking reorganization or an arrangement with creditors or take advantage of any insolvency law, or (e) if action shall be taken by the Consultant for the purpose of effecting any of the foregoing,

(iii) allows any warrant, execution or other writ to be issued or levied upon any property or assets of the Consultant which continues unvacated and in effect for a period of thirty (30) days, or

(iv) fails, in the judgment of the City, to provide the services hereunder properly and with proper dispatch in accordance with the time schedule set forth in this Agreement,

and the default continues five (5) days after written notice is given to the Consultant pursuant to Section 10.18.

B. ***City's Rights.*** Upon the occurrence of an Event of Default, and without prejudice to any other right or remedy it may have at law or equity, the City may:

(i) terminate this Agreement, suspend payment of all pending invoices otherwise due to the Consultant hereunder, and finish this Agreement by such means as deemed appropriate by the City, reserving the right to deduct from any balance due Consultant the cost of completing this Agreement. In the event the cost of finishing the Consultant's performance of this Agreement exceeds the balance due the Consultant, the excess shall be paid by the Consultant to the City within five (5) days of invoicing by the City,

(ii) terminate this Agreement, and the obligations imposed hereunder, including the obligation of any further payment for the services of the Consultant except for the reasonable value for the services performed to the date of termination, or

(iii) continue with performance by the Consultant and serve within a reasonable time after completion of the Agreement a request to arbitrate the Event of Default as a claim or dispute pursuant to the arbitration procedure set forth in Section 10.20.

In the event that the City elects to implement (i) above, the costs and expenses of completing this Agreement shall be computed and audited by the City's designated representative. The audit shall be conducted in accordance with generally accepted accounting principles and the cost thereof shall be paid by the Consultant.

10.04 ***Ownership of Documents.***

A. ***Architectural Works.*** To the extent that the Consultant's services involves the design of an architectural work as defined herein, the Consultant shall retain all common law and statutory rights of ownership, including copyrights, to the drawings and specifications prepared by the Consultant for this Project. The Consultant is deemed to be the author of the drawings and specifications as instruments of service to the City. Notwithstanding the foregoing, the Consultant hereby grants to the City the right to use (including the right of reproduction and use in the creation of new documents) the drawings and specifications for the purpose of completing the Project or for any subsequent maintenance, repair, renovation, remodeling or addition thereto. The rights granted herein to the City shall extend and include any new Consultant which the City may retain for the aforementioned purposes. The Consultant hereby releases the City, and any new Consultant retained by the City for the aforementioned purposes, from any and all claims in connection with the use or reproduction of the drawings and specifications. The Consultant agrees to execute such documents reasonably deemed necessary by the City to implement the rights granted to the City pursuant to this subsection.

B. ***Other Works.*** To the extent that the Consultant's services does not involve the design of an architectural work, the City shall have all common law and statutory rights of ownership, including copyrights, to the plans, drawings, specifications and other documents (including, without limitation, design concepts and sketches, test results, evaluations, reports and studies, excepting any proprietary forms, templates, and checklists specifically listed for City ownership exclusion elsewhere in this Agreement) (collectively herein the "Documents") prepared or assembled by the Consultant, or any of its subconsultants, for this Project. The Consultant hereby releases the City, and any new Consultant retained by the City from any and all claims in connection with the use or reproduction of the Documents. The Consultant agrees to execute such documents reasonably deemed necessary by the City to implement the rights granted to the City pursuant to this subsection. The Consultant shall be entitled to retain a reproducible copy of the documents furnished to the City.

C. ***Definition of Architectural Work.*** For purposes of this Agreement, "architectural work" shall have the same definition as set forth in Architectural Works Copyright Protection Act of 1990, P. L. 101-650, Title VII, Section 70 et. seq.

D. ***Delivery of Documents.*** In the event of the completion, suspension or termination of this Agreement, the City shall have the right to require delivery of any and all of the plans, drawings, specifications, and all other documents (including, without limitation, design concepts and sketches, test results, evaluations, reports and studies), including the magnetic or electronic media of the aforementioned documents, not in the possession of the City.

E. ***Confidentiality.*** The plans, drawings, specifications and other documents (including, without limitation, design concepts and sketches, test results, evaluations, reports and studies) (including the magnetic or electronic media of the aforementioned documents) which are prepared or assembled by the Consultant, or its subconsultants, under this Agreement shall not be made available to any individual or organization without the prior written consent of the City. Except for marketing pamphlets and submittals to clients, the Consultant shall not publish, submit for publication, or publicly display the Project without the written consent of the City. The obligations of confidentiality shall survive the termination of this Agreement.

F. ***Contractual Rights.*** Notwithstanding the provisions of 10.04 A above, the City is hereby licensed to use all design concepts developed by the Consultant and subconsultants under this Agreement, including the right to construct derivative works of the Project, and to use the design concepts for other projects of the City. The design concepts include, but are not limited to, the form, aesthetic appeal, site layout, the arrangement and composition of spaces and elements, the use of colors and materials, system designs, construction methods and interior design.

10.05 ***Insurance.*** The Consultant shall procure and maintain, at its own expense, during the entire term of the Agreement, the following insurances:

A. ***Worker's Compensation Insurance.*** This insurance shall protect the Consultant and the City from employee claims based on job-related sickness, disease, or accident.

B. ***Commercial General Liability Insurance.*** This insurance shall protect the Consultant, its agents and vehicles used to provide the services required under this Agreement from claims of personal injury (including death) and property damage. Such coverage shall be in a minimum amount of $1,000,000 combined single limit for the period of time covered by this Agreement. The Consultant's general liability insurance policies shall be endorsed to include the City as an additional insured.

C. ***Commercial Automobile Liability Insurance.*** This insurance shall protect the Consultant from claims 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. The Consultant's automobile liability insurance policies shall be endorsed to include the City as an additional insured.

D. ***Professional Liability Insurance (Errors and Omissions Coverage).*** This insurance shall protect the Consultant from claims arising out of performance of professional services caused by a negligent act, error, or omission for which the insured is legally liable. Such coverage shall be in a minimum amount of $1,000,000 for the period of time covered by this Agreement.

E. ***Cancellation or Modification of Coverage.*** The Consultant's Commercial General Liability and Professional Liability Insurance Policies shall automatically include or be endorsed to cover the Consultant's contractual liability to the City under this Agreement, and with respect to its Commercial General Liability Policy, to waive subrogation against the City, its officers, agents, servants and employees. The policies shall provide that the City will be given thirty (30) days' notice in writing of any cancellation of, or material change in, the policies.

F. ***Certificates and Endorsements.*** 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. All deductibles and self-insured retentions shall be fully disclosed in the Certificate of Insurance. No deductible or self-insured retention may exceed $25,000 without the written approval of the City. The Consultant shall deliver to the City's authorized designated representative named in **Exhibit "B"** (Required Submittals) certificates indicating that such insurance is in effect before any services are provided under this Agreement and renewal certificates not less than 30 days prior to the expiration date of any policy.

G. ***Period of Coverage.*** If the insurance coverage is underwritten on a "claims made" basis, the retroactive date shall be prior to or coincident with the date of this Agreement and the Certificate of Insurance shall state that coverage is "claims made" and the retroactive date. Upon availability, the Consultant shall maintain coverage for the duration of this Agreement and for two years following completion of this Agreement.

10.06 ***Indemnity.*** Notwithstanding any of the insurance requirements set forth in Section 10.05, and not in lieu thereof, the Consultant shall defend, indemnify and hold the City, its Mayor, Councilmen, officers, employees and agents (herein the "Indemnities"), harmless from any and all claims (including, without limitation, patent infringement and copyrights claims), damages, losses, expenses, suits, actions, decrees, judgments, arbitration awards or any other form of liability (including, without limitation, reasonable attorney fees and court costs) (collectively herein the "Claims") to the extent that such Claims are caused by the negligence, errors, omissions, recklessness or intentional misconduct of the Consultant, its employees, subcontractors, agents or anyone employed the Consultant's subcontractors or agents, in the performance of this Agreement.

As part of its obligation hereunder, the Consultant shall, at is own expense, defend the Indemnitees against the Claims brought against them, or any of them, which is caused by the negligence, errors, omissions, recklessness or intentional misconduct of the Consultant, its employees, subcontractors or agents, for and against which the Consultant is obligated to indemnify the Indemnitees pursuant to this Section, unless the Indemnitees, or any of them elect to conduct their own defense which, in such case, shall not relieve the Consultant of its obligation of indemnification set forth herein. If the Consultant or the Consultant's insurer fails to defend the Indemnities as required herein, the Indemnitees shall have the right, but not the obligation, to defend the same and, if the Consultant is adjudicated by the trier of fact to be liable, the Consultant agrees to pay the direct and incidental costs of such defense (including attorney fees and court costs) which is proportionate to the liability of the Consultant.

As used in this Section 10.06, "agents" means those persons who are directly involved in and acting on behalf of the City or the Consultant, as applicable, in furtherance of the contract or the public work to which the contract pertains.

10.07 ***Assignment.*** The City and the Consultant each bind itself and its partners, successors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement, except the Consultant shall not assign, sublet or transfer any obligation or benefit under this Agreement without the written consent of the City. Nothing contained herein shall be construed as creating any personal liability on the part of any officer or agent of the City.

10.08 ***Waiver.*** No consent or waiver, express or implied, by either party to this Agreement, or of any breach or default by the other in the performance of any obligations hereunder, shall be deemed or construed to be a consent or waiver of any other breach or default by such party hereunder. Failure on the part of any party hereto to complain of any act, or failure to act of the other party, or to declare that other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder. Inspection, payment, or tentative approval or acceptance by the City or the failure of the City to perform any inspection hereunder, shall not constitute a final acceptance of the work or any part thereof and shall not release the Consultant of any of its obligations hereunder.

10.09 ***Consultant Warranties.*** The Consultant hereby represents and warrants that:

(i) it is financially solvent, able to pay its debts as they mature, and is possessed of sufficient working capital to complete this Agreement; that it is experienced, competent, qualified and able to furnish the plant, tools, materials, supplies, equipment and labor which is used to perform the services contemplated by this Agreement, and that it is authorized to do business in the City of Las Vegas and the State of Nevada,

(ii) it holds a license, permit or other special license to perform the services included in this Agreement, as required by law, or employs or works under the general supervision of the holder of such license, permit or special license,

(iii) its computer hardware, software, and firmware will continue functioning without interruption, and will continue to accurately process date, time, and data necessary to the performance of this Agreement, and

(iv) it has, pursuant to the requirements of Resolution 79-99 adopted by the City Council on August 4, 1999, (effective October 1, 1999), as amended by resolution 105-99 (adopted by the City Council on November 17, 1999), disclosed on the form attached hereto as **Exhibit "G"** (Disclosure of Ownership/Principals) all of the principals, including partners, of the Consultant, as well as all persons and entities holding more than a one percent (1%) interest in the Consultant or any principals of the Consultant. If the Consultant, or its principals or partners, are required to provide disclosure under federal law (such as Securities and Exchange Commission or the Employee Retirement Income Act) and current copies of such federal disclosures are attached to **Exhibit "G,"** the requirements of this Section shall be deemed satisfied. During the term of this Agreement, the Consultant shall notify the City in writing of any material change in the above disclosure on **Exhibit "G"** within fifteen (15) days of such change.

10.10 ***Consultant's Employees.*** The Consultant shall be responsible for maintaining satisfactory standards of competency, conduct and integrity, of personnel assigned to the Project, and shall be responsible for taking such disciplinary action with respect to such personnel as may be necessary. In the event the Consultant fails to remove any employee from the work of this Agreement whom the City deems incompetent, careless or insubordinate, or whose continued employment on the work is deemed by the City to be contrary to the public interest, the City reserves the right to require such removal as a condition for the continuation of this Agreement.

10.11 ***Independent Contractor.*** It is hereby expressly agreed and understood that in the performance of the services required herein, the Consultant and any other person employed by him hereunder shall be deemed to be an independent contractor and not an agent or employee of the City.

10.12 ***Applicable Law.*** This Agreement shall be construed and interpreted in accordance with the laws of the State of Nevada.

10.13 ***Compliance with Laws.*** The Consultant shall in the performance of its obligations hereunder comply with all applicable laws, rules and regulations of all governmental authorities having jurisdiction over the performance of this Agreement including, without limitation, the Federal Occupational Health and Safety Act and all state and federal laws prohibiting and/or related to discrimination by reason of race, sex, age, religion or national origin.

10.14 ***Severability.*** In the event that any provisions of this Agreement shall be held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain valid and binding on the parties hereto.

10.15 ***Confidentiality.*** The Consultant shall treat the information relating to the Project, which has been produced by the Consultant or provided by the City, as confidential and proprietary information of the City and shall not permit its release to other parties or make any public announcement or publicity release without the City's written authorization. The Consultant shall also require each subconsultant to comply with this requirement. The submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication relieving the Consultant of its confidentiality obligation imposed herein.

10.16 ***Site Inspection.*** The Consultant represents that it has visited the location of the Project and has satisfied itself as to the general condition thereof and that the Consultant's compensation as provided for in the Agreement is just and reasonable compensation for performance hereunder including reasonably foreseen and foreseeable risks, hazards and difficulties in connection therewith based on such above-ground observations.

10.17 ***Modification.*** All modification or amendments to this Agreement are null and void unless reduced in writing and signed by the parties hereto.

10.18 ***Notice.*** Any written notice required to be given under Sections 1.01 through 10.24 of this Agreement shall be deemed to have been given when the written notice is (i) received by the party to whom it is directed by personal service (ii) telephonically faxed to the telephone number set forth in the introductory paragraph to this Agreement, provided confirmation of the transmission is received by the sender, or (iii) deposited with the United States Postal Service, postage prepaid, addressed to the City Representative or the Consultant Representative, whomever is the proper recipient, and mailed to the address set forth in the introductory paragraph to this Agreement.

10.19 ***Prohibition Against Contingent Fees.*** The Consultant warrants that no person or entity has been employed or retained to solicit or secure this Agreement with the Agreement or understanding that a commission, percentage, brokerage or contingent fee would be paid to that person. For breach or violation of this provision, the City shall have the right to annul this Agreement without liability or, in its discretion, to

deduct from the compensation to be paid to the Consultant, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

10.20 ***Claim or Dispute Resolution.***

A. ***Notice of Claim or Dispute.*** For each claim or dispute which the Consultant has against or with the City (except for any claim for an equitable adjustment under Section 3.02 which is subject to the 30-day limitation set forth therein), notice thereof must be submitted in writing to the City Representative within a reasonable time after the claim or dispute arises, but no later than thirty (30) days after final payment is made to the Consultant. The purpose of written notification is to place the City on notice so that proper measures can be taken to properly defend against the claim or dispute, and the failure to give such notice shall preclude the Consultant from subsequently arbitrating that particular claim or dispute pursuant to Section 10.20C of this Agreement, and the Consultant shall have no further recourse against the City. Pending a final decision on the claim or dispute under Sections 10.20B or 10.20C, the Consultant shall proceed diligently with the performance of this Agreement.

B. ***Resolution by Management.*** The City Representative and the Consultant Representative shall meet within a reasonable time after receipt of the written notice received pursuant to Section 10.20A in an attempt to resolve the claim or dispute to the mutual satisfaction of the parties. If the matter is not disposed of by mutual agreement between the City Representative and the Consultant Representative, the claim or dispute shall be decided by the Director of Public Works, whose decision shall be reduced to writing and mailed or otherwise furnished to the Consultant. The decision of the Director of Public Works shall be final and conclusive unless, within thirty (30) days after the date on which the Consultant receives its copy of such decision, the Consultant mails or otherwise furnishes to the Director of Public Works a written request to arbitrate the claim or dispute, in which event the parties shall proceed with the arbitration pursuant to provisions of Section 10.20B. The failure to make such request shall preclude the Consultant from proceeding any further on the claim or dispute, and the Consultant shall have no further recourse against the City.

C. ***Resolution by Arbitration.*** Upon receipt of the request to arbitrate authorized pursuant Section 10.03B or Section 10.20B, the City and the Consultant shall come to an agreement as to the appointment of an arbitrator for purposes of hearing the appeal. If the parties cannot reach an agreement, then each party shall select an arbitrator for purposes of the appeal, and the two shall select a third arbitrator within 20 days of their appointment. If the selected arbitrators are unable to agree upon the third arbitrator, the third arbitrator shall be selected by the American Arbitration Association or the Nevada Arbitration Association, whichever is designated by the City. Each party shall be afforded an opportunity to be heard and to offer evidence in support of or against the appeal. The decision of the arbitrator, or arbitrators, as the case may be for the determination of the appeal, shall be final, conclusive and enforceable under the laws of the State of Nevada.

D. ***Right of Consolidation.*** Any arbitration arising out of or relating to this Agreement may include, by consolidation, joinder or in any other manner, any additional party or parties who are not a party to this Agreement if so requested by the City or the Consultant. Any consent to arbitration involving an additional party or parties shall not constitute consent to arbitrate any claim or dispute not described as a part of the original arbitration unless otherwise agreed to by the parties.

E. ***Right of Joinder.*** In the event the City is named as a party to any arbitration, or the City commences an arbitration against a party other than the Consultant, which arbitration is related to, or connected with, the construction of the Project or the performance of the Consultant's services hereunder (such as, without limitation, any arbitration between the City and the contractor awarded the contract to construct the Project), the Consultant agrees and irrevocably consents to be joined as a party in the arbitration proceeding and to be bound by any decision resulting therefrom. The decision of the arbitrator or arbitrators, as the case may be, in the arbitration to which the Consultant has been joined as a party, shall be binding and enforceable against the parties thereto under the laws of the State of Nevada.

If the Consultant is named as an additional party by the City, the Consultant shall not be entitled to any additional compensation from the City as a result of preparing for, and participating in, the arbitration.

F. ***Discovery.*** In the event of arbitration, the parties agree that all means of discovery including, but not limited to, depositions and interrogatories, will be afforded to the parties involved in the arbitration, and the appointed arbitrator shall have all authority to impose sanctions against either party for failing to comply with the rules of discovery provided under the Nevada Rules of Civil Procedure.

G. ***Award Final.*** The award rendered by the arbitrator shall be final, and judgment may be entered upon its accordance with applicable law in any court having jurisdiction thereof.

H. ***Mediation.*** Subsequent to the commencement of any arbitration pursuant to Section 10.20C, and prior to any decision arising therefrom, the parties may endeavor with written mutual consent to settle disputes by mediation in accordance with the mediation rules of the mediation service agreed by the parties. The cost of the mediation shall be shared equally by the parties.

10.21 ***Attorney Fees.*** The prevailing party in any litigation or arbitration brought to enforce the provisions of this Agreement shall be entitled to reasonable attorney fees and court costs.

10.22 ***Calendar Day.*** All references in this Agreement to days are to calendar days unless otherwise indicated.

1.1 ***Exhibits.*** All exhibits referenced in this Agreement are hereby incorporated by this reference as a part of this Agreement. Any conflict between the provisions of this Agreement and the Exhibits incorporated herein shall be governed by the provisions of this Agreement.

1.2 ***Counterparts; Electronic Delivery.*** This Agreement 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.

1.3 ***Agreement Version.*** This document incorporates the standard provisions for the City's Professional Services Agreement updated as of April 8, 2008.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

CITY OF LAS VEGAS

By _____
Kathleen C. Rainey, Manager, Purchasing & Contracts

ATTEST

_____
Beverly K. Bridges, MMC, City Clerk Date

APPROVED AS TO FORM

_____
Deputy City Attorney Date

CONSULTANT

By_____
Tony Colagiovanni, PE, CH2M Hill, Inc.

LIST OF EXHIBITS

EXHIBIT " A " SCOPE OF SERVICES

EXHIBIT " B " REQUIRED SUBMITTALS

EXHIBIT " C " PERFORMANCE SCHEDULE

EXHIBIT " D " FEE BREAKDOWN

EXHIBIT " E " ADDITIONAL COMPENSATION

EXHIBIT " F " KEY PERSONNEL LIST

EXHIBIT " G " DISCLOSURE OF OWNERSHIP/PRINCIPALS

EXHIBIT "A"

SCOPE OF SERVICES

ARTICLE 100: GENERAL

100.1 DESCRIPTION OF PROJECT

The Bonanza Trail Phase 2 project includes a shared use path that begins to the west of Rainbow Boulevard along Westcliff Drive and includes an under crossing beneath Rainbow Boulevard and ends at Lorenzi Street. The trail begins again to the east of Jones Boulevard, north of US 95 and continues to Decatur Boulevard, where it includes a trail bridge over Decatur Boulevard. In addition, the project includes signing and striping along Bonanza Trail Road and Valley View Boulevard and only signing along Upland Boulevard. The Bonanza Trail Phase 2 work includes the construction of a trail, lighting, striping, signing, one pedestrian bridge, one pedestrian under crossing and associated appurtances.

100.2 CONDITIONS

100.2.1 "Contract Documents" as used herein refers to the documents referenced in the construction contract that describes the Contractor's scope of work. This may include, but is not limited to, drawings, specifications, general conditions, special provisions, reference standards, geotechnical data, surveys, reports, addenda, and change orders.

100.2.2 Consultant Proposals. If any Consultant proposal or other documents prepared by anyone other than the City is attached to this Agreement or included by reference, the terms of this Agreement shall govern any conflicts between the documents and this Agreement, and any such attachments or references shall only be utilized to compliment this Agreement in describing the detail of the scope of work described in this Agreement, except that the scope shall not be less than the requirements in this Agreement, to avoid rep-typing standard schedules of hourly rates for personnel, rates for material tests and additional services, and similar standard rate schedules. All other terms, conditions, and uses of any such attachments or references are to be ignored in connection with this Agreement, even if such attachments or references are signed by the parties to this Agreement.

100.2.3 Regulatory Authorities. The Consultant does hereby acknowledge, understand and agree that the City Engineer Division, acting as the City's representative for purposes of the Project, does not have control, authority or influence over the decisions or requirements of other departments of the City acting in a regulatory capacity including, but not limited to, the Building Department, Fire Department, and Planning Departments of the City of Las Vegas, plus Clark County and other agencies. The City' representative acts in a capacity similar to that of a representative working for a private property owner, which is to ensure that the City receives a quality product, delivered on schedule, for a fair price. Furthermore, the City Engineer Division does not speak or act for any regulatory authority, nor does any regulatory authority speak or act for the City Engineer Division. The Consultant agrees that its relationship with the regulatory authorities having jurisdiction over the Project is separate from its relationship with the City, and that the Consultant's interaction with each regulatory authority is to be conducted without assistance from the City.

100.2.4 Certifications. To the extent certifications and special qualifications are required by regulatory authorities, laws, regulations, or this Agreement, the Consultant shall provide personnel with the proper credentials during the term of this Agreement. Should the Consultant or the Consultant's personnel be removed from qualification, certification, or otherwise be limited in their ability to perform their duties and responsibilities under this Agreement, the Consultant agrees to subcontract their responsibilities to a properly qualified and certified subconsultant at no additional cost to the City, who shall have the right to approve any such subconsultant prior to use.

100.3 REFERENCE STANDARDS

100.3.1 All Project work and services performed by the Consultant, Contractor, and others shall be in full compliance with applicable codes, ordinances, standards, and regulatory requirements.

100.3.2 The latest edition of the following reference materials, as applicable, shall be used as standards for inspection, coordination, project control, and other work performed under this Agreement:

100.3.2.1 Design and Construction Standards for Wastewater Collection Systems from Clark County Water Reclamation District (formally Clark County Sanitation District)

100.3.2.2 Nevada Department of Transportation (NDOT) references (most current editions):

- **100.3.2.2.1** Road Design Division Manual, Parts 1 & 2.
- **100.3.2.2.2** Standard Specifications for Road and Bridget Construction (NDOT Silver book).
- **100.3.2.2.3** Standard Plans for Road and Bridge Construction.
- **100.3.2.2.4** Standard Construction Plan Symbols and Design Layout and Drafting Methods

100.3.2.2.5 Bridge Design and Procedures Manual
100.3.2.2.6 Nevada Work Zone Traffic Control Handbook
100.3.2.2.7 Design and Construction Standards for Wastewater Collection
100.3.2.3 Manual on Uniform Traffic control Devices for Streets and Highways (MUTCD)
100.3.2.4 Traffic Control Devices Handbook
100.3.2.5 Roadside Design Guide
100.3.2.6 American Society for Testing and Materials (ASTM)
100.3.2.7 A Policy on Geometric Design and Highway and Streets (AASHTO)
100.3.2.8 Clark County Regional Flood Control District's Policies and Procedures.
100.3.2.9 Clark County Regional Flood Control District's Hydrologic Criteria and Drainage Design Manual
100.3.2.10 Uniform Standards Plans and Specifications for Public Work's Construction Off-Site Improvements, Clark County Area (Standard Specifications)
100.3.2.11 American Concrete Institute (ACI)
100.3.2.12 The Asphalt Institute
100.3.2.13 Portland Cement Association (PCA)
100.3.2.14 City of Las Vegas Building Codes
100.3.2.15 International Building Code (IBC)
100.3.2.16 International Energy Conservation Code (IECC)
100.3.2.17 National Electric Code (NEC)
100.3.2.18 Southern Nevada Pool Code
100.3.2.19 Uniform Administrative Code
100.3.2.20 Uniform Mechanical Code (UMC)
100.3.2.21 Uniform Plumbing Code (UPC)
100.3.2.22 Uniform Fire Code, NFPA 1
100.3.2.23 City amendments to the above codes
100.3.2.24 City of Las Vegas Municipal Code Title 18 Subdivision Ordinances
100.3.2.25 City of Las Vegas Municipal Code Title 19 Zoning Code
100.3.2.26 Accessibility Laws, Codes, Standards, and Guidelines
100.3.2.26.1 Architectural Barriers Act
100.3.2.26.2 Rehabilitation Act
100.3.2.26.3 Americans with Disabilities Act (ADA)
100.3.2.26.4 Telecommunications Act (Section 255)
100.3.2.26.5 Rehabilitation Act Amendments
100.3.2.26.6 Access Board Guidelines
100.3.2.26.6.1 ADDAG (2004 or later) ADA-ABA Accessibility Guidelines
100.3.2.26.6.2 Recreation Facilities Guidelines
100.3.2.26.6.3 Outdoor Developed Area Guidelines
100.3.2.26.6.4 Play Area Guidelines
100.3.2.26.6.5 Building Elements Designed for Children's Use
100.3.2.26.6.6 State and Local Government Facilities
100.3.2.26.6.7 Public Right-of-Way Guidelines (Enforced by the USDOT Federal Highway Administration)
100.3.2.26.6.8 Electronic and Information Technology Accessibility Guidelines
100.3.2.26.7 ANSI 117.1
100.3.2.26.8 NRS 338.180.4 for building signage
100.3.2.26.9 NRS 484.408 and City Municipal Code for parking signage
100.3.2.27 Consumer Product Safety Commission Handbook for Public Playground Safety
100.3.2.28 Utility Company Design Standards
100.3.2.28.1 Las Vegas Valley Water District
100.3.2.28.2 NV Energy
100.3.2.28.3 CenturyLink
100.3.2.28.4 Cox Communications
100.3.2.28.5 Southwest Gas
100.3.2.28.6 Republic Service of Southern Nevada

100.3.2.29 Clark County Department of Air Quality and Environmental Management air quality regulations including Dust Control Permits and Supplemental Dust Control Permits, and Stationary Source Permits regulations for cooling towers, tanks, boilers including swimming pool heaters, gasoline pumps, and generators
100.3.2.30 Southern Nevada Health District design standards including food facilities, swimming pools, and underground tanks
100.3.2.31 Nevada Department of Environmental Protection regulations including General Discharge Permit for Oil/water Separators, National Pollutant Discharge Elimination Permit including construction dewatering, Construction Storm Water Permit, and Temporary Permit for Working in Waterways
100.3.2.32 Resources Conservation and Recovery Act (RCRA) regulations for hazardous waste disposal including mercury containing light bulbs, PCB ballasts, and lead paint
100.3.2.33 Toxic Substance Control Act (TSCA) regulations for asbestos containing materials

ARTICLE 101: THE CITY'S RESPONSIBILITIES

101.1 The City will be responsible for performing all work necessary to complete their obligation to the Consultant to allow the Consultant to complete their work.

101.2 The City shall provide the Consultant with:

101.2.1 Any other information required to complete the work, as available, which is not in the Consultant's Scope of Services.

101.2.2 Access arrangements for the Consultant to enter upon public and private property as required to perform their services.

101.2.3 A management team to review submittals, and to work with the Consultant to achieve an acceptable, cost effective Project.

ARTICLE 102: THE CONSULTANT'S RESPONSIBILITIES

102.1 SCOPE OF SERVICES. The Consultant shall provide the following scope of services, as more fully described below:

102.1.1 CONSTRUCTION MANAGEMENT AS AGENT SERVICES
102.1.1.1 Pre-Construction Procedures
102.1.1.2 Construction Procedures
102.1.1.3 Close-Out Procedures

102.1.2 MATERIAL TESTING SERVICES

102.1.3 This scope is to be considered preliminary and may be altered at the direction of the City Representative as the Project develops.

102.1.4 Consultant services, duties, and responsibilities stated in any part of this Exhibit "A" are applicable to all parts (pre-construction, construction, close-out).

102.2 STAFFING REQUIREMENTS

102.2.1 The Consultant shall provide the following minimum personnel for the services to be performed under this Agreement. Reference the entire Agreement for additional staffing requirements.

102.2.2 Construction Manager. The Consultant shall provide a qualified Construction Manager to be in responsible control of the Project. The Construction Manager shall possess an active contractors, civil engineer, or architect license in the State of Nevada pursuant to NRS 624, 625 and 623, respectively. The Construction Manager shall have a minimum of four years of post-licensure/registration progressively responsible experience in managing and administering large construction projects, preferably on public sector construction projects of similar size and scope to the Project, and a OSHA 30 hour Construction training course certificate from the U.S. Department of Labor.
102.2.2.1 Responsible control requires at least: a) weekly on-site field observations of the Project, b) supervision of staff's' work, and c) review of pertinent Project documents to ensure the success of the Project.

102.2.3 Construction Coordinator. The Consultant shall provide a qualified Construction Coordinator to oversee the daily construction administration, inspection and testing for the Project and to ensure timely submissions and processing of Project documents. The Construction

Coordinator shall possess, at a minimum, a OSHA 30 hour Construction training course certificate from the U.S. Department of Labor and one of the following:

102.2.3.1 A four year college degree in architecture, construction management or engineering discipline; or

102.2.3.2 Possess a CCMA, PMI, or any nationally recognized construction management program certification in lieu of a four year college degree; or

102.2.3.3 An equivalent combination of relevant education, training and construction experience totaling ten years or more in construction project management under the supervision of a licensed contractor, civil engineer, or architect.

102.2.4 Construction Inspector. The Consultant shall provide a qualified Construction Inspector to perform inspections as necessary to ensure the Contractor work is in compliance with the Contract Documents. The Construction Inspector shall possess certification(s) in one or more of the following: NICET, ICC, ICBO, IAS or ACI Field Inspector or any national recognized inspection program, preferably in a specialty related to the scope of work of the Project, and a OSHA 10 hour Construction training course certificate from the U.S. Department of Labor.

102.2.5 Document Administrator. The Consultant shall provide an experienced Document Administrator or Inspector to assist the Construction Coordinator in preparing and maintaining all correspondence and documents (i.e. submittals, daily reports, requests for information, change orders, etc.) required by this Agreement. Reference the computer software requirements of this Exhibit for the technical skill requirements of this position.

102.2.6 Qualifications. The Consultant shall furnish a resume for each staff person assigned to the Project, including proof of licensure, registration, and /or certifications. In addition to the resume, the City may require references, request an in-person interview, or other means to confirm qualifications and experience of proposed Project staff. The determination of the qualification of proposed Project staff shall be at the sole discretion of the City. Any proposed Project staff that do not meet the aforementioned qualifications and experience requirements shall be promptly replaced with staff acceptable to the City.

102.2.7 Subconsultants. Services may be performed by subconsultants of the Consultant if the subconsultant is listed in **Exhibit "F"** Key Personnel List or approved in writing by the City prior to the subconsultant providing services. Otherwise all services will be performed by employees of the Consultant, who are approved in advance by the City. The City reserves the right to require the Consultant to replace any employee or subconsultant at any time for any reason.

102.3 EQUIPMENT REQUIREMENTS

102.3.1 Equipment. The Consultant shall provide all equipment needed to provide the scope of services and to ensure compliance with the Contract Documents including, but not limited to:

102.3.1.1 Vehicles as needed to travel the Project site and provide services, which shall be conspicuously marked so as to identify personnel of the Consultant for the benefit of the public.

102.3.1.2 A cellular telephone for each Consultant staff member assigned to the Project to facilitate communication with the City and the public.

102.3.1.3 Computer and communications systems required to manage the Project.

102.3.1.4 Surveying and GPS equipment, devices to measure lighting levels, coating thickness, material thickness gages, horizontal and vertical dimensions, slopes, flashlights, calculators, a level/transit, and camera.

102.3.1.5 Personal safety equipment for each Consultant staff member while on site including hard hats, safety vests, ear and eye protection, and safety shoes.

102.3.1.6 A library of reference standards applicable to the Project, see list above.

102.3.2 Software

102.3.2.1 The Consultant's documentation shall, to the maximum extent possible, be prepared using Expedition software by Primavera. The Consultant shall furnish the City an access code to give the City direct access to the software via the internet.

102.3.2.2 Where Expedition documentation capabilities are limited, provide documents in the following software formats: AutoCAD 2007, Microsoft Office 2007 and Microsoft Project 2000, or more recent versions.

102.3.2.3 Verify that digital electronic entries and submittals are free of electronic "viruses", "worms", "Trojan horses", and other malicious code using commercially available software with current virus definitions.

ARTICLE 103: CONSTRUCTION MANAGEMENT AS AGENT SERVICES - PRE-CONSTRUCTION PROCEDURES

103.1 DOCUMENT CONTROL

103.1.1 Document Setup & Review. The Consultant shall:

103.1.1.1 Provide a copy of their policy and procedure manual for construction management to the City for review and approval to use on the Project.

103.1.1.2 Setup the Expedition software, files, and forms in compliance with the City filing standards, enter in Expedition all initial available information, and provide copies of the completed information to the City Representative, including contact information of all Project participants and all Project correspondence received and generated.

103.1.1.3 Conduct a thorough review of the Project to determine all permits that are required for the Project and verify the permits have been obtained.

103.1.1.4 Perform a review of the Project documents and forward any review comments to the City Representative.

103.1.1.4.1 Documents. Minimum documents to review include, as applicable to the Project:

103.1.1.4.1.1 Construction Contract, Plans, General Conditions, Specifications, Special Provisions, and Addenda.

103.1.1.4.1.2 Geotechnical report and site survey.

103.1.1.4.1.3 Utility construction drawings including NV Energy, Phone, Cox Cable, SW Gas, and others.

103.1.1.4.1.4 LEED points to achieve for new building construction.

103.1.1.4.1.5 Hazardous material surveys, environmental phase 1 and 2 reports, and historical, paleontological, cultural, biological, endangered species surveys, if conducted.

103.1.1.4.1.6 Contractor's Dust Permit and Dust Mitigation Plan; Supplemental Dust Control Permit for demolition, relocation, or remodeling.

103.1.1.4.1.7 Contractor's Storm Water Permit and Storm Water Pollution Prevention Plan.

103.1.1.4.1.8 Contractor's Traffic Control Plan.

103.1.1.4.1.9 Contractor's trench safety plans and competent person submittal for OSHA compliance.

103.1.1.4.1.10 National Pollutant Discharge Elimination System Permit for groundwater discharge including construction dewatering (NPDES).

103.1.1.4.1.11 General Discharge Permit for Oil/Water Separators and Best Management Plan.

103.1.1.4.1.12 Air Pollution New or Modified Stationary Source Permit for cooling towers, boilers including swimming pool heaters, generators, gasoline distribution, and storage tanks.

103.1.1.4.2 Review. Minimum review of documents shall include:

103.1.1.4.2.1 A review for clarity, completeness, economic feasibility, buildability, errors and inconsistencies, omissions and missing information, inadequate detailing, dimensional accuracy and consistency, cross-references between various drawings and between drawings and specifications, and a cross-check between various design discipline drawings for conflicts.

103.1.1.4.2.2 A review of the contractual terms to determine the requirements for contract administration and enforcement.

103.1.1.4.2.3 A review of Performance Specifications for completeness, gaps in the scope of work, and the required coordination between trades.

103.1.1.4.2.4 A thorough comparison of the documents to the visual pre-construction site conditions including a review of the adjacent site conditions beyond that included in the documents.

103.1.1.4.2.5 A review of the Project site activities including such items as the construction limits and fencing locations, deliveries, traffic control, laydown and storage areas, field office and parking areas, temporary utilities, neighboring land interface, children's movement to and from the schools in the area, site security, safety, noise impacts, physical limitations for construction equipment and building components, drainage plan, and construction phasing.

103.1.1.4.2.6 A review of city furnished items for interface with the Contractor's work and schedule delivery.

103.1.1.4.2.7 A review of multiple owner construction contracts, if any, for coordination and interface.

103.1.1.4.2.8 Identification of activities that will benefit from pre-construction conference meetings and checklists such as major concrete pours and building roofing installations. Compile and distribute the list of required pre-construction conference meetings, and prepare checklists and meeting agendas for use in the meetings. Submit the Consultant's list of recommended pre-construction conference meetings to the City for approval.

103.1.1.4.2.9 A review of the common code complaint areas such as ADA slopes and electrical gear clearances.

103.1.2 Substitutions. The Consultant shall:

103.1.2.1 Receive all requests for substitutions from the Contractor and review them for Contract Document compliance, log them into Expedition, reject or forward them to the City Representative and designer for review and approval.

103.1.2.2 In the event Substitution Requests are submitted after the allowable time period, and the Contractor has not provided evidence that the product is no longer available through no fault of the Contractor, the Consultant shall forward a written notice of rejection to the City Representative for review and approval.

103.1.3 Contractor Submittals. The Consultant shall:

103.1.3.1 Prepare a master list of all contractually required submittals in Expedition and distribute copies.

103.1.4 Receive all Submittals from the Contractor and review each for Contract Doument compliance. In the event the submittal is received in a manner contrary to the Contract Documents, the Consultant shall forward a notice of rejection to the Contractor, designer and the City Representative for review and record. No disclaimers are allowed on any document submittals.

103.1.4.1 Generate a submittal log in Expedition showing each submittal, the date received, date forwarded to the designer, number of days with the designer, date returned, designer's response, and the date returned to Contractor.

103.1.4.2 All submittals that are received in accordance with the Contract Documents shall be logged into Expedition and forwarded to the designer for review and approval or rejection.
103.1.4.3 Re-Submittals shall be handled in the same manner as the original submittal.
103.1.4.4 Prepare a list of deferred submittals provided for in the Contract Documents. Require a schedule for these submittals from the Contractor and track each deferred submittal to insure the Contractor submits and receives approval so as not to impact the Project schedule.

103.2 PROJECT CONTROL

103.2.1 Meetings. The Consultant shall participate in preconstruction meetings, job conferences, public information meetings, and other related preconstruction meetings. Generate and distribute minutes of all such meetings.
103.2.1.1 Participate in an initial and periodic "Partnering Meetings" with the City and the Contractor for discussion of shared goals, processes, and procedures during the construction process, which shall be attended by a Consultant team member who has high-level decision-making authority, and require the same in all subconsultant contracts. Meeting dates, times, and place will be determined by the City.

103.2.2 Material Deliveries. The Consultant shall ensure that material deliveries match the approved submittals, and that material handling and storage complies with manufacturer's recommendations, industry practices, and the Contract Documents.

103.3 TIME AND BUDGET

103.3.1.1 Preliminary Project Schedule. The Consultant shall: 1) review in detail and report to the City Representative on the compliance with the Contract Documents of the Contractor's preliminary progress schedule, baseline schedule, and schedule reports, 2) ensure that the Contractor's baseline schedule adequately depicts all of the significant work activities with reasonable timelines, and 3) provide a written analysis report of the Contractor's baseline schedule.

103.3.2 Contractor Payment Format. The Consultant shall review the Contractor's payment request format, quantities, schedules, and line items for compliance with City requirements and the Contract Documents.

103.3.3 Project Status Reports. The Consultant shall review with the City the required format and schedule of the periodic Project status updates to be provided by the Consultant over the course of the work.

ARTICLE 104: CONSTRUCTION MANAGEMENT AS AGENT - CONSTRUCTION PROCEDURES

104.1 DOCUMENT CONTROL

104.1.1 The Consultant shall create and maintain in Expedition the daily reports, submittals, requests for information, field directives, construction change directives, change orders, correspondence, and any other documents generated. Logs shall show the date each document was received, the content of the document, the date forwarded to whom, the date returned, the number of days with the reviewer, the response, and the date returned to the Contractor.
104.1.2 The Consultant shall maintain a list of names, addresses, and emergency telephone numbers of all contractors, subcontractors, agencies, and major suppliers of materials and equipment and provide an up-to-date list to the City Representative.
104.1.3 Prepare and maintain all documents required to meet regulations.
104.1.4 Use acid free paper for Project documents that will become the permanent record for the Project.

104.1.5 Daily Reports. The Consultant shall:
104.1.5.1 Be responsible for producing, in Expedition and separate from the Contractor's daily report requirement, a report for each day describing the events which took place, including any relevant conversations, construction conflicts and site meetings.
104.1.5.2 Ensure that the Consultant's daily reports include all of the items required in the Contract Documents, including:
- **104.1.5.2.1** Working and non-working hours on the Project site,
- **104.1.5.2.2** The weather conditions and possible weather related delays,
- **104.1.5.2.3** Name of contractors, suppliers and distributors on site and number of workers for each listed by skill level,
- **104.1.5.2.4** Deliveries made and the quantity of each delivery,
- **104.1.5.2.5** Equipment on site by model, and year if possible and whether it was active or idle,
- **104.1.5.2.6** Inspections and tests conducted and the amount of inspector time spent on site,
- **104.1.5.2.7** Construction activities conducted and work completed including daily quantities,
- **104.1.5.2.8** Traffic controls in place,

104.1.5.2.9 Description of any controversy and how or if the dispute was settled; any problems that may have delayed the progress and the reasons for the delay together with the amount of time, personnel and equipment that were idled due to the problem; dates relative to questions of extras or deletions,

104.1.5.2.10 Instructions given and received and how and to whom the instruction was transmitted (field directive, change order, etc.),

104.1.5.2.11 Any accidents on site and in the general vicinity; safety concerns and actions taken,

104.1.5.2.12 Full descriptions of any utility conflicts or hits encountered together with actions taken and resources idled.

104.1.6 As-Builts. The Consultant shall:

104.1.6.1 Maintain a complete set of as-built drawings and specifications for the Project, independent of the Contractor's as-builts.

104.1.6.2 Verify that the Contractor is maintaining as-built drawings and specifications in accordance with the Contract Documents.

104.1.7 Photographs. Provide daily photographic documentation of Project site, on CD ROM, prior to and during construction, and make special note of any pertinent situations.

104.1.8 Project Status Reporting. The Consultant shall:

104.1.9 Provide periodic project status updates in accordance with city management reporting frequencies and as instructed by the City Representative.

104.1.9.1 Prepare a monthly progress and summary report and submit it to the City with the Consultant's monthly invoice for services.

104.2 PROJECT CONTROL

104.2.1 The Consultant shall have a representative on-site at all times during construction activity to ensure that activities are performed in accordance with the Contract Documents.

104.2.2 Authority.

104.2.2.1 The Consultant has the authority to:

104.2.2.1.1 Issue Notices of Non-Compliance, after consultation with the City.

104.2.2.1.2 Reject delivered non-compliant materials.

104.2.2.1.3 Issue clarifications not resulting in cost, time or esthetic changes, after consultation with the City.

104.2.2.1.4 Issue Field Directives for emergencies and situations that require immediate response, after making every effort to immediately consult with the City about the directive.

104.2.2.2 The Consultant does not have the authority to:

104.2.2.2.1 Sign Construction Change Directives.

104.2.2.2.2 Sign Change Orders.

104.2.2.2.3 Sign the Certificate of Substantial Completion.

104.2.2.2.4 Revise the design or approve alternate materials.

104.2.2.2.5 Inspect any work other than that for which they are specifically certified.

104.2.2.2.6 Make public news releases or other information about the Project available to the public or news media.

104.2.2.2.7 Sign or initial any paperwork generated by the Contractor, including verifications of work completed or quantities removed or delivered. All such work verifications and other Contractor paperwork issues shall be noted in the Consultant's Daily Reports. The exception to this policy is the receipt of documents, samples, drawings, and similar items received from the Contractor, which may be signed for as received.

104.2.3 Meetings. The Consultant shall:

104.2.3.1 Organize and lead all progress and pre-placement meetings in accordance with the Contract Documents.

104.2.3.2 Record all meeting minutes in Expedition and distribute copies for review and approval, and make any reasonable and merited adjustments to the meeting minutes when requested.

104.2.3.3 Participate in periodic partnering meetings and draft minutes from such with copies forwarded to the City Representative for review and approval.

104.2.4 Coordination. The Consultant shall:

104.2.4.1 Coordinate with agencies and City staff on all aspects of the Project.

104.2.4.2 Keep agencies informed of the City's public information program.

104.2.4.3 Work with the City public information officer in coordinating groundbreaking and grand opening events, and emergency situations.

104.2.4.4 Work with homeowners, businesses and the public at large to resolve issues and provide updated information as required to give notice of upcoming work activity that may impact them.

104.2.4.5 Monitor any utility work required on the Project, maintain 24 hour phone numbers for utility company contacts, ensure that the proper notices to property owners have been delivered for shutdowns, and coordinate the work with the respective utility agencies and companies.

104.2.4.6 Coordinate the activities of any environmental monitoring required for the Project.
104.2.4.7 Work with the Contractor to resolve coordination issues.

104.2.5 Material Testing. The Consultant shall:
104.2.5.1 Assist in, be aware of the Contractor's schedule of, and note in the daily report on the Contractor's coordination with the on-site quality inspections, special inspections, and material testing services provided by the City's consultants.
104.2.5.2 Ensure that all testing required by the Contract Documents are conducted and the results are distributed.
104.2.5.3 Review and respond to all inspections and test results provided by the Contractor and forward copies of each to the City Representative and designer for review and approval.

104.2.6 Issues Management. The Consultant shall:
104.2.6.1 Track and analyze all Project issues, disputes, and claims. In Expedition link and attach all of the reference documents relating to each issue.
104.2.6.2 Identify and immediately notify the City Representative of any items that have the potential to result in additional project time or cost impact.
104.2.6.3 Consult with and advise the City as to possible change orders; prepare and issue change orders as requested by the City.
104.2.6.4 Report immediately to the City upon the occurrence of any accident or safety concern and document information observed and corrective actions taken. Prepare incident reports for all accidents, regardless of the parties involved.
104.2.6.5 Monitor the Contractor's compliance with any NPDES permits and applicable Best Management practices, issue Notices of Non-Compliance, and notify the applicable enforcement agency, as appropriate.
104.2.6.6 Monitor and respond to all traffic control issues.

104.2.7 Notices of Potential Claim. The Consultant shall:
104.2.7.1 Forward any and all Notices of Potential Claim to the City Representative for review and record.
104.2.7.2 Develop a summary of events and submit it with the Notices of Potential Claim.
104.2.7.3 Draft a response to any Notices of Potential Claim and forward to the City Representative for review and approval.
104.2.7.4 Report any verbal notices of claim to the City Representative and advise the Contractor that written notice is required by the Contract Documents. If written notice is not provided by the Contractor within 48 hours, issue a letter to the Contractor requesting the Contractor's position on the issue in writing.

104.2.8 Communication.
104.2.9 All construction communication between the Contractor's team and the City's team must be funneled to and conducted between the Consultant/City Representative and the Contractor's superintendent/project manager.
104.2.10 All directions to the Contractor shall be in writing except that verbal direction may be provided 1) when safety violations are observed which could threaten life or property, or 2) when a potential delay can be averted by directing the Contractor to proceed. Any verbal directions must be followed by written confirmation to the Contractor within 24 hours.
104.2.11 The Consultant shall not provide verbal interpretations of the technical portions of the drawings and specifications, but rather refer such questions to the designer or City Representative for an answer.
104.2.12 The Consultant shall note in its Daily Report any verbal or written instructions given or received.

104.3 INSPECTION

104.3.1 General. The Consultant shall:
104.3.1.1 Provide inspection of all construction to ensure conformance with the Contract Documents, including the following as applicable to the Project.
104.3.1.2 Verify that all materials match the approved submittals, upon delivery and prior to installation.
104.3.1.3 Verify that the construction matches the dimensions in the Contract Documents.
104.3.1.4 Request verification of the Contractor for any work that appears mislocated on the site either horizontally or vertically. Notify the City Representative if the Contractor does not satisfy the Consultant about the issue so additional surveying may be conducted.
104.3.1.5 Verify that all inspections for permits, code, regulations, and Contract Document compliance have been approved prior to the Contractor concealing any work. This includes, but is not limited to, inspections by agencies, utilities, Public Works, Building and Safety, and Special Inspectors.

104.3.2 Roadway. The Consultant shall ensure that:
104.3.2.1 Utilities are marked.
104.3.2.2 A licensed surveyor provides construction staking showing cut and fill elevations to subgrade and limits of roadway.
104.3.2.3 The Contractor provides someone to perform grade checking as they excavate or place borrow.

104.3.2.4 After Contractor's grade checker verifies the finished grade elevation for subgrade, a licensed Nevada surveyor provides hubs verifying the subgrade elevation at 50 foot intervals. At a minimum, the hubs are to be placed at the back of curb and roadway crown locations.
104.3.2.5 The City material testing consultant provides field density testing of the subgrade material for conformance to the Contract Documents.
104.3.2.6 The licensed surveyor provide hubs at 50 foot intervals after the Contractor completes the placement of aggregate base course material and has the grade checker verify the finished grade elevation. At a minimum the hubs are to be installed at the back of curb and roadway crown locations.
104.3.2.7 The field density testing of the aggregate base placement acceptable for grade and surface tolerances has been satisfactorily met.
104.3.2.8 The Contractor has approved submittals for aggregate base courses and geotech tile material, if applicable, prime and tack coat, and AC plant mix prior to Contractor placing material.
104.3.2.9 The Contractor place tack coat and prime coat, if applicable, prior to placing bituminous plant mix surfacing.
104.3.2.10 The proper AC mix is used and collect AC tickets while Contractor places AC plant mix.
104.3.2.11 The AC plant mix placement surface is compliant for required texture and tolerance.

104.3.3 Traffic Control. The Consultant shall:
104.3.3.1 Maintain copies of approved barricade plans and perform a daily traffic zone review for compliance.

104.3.4 Concrete Structures. The Consultant shall ensure that:
104.3.4.1 The Contractor submittals including mix designs have been approved prior to installation.
104.3.4.2 The Pre-placement Inspections have been completed including:
104.3.4.2.1 Lines and Grades including location, elevation, dimensions, shape, drainage, preparation of surface, and bearing.
104.3.4.2.2 Forms including specified type, location, dimensions, tolerances, alignment, stability, surface preparation, tightness, chamfer strips, inspection openings, cleanliness, temperature, and accessories.
104.3.4.2.3 Reinforcing Steel including size (diameter, length, bends, anchorage), grade, location (number of bars, spacing, cover), splices (overlap, mechanical splice, welded joint, welder qualifications and welder procedures), stability (wire ties, chairs, spacers), cleanliness (no loose rust, oil, paint, dried mortar, concrete), and protective coating.
104.3.4.2.4 Prestressing Steel (pre- and post-tensioned) including strand, wire, or bar placement, size, location, grade, anchorage, tensioning sequence, loading and elongation measurements, concrete stressing strength verification, cleanliness, condition of sheathing and protective coating, grouting of post-tensioned tendons, and sealing of the end anchors.
104.3.4.2.5 Embedments including location, size, and condition.
104.3.4.2.6 Blockouts including location, size, and condition.
104.3.4.3 The Placement Inspections have been completed including:
104.3.4.3.1 Conditions including coordination of concrete delivery, protection against sun, rain, hot, cold, lighting and power.
104.3.4.3.2 Field Tests of Concrete including use of specified mix, field water additions, slump (AASHTO T119), temperature (maximum and minimum as specified), air content (pressure or volumetric, AASHTO T196, T152), unit weight (AASHTO T121), yield (AASHTO T121), cylinder specimens (identification, mix, location, date), discharge of ready-mix concrete truckload before 300 revs or 90 minutes (ASTM C94), and initial curing of cylinder specimens, i.e. field curing (AASHTO T23).
104.3.4.3.3 Conveyance of Concrete including nonreactive materials, prevention of segregation and loss of materials, prevention of contamination, condition of conveying equipment (smooth surfaces, no holes, cleanliness), and use of drop-chutes or funnel hoses to contain freefall.
104.3.4.3.4 Placement of Consolidation of Concrete including preparation of contact surfaces, ability of conveying method to place concrete in all areas of the placement, mortar bedding (use of starter mix), prevention of segregation (no chuting or dropping against forms or reinforcement), depth of layer (maximum limit), external vibration (spacing to prevent dead spots), internal vibration (depth of insertion, spacing, time, vertical insertion, no movement of concrete by vibration), even layering around openings and embedments, removal of bleed water, and removal of temporary ties and spacers.
104.3.4.3.5 The Post-Placement Inspections and Tests have been completed including:
104.3.4.3.6 Finishing, curing, and formwork and shore removal including specified finish, protection of surfaces from cracking due to rapid drying, proper curing temperature, form removal (field cured cylinder tests or other approved tests), curing compound (ASTM C309), and finish of formed surfaces (patching and repairs).
104.3.4.3.7 Shoring Removal including location, time of removal, and sequence of removal.
104.3.4.3.8 Tests of Hardened Concrete including curing of specimens (ASTM C31), preparation of concrete cores (ASTM C42), capping (ASTM C617), tests for compressive strength (ASTM C42), tests for split tensile strength (ASTM C496), air dry unit weight of lightweight concrete (ASTM C567), flexural strength (ASTM C293, ASTM C78), specific gravity, absorption, and voids (ASTM C642), first crack strength and toughness fiber reinforcing (ASTM C1018), and non destructive tests.

104.3.5 Underground Utilities. The Consultant shall ensure that:
104.3.5.1 The Contractor is notifying all utilities affected to have their underground utility lines and substructures marked prior to construction.

104.3.5.2 The Contractor is delivering and installing materials that match the approved submittals.
104.3.5.3 The Contractor has notified the City five days in advance of construction that he has reviewed the locations and potholed all existing underground utilities that may have a conflict with any portion of the work.
104.3.5.4 The Contractor has notified all affected property owners 48 hours in advance of any scheduled utility shutdowns.
104.3.5.5 The Contractor is in compliance with OSHA Construction Standards and the Contract Documents for trench safety and excavations. Consultant shall perform a daily review of any open trenching for compliance. The Consultant shall be thoroughly knowledgeable with OSHA Construction Standards 29 CFR Part 1926 Subpart P Excavations and the City's Safety Policy/Procedure for Excavations, and immediately notify the Contractor and City Representative of any safety concerns.

104.3.6 On-Site Construction. In addition to the code inspections being conducted by Building and Safety, Special Inspectors, and the City's traffic equipment field personnel for site electrical and streetlights, the Consultant shall ensure that the constructions is compliant with the Contract Documents, including:
104.3.6.1 Site Work including survey, rough grading, parking lot, lighting, walkways, landscape, irrigation, utilities, ADA accessibility, and site specialties.
104.3.6.2 Building Work including structural, mechanical, plumbing, electrical, fire sprinklers, communication systems, alarm systems, architectural finishes, ADA accessibility, and specialties.
104.3.6.3 At a minimum, verify and measure the following items, if specified:
104.3.6.3.1 Exterior concrete flatwork is at least ¼ inch below finished floor slab elevation.
104.3.6.3.2 Metal gauges of flashings, roofing, doors and frames.
104.3.6.3.3 Exterior metal surfaces are galvanized including hollow metal doors and frames.
104.3.6.3.4 Sheet metal backing is provided on sidewalls of exterior doorways.
104.3.6.3.5 Exterior door hardware is stainless steel.
104.3.6.3.6 Paint thicknesses and minimum number of coats.
104.3.6.3.7 Wood door tops and bottoms are painted.
104.3.6.3.8 Powder-coated painted surfaces are powder-coated.
104.3.6.3.9 Sidewalks not more than 5% and handicap parking spaces not more than 2% slopes.
104.3.6.3.10 Wheelchair space concrete slab area next to the end of benches is provided.
104.3.6.3.11 Five foot diameter clear space in every room for wheelchair turnaround.
104.3.6.3.12 Thresholds and storefront window sills are set in mastic.
104.3.6.3.13 That the roofing manufacturer's representative is present during installation and approves the installation.
104.3.6.3.14 Ceramic tile joints align with structural joints, with sealant and backer rod.
104.3.6.3.15 Six foot minimum clearance from top of totlot equipment to fabric shade.
104.3.6.3.16 Concrete slabs slope to drains. Slabs recessed for floor finishes.
104.3.6.3.17 THW cu wire is used for all exterior electrical.
104.3.6.3.18 Exterior light poles have oversized handholes per city standards.
104.3.6.3.19 Electrical clearances around installed gear meet code.
104.3.6.3.20 Electrical circuit, panel, and equipment labeling meets city standards.

104.3.7 Traffic Signals and Streetlights. The Consultant shall ensure that: if applicable:
104.3.7.1 The construction is complete and accurate prior to the Contractor calling for inspection by the City's traffic equipment field personnel.
104.3.7.2 Recurrent problems are not occurring, including:
104.3.7.2.1 Foundations at the wrong elevation, location, orientation, or bolt size,
104.3.7.2.2 Pull box lids incorrectly marked, street lighting,
104.3.7.2.3 Items missing such as street name signs, block # signs, pole and arm caps, and video cameras,
104.3.7.2.4 Traffic signal heads loose or turned, and
104.3.7.2.5 Underground conduit size incorrect.
104.3.7.3 The Public Works construction services inspection checklist has been reviewed by the Consultant and Contractor prior to calling for inspection including:
104.3.7.3.1 Traffic Signal luminaries, poles, signal mast arm, luminare arm, signal head, opticom, pedestrian heads, J-boxes, push buttons, auto-scope, street name sign, pole base, pull boxes, inductive loops, wire and cabling, signal cabinet, crash caps, signage, and road markings.
104.3.7.3.2 Streetlight luminaries, poles, foundations, pull boxes, crash caps, conduits, and wire and splices.

104.4 TIME AND BUDGET

104.4.1 Contractor Payments. The Consultant shall:
104.4.1.1 Review all applications for payment to ensure that all invoices reflect actual work completed in accordance with the Contract Documents.

104.4.1.2 Verify that all submittals required from the Contractor with each Application for Payment are attached. Request any items from the Contractor that are required but have not been provided and hold application until all required items are provided.
104.4.1.3 In regard to each payment application, issue a recommendation (approval or denial) to the City Representative as to why. The City Representative will then have the responsible charge of either forwarding the application for payment or rejecting it accordingly.
104.4.1.4 Complete the City's standard pay request form and maintain a pay request funding source tally if requested by the City Representative.
104.4.1.5 Provide the written notice required by NRS 338.525 to the Contractor within 20 days for each payment that is less than the amount claimed by the Contractor, and deliver the notice to the Contractor in accordance with NRS 338.455.

104.4.2 Prevailing Wage Records. The Consultant shall:
104.4.2.1 Review the Contractor's monthly prevailing wage records for completeness and accuracy.
104.4.2.2 Notify the City Representative of any reported or discovered prevailing wage violations.
104.4.2.3 Forward all reviewed prevailing wage records to the City for archiving.

104.4.3 Quantities. The Consultant shall:
104.4.3.1 Monitor bid quantities for construction overruns and notify the City Representative if quantities are exceeding the bid amount.

104.4.4 Change Orders. The Consultant shall:
104.4.4.1 Create a Change Order Request (COR) log in Expedition; receive and log all Contractor submitted CORs.
104.4.4.2 Review all CORs and forward them to the City Representative and designer. The Consultant shall generate a summary of the events/circumstances surrounding the COR that includes the Consultant's recommendation regarding each matter.
104.4.4.3 Assist in the negotiations of Change Order pricing.
104.4.4.4 Draft rejections of CORs as deemed appropriate and forward them to the City Representative for review and approval.
104.4.4.5 Prepare the application form and present change orders before the City Change Order Committee for approval.
104.4.4.6 Coordinate and seek the signatures for approval from the City Representative, designer and Contractor for all approved change orders.
104.4.4.7 In the event a change is required but pricing is unable to be mutually agreed upon, the Consultant shall draft a Construction Change Directive to the Contractor and forward copies to the City Representative and designer for review and approval.
104.4.4.8 Track Construction Change Directive (force account) work in sufficient detail to properly evaluate the work effort for payment.

104.4.5 Schedule Submittals. The Consultant shall:
104.4.5.1 Monthly. Review the Contractor's monthly submitted updated schedules during the course of construction for slippage's, logic revisions, changes from previous schedules, incorporation of changed conditions, reasonableness, resource loading, and compliance with the Contract Documents.
104.4.5.2 Revised. Ensure that the Contractor submits revised schedules more frequently than monthly whenever conditions warrant or the Contract Documents require.
104.4.5.3 Recovery. When required by the Contract Documents or requested by the City Representative, require a recovery schedule from the Contractor that is acceptable to the City. Review, monitor, and advise the City on the revised schedule and the course of the recovery.

104.4.6 Schedule Reporting. The Consultant shall:
104.4.6.1 Report all schedule changes to the City within ten working days.
104.4.6.2 Generate a response to the Contractor, which either approves or rejects each Contractor's monthly progress schedule submittal.
104.4.6.3 Provide a monthly written analysis report of the Contractor's monthly update schedule to the City Representative for review and approval.

104.4.7 As-built Schedule. The Consultant shall maintain an as-built schedule on site and update it monthly to accurately represent completed work, plus the Contractor's latest schedule for future work. Provide these schedules to the City Representative each month.

ARTICLE 105: CONSTRUCTION MANAGEMENT AS AGENT - CLOSEOUT PROCEDURES

105.1 DOCUMENT CONTROL

105.1.1 General. Provide a complete record of Project documentation to the City Representative for Project closeout.

105.1.2 Equipment Verification. The Consultant shall:
105.1.2.1 Ensure that all equipment is demonstrated by the Contractor (to the City) to be operational in accordance with the Contract Documents.
105.1.2.2 Ensure that all related equipment manuals and warranties are accounted for and delivered to the City Representative.
105.1.2.3 Verify that all spare parts and materials are provided and accounted for in accordance with the Contract Doument requirements.

105.1.3 As-Builts. The Consultant shall:
105.1.3.1 Review the Contractor's as-built drawings and specifications for accuracy and completeness, compare to the Consultant's as-built set, and consolidate the variations into a single set of documents.
105.1.3.2 Verify that the Contractor has provided accurate monument pre-tie sheet and post-tie sheet information acceptable to the City Surveyor and include in the as-built set of documents.
105.1.3.3 Delivery the coordinated set of as-builts to the City Representative.

105.1.4 Final Report and Delivery of Project Documentation. The Consultant shall:
105.1.4.1 Prepare a final Project summary report.
105.1.4.2 Complete the City's Contractor evaluation form.
105.1.4.3 Deliver all electronic and Expedition files on computer disk (DVD) and hard copy. See Exhibit "B".
105.1.4.4 Place and label Project files in standard stackable cardboard file storage boxes 12x15x10 with lids.
105.1.4.5 Deliver to the City Representative the complete Project record within 30 days of final payment to the Contractor.
105.1.4.6 Maintain copies of Project files for three years.

105.2 PROJECT CONTROL AND INSPECTION

105.2.1 Punchlists and Substantial Completion. The Consultant shall:
105.2.1.1 Upon receiving a Notice of Substantial Completion request from the Contractor, the Consultant shall coordinate and participate in the walk through with the City Representative, designer, and Contractor.
105.2.1.2 For projects with permits issued by Building and Safety, collect from the Contractor and forward the Certificate of Occupancy to the City Representative and file a copy in the Project records. The Certificate of Occupancy is a minimum prerequisite to requesting the Substantial Completion walk through.
105.2.1.3 Develop in Expedition a punchlist generated from the walk through and forward it to the City Representative and designer for review and approval prior to forwarding to the Contractor.
105.2.1.4 Upon a finding by the City Representative that the Project is Substantially Complete, the Consultant shall prepare in Expedition and issue a Certificate of Substantial Completion for signature by the City Representative and designer. Forward fully signed copies to the City Representative and designer for record.
105.2.1.5 Observe and verify that all punchlist items are completed in accordance with the Contract Documents.
105.2.1.6 Upon proper completion of the punchlist items, the Consultant shall ensure that the City Representative is properly and promptly notified to allow for Contractor payment.
105.2.1.7 If requested by the City Representative, assist the facility occupants in coordinating their move in, re-keying, utility services and building system maintenance and security contracts.

105.3 TIME AND BUDGET

105.4 Claims. The Consultant shall evaluate outstanding claims by the Contractor and others and make recommendations concerning each to the City, and work with the City to resolve each.

105.5 Permits. The Consultant shall verify that all permits issued have been completed, signed off by all parties, and filed with the issuing agency; assist the City and Contractor in closing open permits as needed. This includes, but is not limited to, City of Las Vegas, Clark County, Clark County Department of Air Quality and Environmental Management, Southern Nevada Health District, Nevada Division of Protection, Nevada Department of Transportation, and Federal NEPA permits.

105.6 Final Quantities. The Consultant shall determine the final quantities for unit price items and forward a summary to the City Representative for review and record.

105.7 Withholding. The Consultant shall determine the proper amounts to withhold for improper, defective, incomplete, and other punch list work and notify the Contractor in accordance with NRS 338.525 and 338.455. Immediately notify the City Representative when withheld work is satisfactorily completed so payment can be made within 30 days as required by NRS 338.525.

105.8 Liquidated Damages. The Consultant shall determine the amount to subtract from the Contract Amount for Liquidated Damages due to late Project completion and other items contained in the Contract Documents and advise the City Representative, including the following as applicable:
105.8.1 On-Site Work:
- **105.8.1.1** Section 01700, Work Required Complete Prior to Substantial Completion
- **105.8.1.2** Section 01700, Punchlist Completion

105.8.2 Right-of-Way Work:

105.8.2.1 Section 108, Punchlist Completion
105.8.2.2 Section 624, Traffic Control Plan Deficiency - Maintenance
105.8.2.3 Section 624, Traffic Control Plan Deficiency - Safety
105.8.2.4 Section 623, LVACTS/FAST Cable Damages

105.8.2.5 Final Payment. The Consultant shall:
105.8.2.6 Collect the required affidavits and related documents required to accompany the final payment and forward them to the City Representative including for all projects:
105.8.2.6.1 Certificate of Substantial Completion
105.8.2.6.2 Consent of Surety to Final Payment
105.8.2.6.3 Consent of Surety and Increase of Penalty
105.8.2.6.4 Affidavit of Payment of Debt and Claims
105.8.2.7 And for particular projects as applicable:
105.8.2.7.1 Building and Safety: Final Grading Report, Pad Certification, Finish Floor Elevation Certificate, and Drainage Compliance Report.
105.8.2.7.2 Offsite Inspection: R-Value Verification Report, Select Backfill Letter, and Final Grading Report.
105.8.2.7.3 State Engineer Dam Safety Permission to Impound submittal package.
105.8.2.8 Review the Final Payment request for the proper accounting of all change orders, modifications, final quantity reconciliation, permanent withholding, liquidated damages, and other adjustments made to the Contract Sum over the course of the Project.
105.8.2.9 Obtain the Final Payment approval from the City Representative.

ARTICLE 106: MATERIAL TESTING SERVICES

106.1 GENERAL

106.1.1 The Consultant shall provide staffing and AASTHO certified lab services to provide quality control testing and inspection during construction. The Consultant shall be responsible for reviewing documentation including test reports to ensure compliance with the Contract Documents.
106.1.2 All terms and conditions contained in the Construction Management as Agent Services section of this Agreement also apply to the Material Testing Services and personnel.
106.1.3 Upon discovery the Consultant material testing personnel shall immediately reject unacceptable materials during delivery or installation, and so notify the Contractor verbally and in writing within 24 hours, without prior consultation with the City Representative. Notify the City Representative as soon as practical and enter in the Daily Report.

106.2 DOCUMENTATION

106.2.1 The Consultant's field testing personnel shall notify the City Representative when establishing the time of arrival and departure from the site, or the Consultant's Construction Coordinator if the City Representative is not on site.
106.2.2 The Consultant shall prepare Daily Reports noting the following minimum information over the course of the Project:
106.2.2.1 Time beginning inspection and testing
106.2.2.2 Time ending inspection and testing
106.2.2.3 Total man-hours for each pay rate spent for each day
106.2.2.4 Tests or inspections performed
106.2.2.5 Rejected materials, failed tests or inspections, re-inspections conducted, uncorrected work
106.2.3 The Consultant shall immediately report to the City Representative verbally and in writing any:
106.2.3.1 Testing or inspection that fails specifications or requirements.
106.2.3.2 Missed testing or inspections.
106.2.3.3 Testing where there is a reasonable doubt that the future test results may not meet the specifications.
106.2.3.4 Construction that proceeds without the required testing or inspection.
106.2.3.5 Construction that proceeds after uncorrected failed test results or doubtful future results.
106.2.3.6 Construction that is not in compliance with the Contract Documents.
106.2.3.7 Structural failure or collapse.
106.2.3.8 Disciplinary actions taken by regulatory authorities against the Consultant or Contractor.

106.3 SAMPLING AND TESTING CRITERIA

106.3.1 FIELD TESTING

106.3.1.1 The Consultant shall provide field testing for soil, aggregate, concrete, and asphalt required by the Contract Documents.

106.3.1.2 The Consultant shall review and maintain field-testing data and reports for contract compliance.

106.3.2 LABORATORY TESTING

106.3.2.1 The Consultant shall provide laboratory testing for soil, aggregate, concrete, asphalt, and pipe lining required by the Contract Documents.
106.3.2.2 The Consultant shall maintain all source testing data and reports, including retesting of failed tests.

106.3.3 LABORATORY TEST RESULTS

106.3.3.1 Soil Tests
106.3.3.1.1 The Consultant shall perform relative compaction test of subgrade, aggregate base grade and trench backfill for verification of compliance with the project specifications when directed by the City and follow testing frequencies as shown in Item 4 – Testing Requirements. Test results shall be reviewed and delivered to the City's Representative prior to the Consultant leaving the construction site daily.
106.3.3.1.2 The Consultant shall retrieve samples from the Project site and perform laboratory Moisture Density tests when requested by the City. Test results shall be delivered to the City or its Agent within 2 working days following samples being retrieved from the Project site.
106.3.3.1.3 The Consultant shall retrieve samples from the Project site and perform laboratory Sieve Analysis tests when requested by the City. Test results shall be delivered to the City or its Agent within 2 working days following samples being retrieved from the Project site.
106.3.3.1.4 The Consultant shall retrieve samples from the Project site and perform laboratory R-Value tests when requested by the City. Test results shall be delivered to the City or its Agent within 3 working days following samples being retrieved from the Project site.
106.3.3.1.5 The Consultant shall retrieve samples from the Project site and perform laboratory Percent of Wear tests when requested by the City. Test results shall be delivered to the City or its Agent within 2 working days following samples being retrieved from the Project site.
106.3.3.1.6 The Consultant shall retrieve samples from the Project site and perform laboratory Plasticity Index tests when requested by the City. Test results shall be delivered to the City or its Agent within 2 working days following samples being retrieved from the Project site.
106.3.3.1.7 The Consultant shall retrieve samples from the Project site and perform laboratory Sulfate Content tests when required by the City. Test results shall be delivered to the City or its Agent within 3 working days following samples being retrieved from the Project site.

106.3.3.2 Concrete Tests
106.3.3.2.1 The Consultant shall perform on-site slump, temperature, air content, determination of unit weight and consistency tests for verification of compliance with the Project specifications when directed by the City. Test results shall be delivered to the City's Representative prior to the Consultant leaving the construction site daily.
106.3.3.2.2 The Consultant shall prepare a minimum of 4 test cylinders on the Project site at the time of concrete placement and perform laboratory compressive strength tests when requested by the City. Cylinders shall be cured on-site in a cure box supplied by the Consultant, for a period of 24 hours before removal. Results shall be delivered to the City within 2 working days following each cylinder being tested.

106.3.3.3 Asphaltic Concrete Tests
106.3.3.3.1 The Consultant shall perform on-site density tests by utilizing "Density of Bituminous Concrete in Place by Nuclear Method" ASTM D 2950 methodology at the time of asphaltic concrete placement for verification of compliance with the Project specifications when directed by the City. Test results shall be delivered to the City's Representative prior to the Consultant leaving the construction site daily.
106.3.3.3.2 The Consultants shall retrieve samples from the Project site and perform laboratory Extraction/Gradation tests when requested by the City. Test results shall be delivered to the City within 2 working days following samples being retrieved from the Project site.
106.3.3.3.3 The Consultant shall retrieve samples from the Project site and perform laboratory Maximum Theoretical Specific Gravity tests utilizing the Rice methods, when requested by the City. Test results shall be delivered to the City within 2 working days following samples being retrieved from the Project site.
106.3.3.3.4 The Consultant shall retrieve samples from the Project site and perform laboratory Unit Weight and Thickness tests when requested by the City. Test results shall be delivered to the City within 2 working days following samples being retrieved from the Project site.
106.3.3.3.5 The Consultant shall retrieve samples from the Project site and perform laboratory Marshall Series tests when requested by the City. Test results shall be delivered to the City within 3 working days following samples being retrieved from the Project site.

106.3.3.4 Testing Requirements. The following requirements for material control are included as reference standards and incorporated into the scope of work. The Consultant shall be responsible for the following testing methodology:
106.3.3.4.1 Trench Backfill – Material sampled shall be tested in accordance with the test method and frequency indicated:

Control Test	Test Method	Frequency
Maximum Density/Opt. Moisture	AASHTO T180	1 per soil type
Sieve Analysis	AASHTO T27	1 per soil type
Plasticity Index	AASHTO T89 & T90	1 per soil type
Liquid Limit	AASHTO T89	1 per soil type
Sulfate Content	Cal 417-B	1 per soil type

106.3.3.4.2 Subgrade Material – Material sampled shall be tested in accordance with the test method and frequency indicated:

Control Test	Test Method	Frequency
Maximum Density/Opt Moisture	AASHTO T180	1 per soil type, Minimum 2
Sieve Analysis	AASHTO T27	1 per soil type, Minimum 2
Plasticity Index	AASHTO T89 & T90	1 per soil type, Minimum 2
Liquid Limit	AASHTO T89	1 per soil type, Minimum 2
Sulfate Content	Cal 417-B	1 per soil type

106.3.3.4.3 Type II Aggregate Base – Material sampled shall be tested in accordance with the test method and frequency indicated

Control Test	Test Method	Frequency
Maximum Density/Opt Moisture	AASHTO T180	1 per supplier
Sieve Analysis	ASSHTO T27	1 per supplier
Fractured Faces	Nev T230	1 per supplier
Plasticity Index	AASHTO T89 & T90	1 per supplier
Liquid Limit	AASHTO T89	1 per supplier
Resistance (R-Value)	AASHTO T190	1 per supplier
Percent of Wear (500 Rev.)	AASHTO T96	1 per supplier

106.3.3.4.4 Portland Cement Concrete – Concrete cylinders shall be cast and tested in accordance with ASTM. Material shall be sampled and tested as indicated

Portion of Work	Sampling Frequency	No. of Cylinders/ Break Days
Sidewalk	1 set per 1000 LF per day	(4)/7, 14, 28
Curb and Gutter	1 set per 1000 LF per day	(4)/7, 14, 28
Crossgutter	1 set per 1000 LF per day	(4)/7, 14, 28
Misc. Structures	1 set per structure per day	(4)/7, 14, 28
Driveways	1 set per driveway	(4)/7, 14, 28

106.3.3.4.5 Bituminous Pavement – Material sampled during paving operation shall be tested in accordance with ASTM using Marshall Apparatus as indicated:

Control Test	Test Method	Frequency
Marshall Series	AASHTO T245	1 per day
Maximum Theoretical Density	AASHTO T209	1 per day
Asphalt Content	AASHTO T164	2 per day
Aggregate Gradation	AASHTO T11 & T27	2 per day

106.3.3.5 Relative Compaction Testing. The following requirements for Relative Compaction Testing are included as reference standards and incorporated into the scope of work. The Consultant shall be responsible for the following field relative compaction tests:

106.3.3.5.1 Trench Backfill – Backfill shall be tested as indicated:
106.3.3.5.1.1 One test per lift per 100 lineal feet of trench or a minimum of two tests per day.
106.3.3.5.1.2 One test per lateral.
106.3.3.5.1.3 A minimum of two mainline tests between structures.

106.3.3.5.2 Structure Backfill – Backfill shall be tested as indicated:
106.3.3.5.2.1 One test per lift per structure or a minimum of one test per day.
106.3.3.5.2.2 A minimum of one test per structure.

106.3.3.5.3 Subgrade – Subgrade shall be tested as indicated:
106.3.3.5.3.1 One test per 300 to 500 lineal feet per lane (12 foot width) or a minimum of two tests per street.

106.3.3.5.4 Type II Aggregate Base – Aggregate base shall be tested as indicated:
106.3.3.5.4.1 One test per 300 to 500 lineal feet per lane (12 foot width) or a minimum of two tests per street.

106.3.3.5.5 Curb and Gutter – Aggregate base and subgrade shall be tested as indicated:
106.3.3.5.5.1 One test per 500 lineal feet of curb and gutter or curb or a minimum of two per street.

106.3.3.5.6 Crossgutter – Aggregate base and subgrade shall be tested as indicated:
106.3.3.5.6.1 Two tests per complete crossgutter.

106.3.3.5.7 Sidewalk – Aggregate base and subgrade shall be tested as indicated:
106.3.3.5.7.1 One test per 500 lineal feet of sidewalk or a minimum of one per street.

106.3.3.5.8 Driveways – Aggregate base and subgrade shall be tested as indicated:
106.3.3.5.8.1 Residential – one test per complete driveway.
106.3.3.5.8.2 Commercial/Alley – two tests per complete driveway.

106.3.3.5.9 Hot plant mix bituminous pavement – place field density testing of hot bituminous pavement per ASTM D2950 (Nuclear Gauge Method) shall be performed as indicated:
106.3.3.5.9.1 A minimum of five locations per day.

106.4 CLOSE-OUT

106.4.1 The Consultant shall deliver a final report containing all test results, stamped and sealed by a Nevada professional Engineer.
106.4.2 The Consultant shall, at no additional cost, properly retain samples for a period of one year after completion of the Project, and a longer period if so instructed by the City in which case reasonable storage charges will be negotiated prior to the time extension, or the samples delivered to the City if charges cannot be negotiated.

END OF EXHIBIT "A"

EXHIBIT "B"

REQUIRED SUBMITTALS

ARTICLE 200: GENERAL

200.1 For the services set forth in **Exhibit "A"** (Scope of Services), the Consultant shall provide the following minimum submittals and deliverables for the Project, delivered to the City unless noted otherwise, which shall be accomplished as soon as practical after the completion of each event, task, phase, and service, and as a prerequisite to payment for each related event, task, phase, and service. Reference the entire Agreement and other Exhibits for additional Consultant submittals, and documents to be forwarded from the Contractor.

200.2 All reports shall be on white acid-free paper, 8-1/2 x 11 inches, suitable for photocopying and bound in booklet form. It is understood that the City may make and distribute copies of the reports as necessary in connection with the Project without incurring obligation for additional compensation.

200.3 Certificates of Insurance

The Consultant shall deliver to Insurance Tracking Services, Inc. (ITS), the City's authorized designated representative, a certificate of insurance with respect to each required policy to be provided by the Consultant under this Agreement. The required certificates must be signed by the authorized representative of the insurance company shown on the certificate with proof that such person is an authorized representative thereof, and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon.

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) shall be provided to the City upon request.
The Consultant shall promptly deliver to ITS a certificate of insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the terms specified herein. Such certificate shall be delivered to ITS not less than 30 days prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof.

ARTICLE 201: PRE-CONSTRUCTION

201.1 The Consultant shall provide the following:
201.1.1 Resumes for each staff person assigned to the Project for City approval.
201.1.2 Consultant's policy and procedure manual for construction management for City approval.
201.1.3 Project participant contact list including names, addresses, and emergency telephone numbers of all contractors, subcontractors, agencies, and major suppliers.
201.1.4 The Consultant's list of recommended pre-construction conference meetings to the City for approval (concrete pours, roofing, etc.).
201.1.5 List of deferred submittals.

ARTICLE 202: CONSTRUCTION PHASE – MONTHLY INVOICES

202.1 **Consultant's Invoice.** Together with the Consultant's monthly invoice for services, provide copies of the following documents for the period covered by the invoice:
202.1.1 A narrative report of the monthly activities and progress.
202.1.2 Consultant's daily photographs of construction activities.
202.1.3 Consultant's current As-Built Schedule of construction progress and future construction schedule, in both paper and Microsoft Project, P6 or approved equal electronic file format.

202.2 Contractor's Payment Request. Together with forwarding the Contractor's monthly payment request, provide copies of the following documents for the period covered:

202.2.1 Prevailing wage records.

202.2.2 Contractor's photographs of construction activities.

202.2.3 Contractor's current As-Built Schedule of construction progress and future construction schedule, in both paper and Microsoft Project, P6 or approved equal electronic file format.

202.2.4 Consultant's monthly written analysis report of the Contractor's monthly update schedule.

ARTICLE 203: CLOSE-OUT PHASE – FINAL PAYMENT

203.1 Consultant's Invoice. Together with the Consultant's invoice for final payment, or upon termination of this Agreement for any reason, provide:

203.1.1 Report. A final Project summary report.

203.1.2 Daily Reports. The Consultant's Daily Reports, with original signature of the Consultant.

203.1.3 Photographs. The Consultant's daily photographs, labeled and dated.

203.1.4 As-Builts. The coordinated as-built set of drawings and specifications that contains both the Contractor's and Consultant's markups over the course of the Project, including monument tie information.

203.1.5 Electronic Files. Provide a complete and organized record of the Project documentation on labeled DVDs including but not limited to: final as-built drawings, Expedition software generated reports and documents, emails, certified payrolls, payment requests, submittals, shop drawings, test results, delivery tickets, warranties, operating instructions, and close-out manuals.

203.1.5.1 Provide electronic files in the original software format (MS Word, Excel, etc.).

203.1.5.2 Provide pdf or tif electronic files of all fully executed signature documents.

203.1.5.3 Provide electronic copies of all Paper Files referenced in the following paragraph.

203.1.6 Paper Files. All original documents relating to the Project produced during the term of this Agreement, organized and labeled in standard stackable cardboard file storage boxes 12x15x10 with lids.

203.1.7 Evaluation Form. The completed City's Contractor evaluation form.

203.2 Contractor's Final Payment Request. Together with forwarding the Contractor's final payment request, provide copies of the following documents:

203.2.1 Certificate of Substantial Completion

203.2.2 Consent of Surety to Final Payment

203.2.3 Consent of Surety and Increase of Penalty

203.2.4 Affidavit of Payment of Debt and Claims

203.3 And for particular projects as applicable:

203.3.1 Building and Safety: Final Grading Report, Pad Certification, Finish Floor Elevation Certificate, and Drainage Compliance Report.

203.3.2 Offsite Inspection: R-Value Verification Report, Select Backfill Letter, and Final Grading Report.

203.3.3 State Engineer Dam Safety Permission to Impound submittal package.

END OF EXHIBIT "B"

EXHIBIT "C"

PERFORMANCE SCHEDULE

ARTICLE 300: GENERAL

300.1 For the services set forth in **Exhibit "A"** (Scope of Services), the Consultant's work begins upon written notice to proceed from the City. The Consultant's site mobilization shall be performed upon written notification by the City. Services shall be performed by the Consultant in an expeditious manner so as to not delay the progress of the Project, and in accordance with the time requirements described elsewhere in this Agreement.

300.1.1 The Scope of Service and compensation set forth in this Agreement are based upon the Consultant and the City each performing its responsibilities in a timely manner.

ARTICLE 301: LATE AND EARLY COMPLETION

301.1 The anticipated construction start date of the Project is October, 2010 with an anticipated construction term of 274 calendar days for the Contractor to achieve Substantial Completion of the Project.

301.2 If the Project is suspended or terminated, or the anticipated construction schedule is reduced, the Consultant shall be paid for the services provided to the date of suspension or termination or the services provided within the reduced schedule in accordance with this Agreement.

301.3 If the anticipated construction schedule is exceeded, the Consultant's compensation may continue to be paid from the Total Not-to-Exceed Cost for Basic Services in **Exhibit "D"** (Fee Breakdown) until this amount has been expended, and if authorized by the City Representative, additionally may be paid from the Total Not-to-Exceed Cost of the Additional Services Allowance in **Exhibit "D"** in accordance with the rates in **Exhibit "E"** (Additional Compensation).

301.4 The City reserves the right to adjust the Consultant services to be provided over the course of the Project, which may include the elimination of the Consultant's role in the Project at any time and for any reason.

END OF EXHIBIT "C"

EXHIBIT "D"

FEE BREAKDOWN

ARTICLE 400: TOTAL COMPENSATION

400.1 The total compensation to be paid to the Consultant for performance of this Agreement including Basic Services, Additional Services, and Reimbursable Expenses shall not exceed **$600,000**. This amount is comprised of the parts described in this **Exhibit "D"** (Fee Breakdown).

ARTICLE 401: BASIC SERVICES PAYMENT BASED ON HOURLY RATES AND ADDITIONAL SERVICES RATES WITH A TOTAL NOT-TO-EXCEED COST

401.1 For the services set forth in **Exhibit "A"** (Scope of Services), the City agrees to pay to the Consultant based upon the Consultant Hourly Rates and Additional Services Rates established in **Exhibit "E"** (Additional Compensation) based upon the completed and approved services performed for the prior month. The Consultant agrees to perform the services required under this Agreement **Exhibit "A"** (Scope of Services) as directed by the City Representative. Payment shall be made pursuant to monthly invoices submitted in accordance with this Agreement.

BASIC SERVICES		REMARKS
TOTAL NOT-TO-EXCEED COST	$534,965.34	

401.2 The following Basic Services Worksheet **Exhibit D-1** table(s) shows the estimated hours and the dollar cost of those hours to be expended by the Consultant by various personnel and the monthly cost of authorized services and facilities based on the Additional Services Rates established in **Exhibit "E"** over the course of the Project and, although this table represents the basis for how the Total Not-to-Exceed Cost for Basic Services was established, it is not a part of this Agreement and not to be used as the basis for payment. The personnel, hours, facilities, assets, and other services provided will be adjusted over the course of the Project at the direction of the City Representative, with the Consultant earning payment for only those hours and services performed and facilities provided in accordance with this Agreement. The cost of these adjustments shall be calculated utilizing the rates agreed to in this Agreement to the extent they are applicable, or otherwise negotiated prior to performance.

401.1 The City Representative shall have the authority to make work scope adjustments within the Basic Services Not-to-Exceed Cost without processing this Agreement for an amendment to be approved and signed by City Council or their designee if (1) the revisions are documented in writing signed by the Consultant and City prior to performance, (2) the Total Not-to-Exceed Cost for Basic Services is not exceeded, and (3) the change(s) are within the scope of the Project.

401.2 An increase to the Total Not-to-Exceed Cost for Basic Services may only be authorized by written amendment to this Agreement.

ARTICLE 402: ALLOWANCE FOR ADDITIONAL SERVICES

402.1 A Not-To-Exceed Allowance for Additional Services is hereby established as set forth below. The City Representative has authority to pre-authorize in writing Additional Services up to the Total Not-To-Exceed Cost. Services performed prior to receiving the required written authorization or in excess of the Total Not-To-Exceed Cost shall not be obligated for compensation.

402.2 Additional Services are services that are not set forth in **Exhibit "A"** (Scope of Services) as Basic Services, or services that are required after the Total Not-To-Exceed Cost for Basic Services has been expended.

402.3 The Consultant shall be compensated for Additional Services in accordance with the Additional Services fees set forth in **Exhibit "E"** (Additional Compensation), or if no Additional Service fee has been established for the service, in accordance with the Consultant Hourly Rates established in **Exhibit "E"** (Additional Compensation). Additional Service compensation disputes shall be resolved in accordance with the claims and disputes provisions of this Agreement and shall not be cause for the Consultant to delay providing requested services. Payment shall be made for each completed Additional Service pursuant to invoices submitted in accordance with the Agreement.

402.4 Increases to this Total Not-To-Exceed Cost for Additional Services may only be authorized by written amendment to this Agreement.

ADDITIONAL SERVICES ALLOWANCE		ALLOWED SERVICES
TOTAL NOT-TO-EXCEED COST	$65,034.66	For Additional Services required by an unexpected event or condition, a need to increase management oversight, a construction schedule extension, Consultant overtime costs, additional subconsultants, and other project management activities.

ARTICLE 403: ALLOWANCE FOR REIMBURSABLE EXPENSES

403.1 For the Reimbursable Expenses allowed by **Exhibit "E"** (Additional Compensation), a Not-To-Exceed Allowance is hereby established as set forth below. The Consultant has determined that this Reimbursable Expense Allowance amount will not be exceeded for the allowed Reimbursable Expenses for performance of the Services set forth in **Exhibit "A"** (Scope of Services), and accordingly does hereby assume the risk to complete the performance of this Agreement without further compensation for Reimbursable Expenses should the costs exceed this Total Not-To-Exceed Cost for Reimbursable Expenses. Payment shall be made for each completed Reimbursable Expense pursuant to invoices submitted in accordance with the Agreement.

403.2 Expenses not listed in **Exhibit "E"** (Additional Compensation) as allowed Reimbursable Expenses shall not be compensated without amendment to this Agreement to allow them as Reimbursable Expenses. Increases to this Total Not-To-Exceed Cost for Reimbursable Expenses may only be authorized by written amendment to this Agreement.

REIMBURSABLE EXPENSE ALLOWANCE		REMARKS
TOTAL NOT-TO-EXCEED COST	$0.00	

END OF EXHIBIT "D"

EXHIBIT "E"

ADDITIONAL COMPENSATION

ARTICLE 500: CONSULTANT HOURLY RATES

500.1 The following hourly rates are to be used as the basis for negotiation of added and reduced services. These hourly rates are valid for the duration of the Project and include salary costs, overhead, administration and profit. The overhead included in these rates covers all support personnel who normally work on non-specific project tasks including but not limited to receptionists, senior executives together with their assistants, financial accounting personnel, and facility, equipment, and IT maintenance personnel.

CLASSIFICATION (see Exhibit "F" Key Personnel for personnel names)	**RATE**	**UNIT**
Construction Manager	$210.00	Per Hour
Construction Coordinator	$180.30	Per Hour
Construction Inspector	$106.47	Per Hour
Document Control	$79.56	Per Hour
Scheduler	$150.03	Per Hour
Survey Crew (2 person)	$0	Per Hour
Tortoise/Owl Monitoring	$0	Per Hour
Paleontological Monitoring	$0	Per Hour

ARTICLE 501: ADDITIONAL SERVICES RATES

501.1 The cost of the following services and facilities has been negotiated as of the date of this Agreement.

SERVICES and FACILITIES	**FIXED FEE**

501.2 The cost of the following testing and laboratory services has been negotiated as of the date of this Agreement.

TESTING and LABORATORY SERVICES	**FIXED FEE Per TEST**
M/D Relationship	$170
Sieve Analysis	$120
Plastic Limits	$120
Percentage Wear	$149
R-Value	$270

TESTING and LABORATORY SERVICES	FIXED FEE Per TEST
Fractured Faces	$100
Sand Equivalent	$100
Extraction Gradation	$235
Moisture Content	$30
Theoretical Max SpG	$110
Bulk SpG-Compacted Mix (2)	$30 each core
Marshall-Stability and Flow (2)	$340
Retained Tensile Strength (3)	$340
Bulk SpG-Cores (2)	$30 each core
Concrete Compressive Strength (4)	$27 each cylinder
Concrete Compressive Strength (6)	$27 each cylinder
Rip-Rap SpG	$90
Rip-Rap Percentage Wear	$149

501.3 These Additional Services Rates are valid for the duration of the Project and include salary costs, equipment, overhead, administration and profit. For Additional Services of sub-consultants, the City shall compensate the Consultant a multiple of **one and five hundredths (1.05)** times the amounts billed to the Consultant for such services, which multiple has been included in the Additional Services fees shown herein.

ARTICLE 502: REIMBURSABLE EXPENSES

502.1 The following Reimbursable Expenses are allowed:

REIMBURSABLE EXPENSE
None authorized or anticipated as of the date of this Agreement.

502.2 For Reimbursable Expenses of the Consultant, the City shall compensate the Consultant a multiple of **one and five hundredths (1.05)** times the actual direct costs incurred by the Consultant. The multiplier includes all compensation for overhead and profit.

502.3 Reimbursable Expenses are limited to specific pre-authorized items or services purchased from third parties to this Agreement, dedicated to only this Project. Additions to the above allowed Reimbursable Expenses may only be granted as a written amendment to this Agreement.

END OF EXHIBIT "E"

EXHIBIT "F"

KEY PERSONNEL LIST

ARTICLE 600: CITY PERSONNEL

600.1 CITY REPRESENTATIVE: Jeff Galambas, P.E.

ARTICLE 601: CONSULTANT'S PROJECT STAFF

601.1 The following personnel will be assigned by to work on the Project. Any changes require City approval.

601.1.1 CONSULTANT REPRESENTATIVE (who may also be one of the following staff): Tony Colagiovanni, PE

601.1.2 CONSTRUCTION COORDINATOR: TBD
601.1.3 CONSTRUCTION INSPECTOR: Wade Langsev
601.1.4 DOCUMENT ADMINISTRATOR: Tristyn Bowman
601.1.5 OTHER PERSONNEL: Mai Crumley (Scheduler)

601.1.6 RESPONSIBLE IN CHARGE PERSON (Mandatory under NRS 338 Construction Manager as Agent, who may also be one of the above staff)
List name of individual Architect, individual Engineer, or Contractor company name as licensed: Tony Colagiovanni, P.E.
List Architect, Engineer, or Contractor license number: 14844

ARTICLE 602: CONSULTANT'S SUBCONSULTANTS

The following subconsultants will be contracted with and utilized by the Consultant to work on the Project. Any changes require City approval. All work will be performed by the Consultant's employees or the following subconsultants:

602.1.1 MATERIAL TESTING: Aztech Inspection and Testing

602.1.2 ENVIRONMENTAL MONITORING:

602.1.3 CIVIL ENGINEER:

602.1.4 STRUCTURAL ENGINEER:

602.1.5 MECHANICAL ENGINEER:

602.1.6 ELECTRICAL ENGINEER:

602.1.7 LANDSCAPE DESIGN:

602.1.8 COST ESTIMATOR:

602.1.9 GEOTECHNICAL ENGINEER:

602.1.10 LAND SURVEYOR:

END OF EXHIBIT "F"

EXHIBIT "G"

CERTIFICATE

DISCLOSURE OF OWNERSHIP/PRINCIPALS

1. **Definitions**

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

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

2. **Policy**

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

3. **Instructions**

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

4. **Incorporation**

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

Block 1 Contracting Entity	Block 2 Description
CH2M HILL, INC.	Construction management services for the Bonanza Trail Phase 2 Project
Address: 2485 Village View Dr., Suite 350	
Telephone: 702-369-6175	
EIN: 59-0918189	RFP#

Block 3 — *Type of Business*

☐ Individual ☐ Partnership ☐ Limited Liability Company X Corporation ☐ Trust
☐ Other

CERTIFICATE – DISCLOSURE OF OWNERSHIP/PRINCIPALS
(CONTINUED)

Block 4 Disclosure of Ownership and Principals
In the space below, the Contracting Entity must disclose all principals (including partners) of the Contracting Entity, as well as persons or entities holding more than one-percent (1%) ownership interest in the Contracting Entity.

	FULL NAME/TITLE	BUSINESS ADDRESS	BUSINESS PHONE
1.	Refer to attached listing of officers & directors. Firm is employee owned. No persons or entities own more than 1% of ownership interest.	9191 S. Jamaica St., Englewood, CO 80112	303-771-0900

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

Block 5 DISCLOSURE OF OWNERSHIP AND PRINCIPALS – ALTERNATE

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

Name of Attached Document: N/A

Date of Attached Document: N/A Number of Pages: N/A

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

BARDIA NEZHATI
Name

8/26/10
Date

Subscribed and sworn to before me this 26th day of August, 2010

S. Brummett

S. BRUMMETT
NOTARY PUBLIC
STATE OF NEVADA
APPT. No. 03-86118-1
MY APPT. EXPIRES JUNE 24, 2014

CH2M HILL Legal Entities - List of Active Officers and Directors 8/26/2010

CH2M HILL, INC.

Director	Title
Dehn, William T.	BOARD OF DIRECTORS
	PRESIDENT
McLean, Margaret B.	BOARD OF DIRECTORS
	SECRETARY
	VICE PRESIDENT
Sentec, Melanie Catherine	BOARD OF DIRECTORS
	SENIOR VICE PRESIDENT
	CHIEF FINANCIAL OFFICER
Bailey, Robert W.	SENIOR VICE PRESIDENT
Brune, Frederick M.	SENIOR VICE PRESIDENT
Card, Robert G.	SENIOR VICE PRESIDENT
Fallon, Mark D.	SENIOR VICE PRESIDENT
Gelman, Stephen R.	SENIOR VICE PRESIDENT
Lasswell, Mark A.	SENIOR VICE PRESIDENT
Lupia, Eugene A.	SENIOR VICE PRESIDENT
McIntire, Lee A.	SENIOR VICE PRESIDENT
McKelvy, Michael E.	SENIOR VICE PRESIDENT
Spears, Mark S.	SENIOR VICE PRESIDENT
Arnold, Julie T.	ASSISTANT SECRETARY
Hill, Sally A.	ASSISTANT SECRETARY
Jatt, Cheryl L.	ASSISTANT SECRETARY
Shelton, Brian R.	TREASURER
	VICE PRESIDENT
Shea, JoAnn	CONTROLLER
	VICE PRESIDENT
Benson, Jr., Philip C.	VICE PRESIDENT
Dieniulis, Susan M.	VICE PRESIDENT
Galloway, Lori	VICE PRESIDENT
Inklebarger, Randy	VICE PRESIDENT
Jeffcoat, W. Blakely	VICE PRESIDENT
Johnson, Lloyd W.	VICE PRESIDENT
Ruhl, Terry A.	VICE PRESIDENT
Alderson, Brack	ASSISTANT VICE PRESIDENT
Barber, Scott J.	ASSISTANT VICE PRESIDENT
Bauer-Martinez, John A.	ASSISTANT VICE PRESIDENT
Brubaker, Gregory F.	ASSISTANT VICE PRESIDENT
Crandall, Charles N.	ASSISTANT VICE PRESIDENT
Heinemann, Thomas J	ASSISTANT VICE PRESIDENT
Higgins, Thomas E.	ASSISTANT VICE PRESIDENT
Lathen, Robert L.	ASSISTANT VICE PRESIDENT
Lehnen, Jeffrey D.	ASSISTANT VICE PRESIDENT
Mattheiss, Bruce	ASSISTANT VICE PRESIDENT
Orlowski, Thomas C.	ASSISTANT VICE PRESIDENT
Wheale, Robert W.	ASSISTANT VICE PRESIDENT

City of Las Vegas Agenda Item No.: **43.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of award of Agreement No. 110036-DC, Prime Design Services for Main Street Improvements US 95 to Owens - Department of Public Works - Award recommended to: PARSONS TRANSPORTATION GROUP, INC. ($461,707.60 - Road and Flood Capital Projects Fund) - Ward 5 (Barlow)

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☒ **Budget Funds Available**
Amount: $461,707.60
Funding Source: Road and Flood CPF
Dept./Division: Public Works

PURPOSE/BACKGROUND:
This agreement provides for design services for alternative analysis and interim configuration of Main Street and pavement section determination, complete roadway design including striping, signage grading, bus turnouts, left and right turn lanes, new pedestrian ramps with a safety railing, streetlight and traffic signal design. This item is exempt from the competitive bidding process pursuant to NRS 332.115.1(b), Professional Services.

PCC: D. Collins
POC: Raymond Herwig - (702) 789-2000

RECOMMENDATION:
That City Council approve award of Agreement No. 110036-DC, Prime Design Services for Main Street Improvements US 95 to Owens to Parsons Transportation Group, Inc. in the amount of $461,707.60. Authority to execute the Agreement is given to the Purchasing Manager per R-48-2006.

BACKUP DOCUMENTATION:
1. Agreement No. 110036-DC
2. Certificate - Disclosure of Ownership/Principals

PRIME DESIGN SERVICES AGREEMENT
FOR
MAIN STREET IMPROVEMENTS - US95 TO OWENS

THIS AGREEMENT is made and entered into this _____ day of _____, _____, by and between the **CITY OF LAS VEGAS**, a municipal corporation within the State of Nevada (herein the "City") whose address is **400 Stewart Avenue, Las Vegas, Nevada 89101**, and fax number is **(702) 382-3232**, and **PARSONS TRANSPORTATION GROUP INC.**, (the "Consultant"), a **Corporation**, whose address is **6795 Edmond St. Suite 150 Suite 150, Las Vegas, NV 89118**, and fax number is **(702) 789-2000**.

WITNESSETH:

WHEREAS, the City intends to construct the **Main Street** Improvements - US95 to Owens (herein the "Project"); and

WHEREAS, the City desires to retain the Consultant who will be responsible for providing the professional services more fully described below and in the exhibits attached hereto; and

NOW, THEREFORE, in consideration of the above premises, the parties hereto agree to the following terms, conditions and covenants set forth in Sections One through Ten hereof:

SECTION ONE
CONSULTANT RESPONSIBILITIES

1.01 ***Description of Consultant's Services.*** For the compensation set forth in Section Seven, the Consultant hereby agrees to perform the basic services set forth in the Scope of Services, **Exhibit "A"** attached hereto and incorporated herein as a part of this Agreement and, if so requested, the additional services set forth in the Additional Compensation, **Exhibit "E"** attached hereto and incorporated herein as a part of this Agreement and to provide the submittals described in the Required Submittals **Exhibit "B,"** attached hereto.

1.02 ***Performance Standards.*** In performing the services set forth in this Agreement, the Consultant shall follow the practices consistent with the generally accepted standards in the profession of the services being provided to the City pursuant to this Agreement.

1.03 ***Document Review.*** The Consultant shall be responsible for reviewing each document prepared by the Consultant and its subconsultants including, without limitation, the plans, drawings and specifications for the purpose of ensuring that such documents are technically sound, in conformance with applicable federal, state and local laws and other regulations, and do not violate or infringe upon any patent rights.

1.04 ***Waiver.*** The City's approval of any documents or services furnished by the Consultant shall not in any way relieve the Consultant of responsibility for the professional and technical accuracy of its documents or services. The City's review, approval, acceptance or payment for any of the Consultant's services shall not be construed to operate as a waiver of any rights enjoyed by the City under this Agreement or of any cause of action arising out of the performance of this Agreement. The Consultant shall remain liable for any damages to the City caused by the Consultant's negligent act or omission committed in the performance of this Agreement.

1.05 ***Designation of Consultant's Representative.*** The Consultant's representative is the individual identified in the Key Personnel List, **Exhibit "F"** attached hereto (the "Consultant Representative") to act in that capacity, who shall be responsible for the services required under this Agreement. The services specified by this Agreement shall be performed by the personnel identified in the Key Personnel List provided that such associates and employees perform under the personal supervision of the Consultant Representative.

If any person or subconsultant who is expected to provide any of the services required under this Agreement is objectionable to the City for any reason, the Consultant shall, without additional compensation, replace such person or subconsultant with someone acceptable to the City.

If the Consultant's personnel are unable to complete their responsibilities for any reason under this Agreement, or the Consultant desires for any reason to substitute personnel assigned to the Project, the Consultant agrees to obtain the approval of the City for the substitution. The City shall not unreasonably deny approval unless the City adjudges the substitution not be in the interest of the City or the Project.

If the Consultant fails to make an acceptable replacement within thirty (30) days, the City may terminate this Agreement for default as provided in Section 10.03 of this Agreement.

1.06 ***Correspondence Review.*** The Consultant shall furnish the City Representative copies of each correspondence, if any, sent to any regulatory agencies, for approval and review prior to mailing such correspondence.

1.07 ***Cooperation with the City.*** The Consultant agrees that its officers, associates, employees and subconsultants will cooperate with the City in providing the services under this Agreement and will be, with advance notice, available for consultation with the City at such reasonable times as to not conflict with the City's other responsibilities.

1.08 ***Responsibility for Construction Document Revisions.***

A. ***Applicability.*** The Consultant's responsibility described in this Section applies only if the Consultant is responsible for providing a construction cost estimate and preparing construction documents for the Project.

SECTION TWO
CITY RESPONSIBILITIES

2.01 ***City Representative.*** The Director of Public Works or his authorized representative identified in the Key Personnel List is hereby designated as the City's representative (the "City Representative") with respect to this Agreement. The City Representative shall have complete authority to transmit instructions, receive information, interpret and define the City's policies and decisions with respect to the services of the Consultant. The City Representative is not authorized to change or waive any of the provisions set forth in Sections 1.01 through 10.24 of this Agreement.

2.02 ***Review of Consultant's Services and Documents.*** The services to be performed by the Consultant shall be subject to periodic review by the City Representative. To prevent an unreasonable delay in the Project, the City Representative will endeavor to examine and comment in writing on the documents furnished by the Consultant including, without limitation, the plans, drawings, specifications, test results, evaluations, and reports within twenty-one (21) days of receipt of such documents, unless the Contract provides for a different review time with respect to the document.

2.03 ***Access to Records.*** The City shall, without charge, furnish a copy to, or make available for examination or use by, the Consultant, as it may request, any documents and data which the City has available including, without limitation, reports, maps, plans, specifications, surveys, records, ordinances, codes, regulations, and other documents related to the services required under this Agreement. The City shall assist the Consultant in obtaining data and documents from public agencies and from private citizens and business firms whenever the City determines that such material is necessary for the completion of the services required by this Agreement.

2.04 ***Cooperation with Consultant.*** The City agrees that its officers and employees will cooperate with the Consultant in the performance of this Agreement and will be, with advance notice, available for consultation with the Consultant at such reasonable times as to not conflict with the Consultant's other responsibilities. The City shall provide access to the Consultant on to the Project site as may be required to perform the services under this Agreement.

SECTION THREE
CHANGES TO CONSULTANT'S SERVICES

3.01 ***Requested Changes.*** The City may at any time, by written order, make a change in the services to be performed by the Consultant under this Agreement.

3.02 ***Adjustment of Compensation.*** If the change requested by the City causes an increase or decrease in the cost or time required to perform any of the services required under this Agreement, an equitable adjustment shall be made in the compensation to be paid to the Consultant under Section Seven, or in the performance schedule under Section Eight, or both, and this Agreement shall be modified in writing accordingly. Each claim for adjustment under this Section must be asserted in writing within thirty (30) days from the date of receipt by the Consultant of written notification of the change, unless the City grants in writing an extension. Provided proper notice has been given to the City as required herein, the claim for an adjustment shall be handled pursuant to the provisions of 10.20B and 10.20C of this Agreement. The failure to provide notification of the claim within the time required herein shall constitute a waiver of the right to seek any equitable or legal adjustment in compensation with respect to that change.

SECTION FOUR
ADDITIONAL SERVICES OF CONSULTANT

4.01 ***Additional Services.*** The Consultant shall provide the additional services described in the Additional Compensation if, and only if, so requested in writing by the City. Payment for the additional services will be made to the Consultant in accordance with Section Seven of this Agreement.

4.02 ***Attendance at Meetings or Public Hearings.*** The Consultant shall notify the City in advance of any additional costs which may be incurred prior to attending any meetings or public hearings as may be necessary in connection with the services performed by the Consultant under this Agreement.

SECTION FIVE
SUBCONSULTANT AGREEMENT

5.01 ***Subconsultant Provisions.*** If, with the approval of the City as required pursuant to Section 10.07, the Consultant enters into an agreement with a subconsultant for the performance of any of its obligations under this Agreement, the Consultant agrees to include in each subconsultant agreement a provision that:

(i) the Consultant agrees to pay the subconsultant when paid by the City for that portion of the services provided to the City and that no liability arises on the part of the Consultant for payment of the subconsultant services until payment has been made by the City. If the City has paid the Consultant for the subconsultant services, the subconsultant's only recourse is against the Consultant and not against the City, either through the institution of legal or equitable action or the attachment of any lien,

(ii) the subconsultant shall have no more rights against the City than that of the Consultant,

(iii) the subconsultant agrees to be bound by the terms, conditions and obligation of this Agreement unless the City has approved any deviation, change or modification in writing, and

(iv) unless otherwise approved in writing by the City Representative, the subconsultant shall obtain and maintain professional liability insurance (Errors and Omissions coverage) in connection with the subconsultant services in an amount equal to that required of the Consultant in this Agreement.

SECTION SIX
TERM OF AGREEMENT

6.01 ***Term.*** This Agreement shall commence on the day it is approved by the City (which date shall be inserted in the introductory paragraph of this Agreement) and shall remain in force and effect until the Project is completed unless terminated earlier pursuant to Section 10.02 or 10.03 of this Agreement. Such termination shall not release either party from any of its continuing obligations under this Agreement.

6.02 ***Disputes.*** This Section shall not be construed to preclude the filing of any dispute arising out of the performance of this Agreement or in connection with the subject matter hereof, nor shall this Section be construed to change the date or the time on which a cause of action arising out of the performance of this Agreement or in connection with the subject matter hereof, would otherwise accrue under the statutes of limitation or doctrines of law.

SECTION SEVEN
COMPENSATION AND TERMS OF PAYMENT

7.01 ***Compensation: Basic Services.*** For the services to be performed by the Consultant under this Agreement and set forth in the Scope of Services, the City agrees to pay the Consultant the fee in the amount identified in the Fee Breakdown, **Exhibit "D"** attached hereto, pursuant to invoices submitted in accordance with Section 7.04 of this Agreement.

7.02 ***Compensation: Additional Services.*** For any services not set forth in the Scope of Services, the City shall pay to the Consultant either a lump sum fee, or an hourly fee based on the hourly labor rate schedule set forth in the Additional Compensation, whichever is agreed to by the parties, provided prior written approval for such services is given by the City Representative.

7.03 ***Compensation: Reimbursable Expenses.*** The Consultant agrees that all of its direct and indirect expenses are included in the fee for Basic Services and the agreed upon compensation for any Additional Services, except as may be specifically allowed for reimbursable expenses as part of the Additional Compensation.

7.04 ***Payment Invoicing.*** The Consultant may submit an invoice for payment for the services provided by the Consultant based on the manner or method of payment set forth in the Fee Breakdown. The City Representative will notify the Consultant of any problems regarding the invoice within fourteen (14) days from receipt thereof. If no response is received from the City Representative within the aforementioned period of time, the Consultant may expect payment within a period of (60) days from the date of receipt by the City. If payment has not been received within

the sixty (60) days, the Consultant agrees to contact the City Representative to resolve the problem causing the delay. If resolution of the delay is not satisfactory to the Consultant, the Consultant may submit a claim pursuant to Section 10.20A of this Agreement.

7.05 ***Right to Off-Set.*** The City Representative may subtract or offset from any unpaid invoice from the Consultant any claims which the City may have for failure of the Consultant to comply with the terms, conditions or covenants of this Agreement, or any damages, costs and expenses caused by, resulting from, or arising out of the negligent act or omission of the Consultant in the performance of the services under this Agreement including, without limitation, any error or deficiency in the report or other documents prepared by the Consultant. The City Representative shall provide a written statement to the Consultant of the off-set which has been subtracted from any payment to the Consultant along with appropriate documentation and receipts, if any, and a description of the failure, error or deficiency attributed to the Consultant. If the Consultant disputes the right or amount of the off-set made by the City, the Consultant may file a claim pursuant to Section 10.20 of this Agreement.

7.06 ***Final Payment.*** Upon completion of the services required under this Agreement, and acceptance thereof by the City (which acceptance will not be unreasonably withheld), the Consultant will, within sixty (60) days of the City's acceptance, be paid the balance of any money due for such services.

SECTION EIGHT
PERFORMANCE SCHEDULE

8.01 ***Performance Schedule.*** The Consultant shall perform and complete the services required under this Agreement according to the schedule (the "Performance Schedule") set forth in the Schedule of Performance, **Exhibit "C"** attached hereto. If the performance of services is delayed or submittals are not delivered in the time period as outlined in the Performance Schedule, the Consultant shall notify the City Representative in writing of the reasons for the delay and include a plan which brings the Consultant's performance into compliance with the Performance Schedule.

SECTION NINE
AUDIT: ACCESS TO RECORDS

9.01 ***Records.*** The City shall have the right to audit the Consultant's books, records and other documents directly pertinent to the performance of this Agreement. The Consultant agrees to maintain books, records and other documents directly pertinent to performance of this Agreement in accordance with generally accepted accounting principles and practices. The Consultant shall also maintain the financial information and data used to prepare or support the invoices submitted to the City. Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards, procedures and guidelines of the City, or its designated representative. The City, or its duly authorized representatives, shall have access to such books, records, and documents for the purpose of inspection, audit and copying. The Consultant will provide proper facilities for such access and inspection.

9.02 ***Disclosure.*** The Consultant shall be afforded the opportunity for an audit entrance and exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report, and that the final audit report will include the written comments, if any, of the Consultant.

9.03 ***Period of Maintenance.*** The books, records and other documents under Sections 9.01 and 9.02 of this Agreement shall be maintained for three (3) years after the date of the final payment for the services under this Agreement. In addition, those records and other documents which relate to any arbitration, litigation or the settlement of any claim arising out of this Agreement, or to which an audit exception has been taken, shall be maintained and made available until three (3) years after the date that the arbitration, litigation or exception has been resolved.

9.04 ***Subcontract Provisions.*** The Consultant agrees to include Sections 9.01 through 9.03 of this Agreement in all its subcontracts directly related to performance of services specified in this Agreement which are in excess of $10,000.

SECTION TEN
MISCELLANEOUS PROVISIONS

10.01 ***Suspension.*** The City may suspend, without cause, the performance by the Consultant under this Agreement for such period of time as the City, in its sole discretion, may prescribe by providing written notice to the Consultant. The suspension shall be effective as of the date set forth in the written notice. With such suspension, the City agrees to pay to the Consultant the amount of compensation, based on percentage of completion of the Project, earned as of the effective date of suspension less all previous payments. The Consultant shall not provide any further services under this Agreement after the effective date of suspension until otherwise notified in writing by the City. In no event shall the City be liable to the Consultant for services in excess of the percentage of the Project completed at the time of suspension.

If, after notice to resume performance has been given by the City, the suspension was for a period in excess of ninety (90) days, which has resulted in an increase in the performance of the Agreement to the Consultant and:

(i) the Consultant was not a contributing cause for the suspension,
(ii) the Consultant has not received an equitable adjustment under another provision of this Agreement, and
(iii) the Consultant could not mitigate the increase in the performance cost,

then the Consultant's fee shall be reviewed by the City and, if justified, equitably adjusted to provide for any additional expenses resulting from the suspension.

10.02. ***Termination for Convenience.*** The City reserves the right to terminate this Agreement without cause or default on the part of the Consultant with ten (10) days' prior written notification to the Consultant served pursuant to Section 10.18 of this Agreement. In the event of termination, without cause or default, the City agrees to pay to the Consultant the reasonable value for the services performed as of the date that notification of termination is received by the Consultant. In no event shall the City be liable to the Consultant for services in excess of the percentage completed at the time of termination.

10.03 ***Termination for Cause or Other Resolution.***

A. ***Default.*** The occurrence of any of the following events shall constitute a default by the Consultant hereunder (herein "Event of Default"). If, during the term of this Agreement, the Consultant:

(i) defaults in the due observance and performance of any term, condition or covenant contained in this Agreement,

(ii) (a) voluntarily terminates operations or consent to the appointment of a receiver, trustee or liquidator of the Consultant for all or a substantial portion of its assets, (b) is adjudicated bankrupt or insolvent or files a voluntary petition in bankruptcy, or admits in writing to the inability to pay its debts as they become due, (c) make a general assignment for the benefit of creditors, (d) file a petition or answer seeking reorganization or an arrangement with creditors or take advantage of any insolvency law, or (e) if action shall be taken by the Consultant for the purpose of effecting any of the foregoing,

(iii) allows any warrant, execution or other writ to be issued or levied upon any property or assets of the Consultant which continues unvacated and in effect for a period of thirty (30) days, or

(iv) fails, in the judgment of the City, to provide the services hereunder properly and with proper dispatch in accordance with the time schedule set forth in this Agreement,

and the default continues five (5) days after written notice is given to the Consultant pursuant to Section 10.18.

B. ***City's Rights.*** Upon the occurrence of an Event of Default, and without prejudice to any other right or remedy it may have at law or equity, the City may:

(i) terminate this Agreement, suspend payment of all pending invoices otherwise due to the Consultant hereunder, and finish this Agreement by such means as deemed appropriate by the City, reserving the right to deduct from any balance due Consultant the cost of completing this Agreement. In the event the cost of finishing the Consultant's performance of this Agreement exceeds the balance due the Consultant, the excess shall be paid by the Consultant to the City within five (5) days of invoicing by the City,

(ii) terminate this Agreement, and the obligations imposed hereunder, including the obligation of any further payment for the services of the Consultant except for the reasonable value for the services performed to the date of termination, or

(iii) Continue with performance by the Consultant and serve within a reasonable time after completion of the Agreement a request to arbitrate the Event of Default as a claim or dispute pursuant to the arbitration procedure set forth in Section 10.20.

In the event that the City elects to implement (i) above, the costs and expenses of completing this Agreement shall be computed and audited by the City's designated representative. The audit shall be conducted in accordance with generally accepted accounting principles and the cost thereof shall be paid by the Consultant.

10.04 ***Ownership of Documents.***

A. ***Architectural Works.*** To the extent that the Consultant's services involves the design of an architectural work as defined herein,

the Consultant shall retain all common law and statutory rights of ownership, including copyrights, to the drawings and specifications prepared by the Consultant for this Project. The Consultant is deemed to be the author of the drawings and specifications as instruments of service to the City. Notwithstanding the foregoing, the Consultant hereby grants to the City the right to use (including the right of reproduction and use in the creation of new documents) the drawings and specifications for the purpose of completing the Project or for any subsequent maintenance, repair, renovation, remodeling or addition thereto. The rights granted herein to the City shall extend and include any new consultant which the City may retain for the aforementioned purposes. The Consultant hereby releases the City, and any new consultant retained by the City for the aforementioned purposes, from any and all claims in connection with the use or reproduction of the drawings and specifications. The Consultant agrees to execute such documents reasonably deemed necessary by the City to implement the rights granted to the City pursuant to this subsection including written permission to make changes or modifications to the plans.

B. ***Other Works.*** To the extent that the Consultant's services does not involve the design of an architectural work, the City shall have all common law and statutory rights of ownership, including copyrights, to the plans, drawings, specifications and other documents (including, without limitation, design concepts and sketches, test results, evaluations, reports and studies, excepting any proprietary forms, templates, and checklists specifically listed for City ownership exclusion elsewhere in this Agreement) (collectively herein the "Documents") prepared or assembled by the Consultant, or any of its subconsultants, for this Project. The Consultant hereby releases the City, and any new consultant retained by the City from any and all claims in connection with the use or reproduction of the Documents. The Consultant agrees to execute such documents reasonably deemed necessary by the City to implement the rights granted to the City pursuant to this subsection including written permission to make changes or modifications to the plans. The Consultant shall be entitled to retain a reproducible copy of the documents furnished to the City.

C. ***Definition of Architectural Work.*** For purposes of this Agreement, "architectural work" shall have the same definition as set forth in Architectural Works Copyright Protection Act of 1990, P. L. 101-650, Title VII, Section 70 et. seq.

D. ***Delivery of Documents.*** In the event of the completion, suspension or termination of this Agreement, the City shall have the right to require delivery of any and all of the plans, drawings, specifications, and all other documents (including, without limitation, design concepts and sketches, test results, evaluations, reports and studies), including the magnetic or electronic media of the aforementioned documents, not in the possession of the City.

E. ***Confidentiality.*** The plans, drawings, specifications and other documents (including, without limitation, design concepts and sketches, test results, evaluations, reports and studies) (including the magnetic or electronic media of the aforementioned documents) which are prepared or assembled by the Consultant, or its subconsultants, under this Agreement shall not be made available to any individual or organization without the prior written consent of the City. Except for marketing pamphlets and submittals to clients, the Consultant shall not publish, submit for publication, or publicly display the Project without the written consent of the City. The obligations of confidentiality shall survive the termination of this Agreement.

F. ***Contractual Rights.*** Notwithstanding the provisions of 10.04 A above, the City is hereby licensed to use all design concepts developed by the Consultant and subconsultants under this Agreement, including the right to construct derivative works of the Project, and to use the design concepts for other projects of the City. The design concepts include, but are not limited to, the form, aesthetic appeal, site layout, the arrangement and composition of spaces and elements, the use of colors and materials, system designs, construction methods and interior design.

10.05 ***Insurance.*** The Consultant shall procure and maintain, at its own expense, during the entire term of the Agreement, the following insurances:

A. ***Worker's Compensation Insurance.*** This insurance shall protect the Consultant and the City from employee claims based on job-related sickness, disease, or accident.

B. ***Commercial General Liability Insurance.*** This insurance shall protect the Consultant, its agents and vehicles used to provide the services required under this Agreement from claims of personal injury (including death) and property damage. Such coverage shall be in a minimum amount of $1,000,000 combined single limit for the period of time covered by this Agreement. The Consultant's general liability insurance policies shall be endorsed to include the City as an additional insured.

C. ***Commercial Automobile Liability Insurance.*** This insurance shall protect the Consultant from claims 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. The Consultant's automobile liability insurance policies shall be endorsed to include the City as an additional insured.

D. ***Professional Liability Insurance (Errors and Omissions Coverage).*** This insurance shall protect the Consultant from claims arising out of performance of professional services caused by a negligent act, error, or omission for which the insured is legally liable. Such coverage shall be in a minimum amount of $1,000,000 for the period of time covered by this Agreement.

E. ***Cancellation or Modification of Coverage.*** The Consultant's Commercial General Liability and Professional Liability Insurance Policies shall automatically include or be endorsed to cover the Consultant's contractual liability to the City under this Agreement, and with respect to its Commercial General Liability Policy, to waive subrogation against the City, its officers, agents, servants and employees. The policies shall provide that the City will be given thirty (30) days' notice in writing of any cancellation of, or material change in, the policies.

F. ***Certificates and Endorsements.*** 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. All deductibles and self-insured retentions shall be fully disclosed in the Certificate of Insurance. No deductible or self-insured retention may exceed $25,000 without the written approval of the City. The Consultant shall deliver to the City's authorized designated representative named in **Exhibit "B"** (Required Submittals) certificates indicating that such insurance is in effect before any services are provided under this Agreement and renewal certificates not less than 30 days prior to the expiration date of any policy.

G. ***Period of Coverage.*** If the insurance coverage is underwritten on a "claims made" basis, the retroactive date shall be prior to or coincident with the date of this Agreement and the Certificate of Insurance shall state that coverage is "claims made" and the retroactive date. Upon availability, the Consultant shall maintain coverage for the duration of this Agreement and for two years following completion of this Agreement.

10.06 ***Indemnity.*** Notwithstanding any of the insurance requirements set forth in Section 10.05, and not in lieu thereof, the Consultant shall defend, indemnify and hold the City, its officers, employees and agents (herein the "Indemnitees"), harmless from any and all claims (including, without limitation, patent infringement and copyrights claims), damages, losses, expenses, suits, actions, decrees, judgments, arbitration awards or any other form of liability (including, without limitation, reasonable attorney fees and court costs) (collectively herein the "Claims") which the Indemnitees may suffer as a result of, by reason of, or as a consequence of, the negligent errors, omissions, recklessness, intentional misconduct of the Consultant, its subcontractors, agents or anyone employed by the Consultant, its subcontractors or agents, in the performance of this Agreement.

As part of its obligation hereunder, the Consultant shall, at is own expense, defend the Indemnitees against the Claims which may be brought against them, or any of them, as a result of, by reason of, or as a consequence of, the negligent act or omission of the Consultant, its subcontractors or agents, for and against which the Consultant is obligated to indemnify the Indemnitees, unless the Indemnitees, or any of them elect to conduct their own defense which, in such case, shall not relieve the Consultant of its obligation of indemnification set forth herein. If the Consultant fails to do so, the Indemnitees shall have the right, but not the obligation, to defend the same and charge the direct and incidental costs of such defense (including attorney fees and court costs) against the Consultant which is proportionate to the liability of the Consultant.

If the professional liability insurer of the Consultant does not so defend the Indemnitees and the Consultant is adjudicated to be liable by a trier of fact, the trier of fact shall award reasonable attorney's fees to be paid to the Indemnitees by the Consultant in an amount which is proportionate to the liability of the Consultant. As used in this Section, "agents" means those persons who are directly involved in and acting on behalf of the City in furtherance of this Agreement or the public work to which this Agreement pertains.

10.07 ***Assignment.*** The City and the Consultant each bind itself and its partners, successors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement, except the Consultant shall not assign, sublet or transfer any obligation or benefit under this Agreement without the written consent of the City. Nothing contained herein shall be construed as creating any personal liability on the part of any officer or agent of the City.

10.08 ***Waiver.*** No consent or waiver, express or implied, by either party to this Agreement, or of any breach or default by the other in the performance of any obligations hereunder, shall be deemed or construed to be a consent or waiver of any other breach or default by such party hereunder. Failure on the part of any party hereto to complain of any act, or failure to act of the other party, or to declare that other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder. Inspection, payment, or tentative approval or acceptance by the City or the failure of the City to perform any inspection hereunder, shall not constitute a final acceptance of the work or any part thereof and shall not release the Consultant of any of its obligations hereunder.

10.09 ***Consultant Warranties.*** The Consultant hereby represents and warrants that:

(i) it is financially solvent, able to pay its debts as they mature, and is possessed of sufficient working capital to complete this Agreement; that it is experienced, competent, qualified and able to furnish the plant, tools, materials, supplies, equipment and labor which is used to perform the services contemplated by this Agreement, and that it is authorized to do business in the City of Las Vegas and the State of Nevada,

(ii) it holds a license, permit or other special license to perform the services included in this Agreement, as required by law, or employs or works under the general supervision of the holder of such license, permit or special license,

(iii) its computer hardware, software, and firmware will continue functioning without interruption, and will continue to accurately process date, time, and data necessary to the performance of this Agreement, and

(iv) it has, pursuant to the requirements of Resolution 79-99 adopted by the City Council on August 4, 1999, (effective October 1, 1999), as amended by resolution 105-99 (adopted by the City Council on November 17, 1999), disclosed on the form attached hereto as **Exhibit "G"** (Disclosure of Ownership/Principals) all of the principals, including partners, of the Consultant, as well as all persons and entities holding more than a one percent (1%) interest in the Consultant or any principals of the Consultant. If the Consultant, or its principals or partners, are required to provide disclosure under federal law (such as Securities and Exchange Commission or the Employee Retirement Income Act) and current copies of such federal disclosures are attached to **Exhibit "G,"** the requirements of this Section shall be deemed satisfied. During the term of this Agreement, the Consultant shall notify the City in writing of any material change in the above disclosure on **Exhibit "G"** within fifteen (15) days of such change.

10.10 ***Consultant's Employees.*** The Consultant shall be responsible for maintaining satisfactory standards of competency, conduct and integrity, of personnel assigned to the Project, and shall be responsible for taking such disciplinary action with respect to such personnel as may be necessary. In the event the Consultant fails to remove any employee from the work of this Agreement whom the City deems incompetent, careless or insubordinate, or whose continued employment on the work is deemed by the City to be contrary to the public interest, the City reserves the right to require such removal as a condition for the continuation of this Agreement.

10.11 ***Independent Contractor.*** It is hereby expressly agreed and understood that in the performance of the services required herein, the Consultant and any other person employed by him hereunder shall be deemed to be an independent contractor and not an agent or employee of the City.

10.12 ***Applicable Law.*** This Agreement shall be construed and interpreted in accordance with the laws of the State of Nevada.

10.13 ***Compliance with Laws.*** The Consultant shall in the performance of its obligations hereunder comply with all applicable laws, rules and regulations of all governmental authorities having jurisdiction over the performance of this Agreement including, without limitation, the Federal Occupational Health and Safety Act and all state and federal laws prohibiting and/or related to discrimination by reason of race, sex, age, religion or national origin.

10.14 ***Severability.*** In the event that any provisions of this Agreement shall be held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain valid and binding on the parties hereto.

10.15 ***Confidentiality.*** The Consultant shall treat the information relating to the Project, which has been produced by the Consultant or provided by the City, as confidential and proprietary information of the City and shall not permit its release to other parties or make any public announcement or publicity release without the City's written authorization. The Consultant shall also require each subconsultant to comply with this requirement. The submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication relieving the Consultant of its confidentiality obligation imposed herein.

10.16 ***Site Inspection.*** The Consultant represents that it has visited the location of the Project and has satisfied itself as to the general condition thereof and that the Consultant's compensation as provided for in the Agreement is just and reasonable compensation for performance hereunder including reasonably foreseen and foreseeable risks, hazards and difficulties in connection therewith based on such above-ground observations.

10.17 ***Modification.*** All modification or amendments to this Agreement are null and void unless reduced in writing and signed by the parties hereto.

10.18 ***Notice.*** Any written notice required to be given under Sections 1.01 through 10.24 of this Agreement shall be deemed to have been given when the written notice is (i) received by the party to whom it is directed by personal service (ii) telephonically faxed to the telephone number set forth in the introductory paragraph to this Agreement, provided confirmation of the transmission is received by the sender, or (iii) deposited with the United States Postal Service, postage prepaid, addressed to the City Representative or the Consultant Representative, whomever is the proper recipient, and mailed to the address set forth in the introductory paragraph to this Agreement.

10.19 ***Prohibition Against Contingent Fees.*** The Consultant warrants that no person or entity has been employed or retained to solicit or secure this Agreement with the Agreement or understanding that a commission, percentage, brokerage or contingent fee would be paid to that person. For breach or violation of this provision, the City shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the compensation to be paid to the Consultant, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

10.20 ***Claim or Dispute Resolution.***

A. ***Notice of Claim or Dispute.*** For each claim or dispute which the Consultant has against or with the City (except for any claim for an equitable adjustment under Section 3.02 which is subject to the 30-day limitation set forth therein), notice thereof must be submitted in writing to the City Representative within a reasonable time after the claim or dispute arises, but no later than thirty (30) days after final payment is made to the Consultant. The purpose of written notification is to place the City on notice so that proper measures can be taken to properly defend against the claim or dispute, and the failure to give such notice shall preclude the Consultant from subsequently arbitrating that particular claim or dispute pursuant to Section 10.20C of this Agreement, and the Consultant shall have no further recourse against the City. Pending a final decision on the claim or dispute under Sections 10.20B or 10.20C, the Consultant shall proceed diligently with the performance of this Agreement.

B. ***Resolution by Management.*** The City Representative and the Consultant Representative shall meet within a reasonable time after receipt of the written notice received pursuant to Section 10.20A in an attempt to resolve the claim or dispute to the mutual satisfaction of the parties. If the matter is not disposed of by mutual agreement between the City Representative and the Consultant Representative, the claim or dispute shall be decided by the Director of Public Works, whose decision shall be reduced to writing and mailed or otherwise furnished to the Consultant. The decision of the Director of Public Works shall be final and conclusive unless, within thirty (30) days after the date on which the Consultant receives its copy of such decision, the Consultant mails or otherwise furnishes to the Director of Public Works a written request to arbitrate the claim or dispute, in which event the parties shall proceed with the arbitration pursuant to provisions of Section 10.20B. The failure to make such request shall preclude the Consultant from proceeding any further on the claim or dispute, and the Consultant shall have no further recourse against the City.

C. ***Resolution by Arbitration.*** Upon receipt of the request to arbitrate authorized pursuant Section 10.03B or Section 10.20B, the City and the Consultant shall come to an agreement as to the appointment of an arbitrator for purposes of hearing the appeal. If the parties cannot reach an agreement, then each party shall select an arbitrator for purposes of the appeal, and the two shall select a third arbitrator within 20 days of their appointment. If the selected arbitrators are unable to agree upon the third arbitrator, the third arbitrator shall be selected by the American Arbitration Association or the Nevada Arbitration Association, whichever is designated by the City. Each party shall be afforded an opportunity to be heard and to offer evidence in support of or against the appeal. The decision of the arbitrator, or arbitrators, as the case may be for the determination of the appeal, shall be final, conclusive and enforceable under the laws of the State of Nevada.

D. ***Right of Consolidation.*** Any arbitration arising out of or relating to this Agreement may include, by consolidation, joinder or in any other manner, any additional party or parties who are not a party to this Agreement if so requested by the City or the Consultant. Any consent to arbitration involving an additional party or parties shall not constitute consent to arbitrate any claim or dispute not described as a part of the original arbitration unless otherwise agreed to by the parties.

E. ***Right of Joinder.*** In the event the City is named as a party to any arbitration, or the City commences an arbitration against a party other than the Consultant, which arbitration is related to, or connected with, the construction of the Project or the performance of the Consultant's services hereunder (such as, without limitation, any arbitration between the City and the Contractor awarded the contract to construct the Project), the Consultant agrees and irrevocably consents to be joined as a party in the arbitration proceeding and to be bound by any decision resulting therefrom. The decision of the arbitrator or arbitrators, as the case may be, in the arbitration to which the Consultant has been joined as a party, shall be binding and enforceable against the parties thereto under the laws of the State of Nevada.

If the Consultant is named as an additional party by the City, the Consultant shall not be entitled to any additional compensation from the City as a result of preparing for, and participating in, the arbitration.

F. ***Discovery.*** In the event of arbitration, the parties agree that all means of discovery including, but not limited to, depositions and interrogatories, will be afforded to the parties involved in the arbitration, and the appointed arbitrator shall have all authority to impose sanctions against either party for failing to comply with the rules of discovery provided under the Nevada Rules of Civil Procedure.

G. ***Award Final.*** The award rendered by the arbitrator shall be final, and judgment may be entered upon its accordance with applicable law in any court having jurisdiction thereof.

H. ***Mediation.*** Subsequent to the commencement of any arbitration pursuant to Section 10.20C, and prior to any decision arising therefrom, the parties may endeavor with written mutual consent to settle disputes by mediation in accordance with the mediation rules of the mediation service agreed by the parties. The cost of the mediation shall be shared equally by the parties.

10.21 ***Attorney Fees.*** The prevailing party in any litigation or arbitration brought to enforce the provisions of this Agreement shall be entitled to reasonable attorney fees and court costs.

10.22 ***Calendar Day.*** All references in this Agreement to days are to calendar days unless otherwise indicated.

10.23 ***Exhibits.*** All exhibits referenced in this Agreement are hereby incorporated by this reference as a part of this Agreement. Any conflict between the provisions of this Agreement and the Exhibits incorporated herein shall be governed by the provisions of this Agreement.

10.24 ***Counterparts; Electronic Delivery.*** This Agreement 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.

10.25 ***Agreement Version.*** This document incorporates the standard provisions for the City's Professional Services Agreement updated as of April 8, 2008.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

CITY OF LAS VEGAS

By _____
Kathleen C. Rainey, Manager, Purchasing & Contracts

ATTEST

_____
Beverly K. Bridges, MMC, City Clerk Date

APPROVED AS TO FORM

John S. Ridilla 8/27/10
Deputy City Attorney Date

John S. Ridilla
Deputy City Attorney

CONSULTANT

By _____
Raymond Herweg, Parsons Transportation Group Inc.,

LIST OF EXHIBITS

EXHIBIT " A " SCOPE OF SERVICES

EXHIBIT " B " REQUIRED SUBMITTALS

EXHIBIT " C " PERFORMANCE SCHEDULE

EXHIBIT " D " FEE BREAKDOWN

EXHIBIT " E " ADDITIONAL COMPENSATION

EXHIBIT " F " KEY PERSONNEL LIST

EXHIBIT " G " DISCLOSURE OF OWNERSHIP/PRINCIPALS

EXHIBIT "A"

SCOPE OF SERVICES

ARTICLE 100: GENERAL INFORMATION

100.1 Project Overview

100.1.1 Project Overview Description

The Scope of Services to be provided under the terms of this Agreement addresses the design and preparation of Contract Drawings, Special Details and Special Provisions for roadway and drainage improvements along an approximately 1 mile section of Main Street from US95 to Owens Avenue.

The project will initially include an Alternative Analysis to determine an ultimate and interim configuration of Main Street. The ultimate design will be used to determine future necessary right-of-way acquisitions. The scope of services will also include pavement section determination, complete roadway design including striping, signage grading, bus turnouts, left and right turn lanes, new pedestrian ramps with safety railing, streetlight and traffic signal design, drainage analysis, utility coordination and relocation design.

100.2 Construction Cost Budget

100.2.1 Construction Cost Budget **$7,071,900**

100.3 Project Contact Information

100.3.1 The City Engineer or their authorized representative is hereby designated as the City's Representative with respect to this Agreement. The City's Representative shall have complete authority to transmit instructions, receive information, interpret and define the City's policies and decisions with respect to the services of the Consultant. All inquiries concerning the project should be directed to the City Engineer or his authorized representative and the Consultant should not contact internal units of the City unless directed to do so. This policy is effective throughout the life of the project.

100.3.2 The Consultant's Representative is hereby designated as the Consultant's Project Manager listed in Exhibit "F", who shall be responsible for the services required under this Agreement. All of the services specified by this Agreement shall be performed by the Consultant's Representative, or by the associates and employees identified in the Consultant's proposal provided that such associates and employees perform under the personal supervision of the Consultant's Representative. All employees identified in the Consultant's cost proposal shall be subject to approval by the City's Representative. Should the Consultant's Representative, or any associate or employee, be unable to complete his or her responsibility for any reason, the Consultant will replace the employee with a qualified person approved by the City. If the Consultant fails to make a required replacement within thirty (30) days, the City may terminate this Agreement for default.

100.4 Plan Control and Standards

100.4.1 All plans, designs, specifications and estimates shall conform to the City standard practices, which are based on the latest edition of the following documents:

100.4.1.1 Policy on Geometric Design of Highways and Streets (AASHTO)
100.4.1.2 Uniform Standard Specifications for Public Works' Construction, Off-Site Improvements, Clark County Area, Nevada
100.4.1.3 Uniform Standard Drawings for Public Works' Construction, Off-Site Improvements, Clark County Area, Nevada, Volume I and Volume II
100.4.1.4 Nevada Department of Transportation (NDOT) Standard Plans for Road and Bridge Construction and NDOT Standard Specifications for Road and Bridge Construction
100.4.1.5 Manual on Uniform Traffic Control Devices
100.4.1.6 Clark County Regional Flood Control District's Hydrologic Criteria and Drainage Design Manual
100.4.1.7 Las Vegas Valley Flood Control Master Plan Update (MPU), current edition
100.4.1.8 Central Neighborhood Flood Control Master Plan, Volume I & II, March 2005
100.4.1.9 Las Vegas Valley Water District (LVVWD) Rules and Regulations
100.4.1.10 Uniform Design and Construction Standards for Water Distribution Systems, Clark County, Nevada
100.4.1.11 Design and Construction Standards for Wastewater Collection Systems, Southern Nevada
100.4.1.12 Freeway and Arterial System of Transportation (FAST) standards
100.4.1.13 Las Vegas Boulevard North Corridor Study, I-515 to Owens Avenue, May 2009.

100.4.2 The design criteria for the following agencies will also be adhered to: City of Las Vegas Sanitary Sewer Planning, Traffic Engineering, and Flood Control; Clark County Regional Flood Control District ("CCRFCD"); Nevada Department of Transportation ("NDOT"); Las Vegas Valley Water District ("LVVWD"); and local utility providers.

100.5 Changes to Scope of Services

100.5.1 If increased scope or workload is encountered, the Consultant is to notify the City in writing and receive written confirmation to proceed prior to the performance of any work related to the increased scope or workload.

100.5.2 The City Engineer or their authorized representative may at any time, only be written order, make changes which may result in an increase or decrease in the services to be performed by the Consultant. If the changes requested by the City cause an increase or decrease in the cost or time required to perform any of the services required hereunder, an equitable adjustment shall be made in the compensation to be paid to the Consultant under Section Seven, or in the time of performance under Section Eight, or both, and this Agreement shall be modified in writing accordingly. Any claim for adjustment under this Section must be asserted in writing within thirty days from the date of receipt by the Consultant of written notification of the changes to the services to be provided by the Consultant unless the City grants in writing a further period of time. Failure to assert such claim within the time limit provided herein shall constitute a waiver of any right to seek any equitable adjustment in compensation with respect to that change.

100.6 Responsibilities of the Consultant

100.6.1 The Consultant shall provide a set of Plans and Special Provisions, for the project described in Section 100.1.1, that are whole and complete, technically accurate, biddable and constructible, meeting the City's reasonable needs and expectations. All design, re-design, coordination, permitting, quality control review, meeting attendance, bid phase assistance, travel, reproduction, computer use or similar items that could reasonably be anticipated which are not limited or excluded elsewhere in this contract or listed specially in additional services, shall be provided by the Consultant for the basic services fee agreed to herein whether they are specifically listed in this scope of services or not.

100.6.2 The Consultant agrees to include in all its subcontracts related to the Project, and require the same of all subconsultant contracts at all tiers, the provisions of this Agreement related to the City's and Consultant's rights (including copyright), ownership and uses of the concepts, designs, documents, intellectual property, and tangible property.

100.6.3 Where the Consultant specifies materials and equipment by brand names, provide two or more brand names with model numbers for each item specified and state "or approved equal". Where less than two suitable brand names/model numbers are commercially available state "or approved equal" and provide required documentation per NRS requirements to support single source selection.

100.6.4 Prior to each design submittal, check all documents for technical accuracy, compliance with applicable codes and ordinances, complete incorporation of all design review comments, and coordination within and between design disciplines. Each submittal shall be in accordance with the appropriate submittal requirements listed herein. Incomplete submittals shall be rejected. All costs associated with the re-submittal shall be borne by the Consultant.

100.6.5 The Consultant shall without additional compensation correct or revise any error or deficiencies in the plans, drawings, specifications or other related documents prepared by the Consultant.

100.6.6 The Consultant shall be responsible for all coordination with its subconsultants. Each submittal to the City shall be organized by discipline and shall be thoroughly crosschecked to avoid conflicts between Consultant and subconsultant documents. Vague references to project requirements on other discipline's plans shall not be permitted. Where references to others' plans are necessary for direction, reference notes shall specifically state the drawing number or specification section, as appropriate. It shall be the Consultant's responsibility to advise each subconsultant of this requirement.

100.6.7 The professional services to be rendered by the Consultant under this Agreement shall be in conformance with applicable federal, state and local statutes, acts, rules, codes, ordinances, laws and regulations. These include but are not limited to the Americans with Disabilities Act (ADA) guidelines and requirements including conformance to any ADA provisions and guidelines that have been issued in "final form" regardless of their adoption by the Department of Justice, municipal ordinances, and any other applicable Federal, state and local acts, rules, laws or regulations.

100.6.8 All work, including but not limited to drawings, specifications, and calculations, shall be provided by the Consultant for each and every part of the Project. When complying with NRS 338.140 by listing multiple manufacturers in the specifications, the Consultant shall review

options with the City and select the most available, standard, or economical manufacturer's model to fully engineer and include in the bid documents. Should the contractor propose one of the other manufacturers listed in the specifications after award, the cost of the other listed manufacturer's affect on the documents and the construction shall be borne by the contractor, except that the Consultant shall have the duty to cooperate with the contractor in reviewing the proposal for design compliance (including the contractor provided structural calculations) and providing revisions to the Consultant's documents as required to accommodate the proposed change. Such revisions to the Consultant's documents may be an Additional Service, which shall be approved in writing by the City prior to the Consultant making any revisions and charged to the contractor by change order.

100.6.9 The Consultant acknowledges the City's requirement to incorporate the City's "Instructions to Bidders", "General Conditions" and "Division One", incorporated herein by reference, into the Contract Documents prepared for bidding for the Project covered by this Agreement. The Consultant further agrees to perform in accordance with the obligations stated in these referenced documents and agrees to include this provision in all sub-consultant contracts. The Consultant acknowledges familiarity with the City's standard format, terms and conditions of these documents and that such document examples were made available to the Consultant upon request, prior to signing this Agreement.

100.6.10 The City's approval of any documents or services furnished by the Consultant shall not in any way relieve the Consultant of responsibility for the professional and technical accuracy of its documents or services. The City's review, approval, acceptance or payment for any of the Consultant's services shall not be construed to operate as a waiver of any rights enjoyed by the City under this Agreement or of any cause of action arising out of the performance of this Agreement. The Consultant shall remain liable in accordance with the terms of this Agreement and applicable law for the damages to the City caused by the Consultant's negligent act or omission committed in the performance of this Agreement.

100.6.11 Plan and Special Provision Production and Submission

100.6.11.1 All Drawings shall be prepared using AutoDesk's AutoCAD Release 2004 or newer release in accordance with industry accepted standards. Specifications shall be prepared in City standard format using the software program Microsoft Word 2000 or newer release. The use of any other software for plan or specifications production requires prior written approval from the City's Representative.

100.6.11.2 All drawing submittals, except the final submittal, submitted by the Consultant will be printed on white bond paper. The final construction drawings will be printed on 4 mil, double matte mylar. All full size reproducible copies will be on 24" x 36" sheets (with 22" x 34" border) and all half size reproducible copies shall be on 11"x17" sheets (representing true half size of the full size plans). **Plans that do not meet these requirements will not be accepted.**

100.6.11.3 Special Provision format will follow the City standard provided to the Consultant. Special Provisions shall be stamped and signed by the appropriate design professional. **Special Provisions that do not meet these requirements will not be accepted.**

100.6.11.4 Within five business days of each hard copy design submittal, for each design submittal, the Consultant will submit electronic files of the AutoCAD files, including drawings and data files, and an Adobe Portable Document Format (PDF) file, 11"x17" print size, for each plan sheet submitted. In addition, the Consultant will submit electronic files of the Special Provisions in Microsoft Word format and one comprehensive Adobe PDF file, with appropriate formatting, of the entire set of Special Provisions. All electronic files shall be submitted on either a CD-ROM or a DVD disk that can be read by any industry standard hardware. **If electronic files are not submitted within five business days of the hard copy design submittal, the City will consider the design submittal incomplete and may reject the submittal in its entirety. If rejected all costs for the resubmittal shall be borne by the Consultant.**

100.6.11.5 Prior to any electronic submittal, the Consultant shall, using commercially available software with current virus definitions, certify that electronic submittals are free of electronic "viruses", "worms", "Trojan horses", and other programs or data stored on the host computer or the electronic submittal. Should the City choose to check incoming electronic submittals for such afflictions, utilizing commercially available software and at the first indication of such an affliction, the entire electronic submittal will be considered unacceptable and will be returned to the Consultant. The Consultant shall remove the unwanted programs or the unwanted programs or data and further verify the integrity of the electronic submittal. The Consultant shall bear the expense of correction, checking and re-submittal and shall not be released from submittal requirements.

100.6.12 Cost Estimates

100.6.12.1 The Consultant shall prepare and provide a detailed Construction Cost Estimate with each submittal. The cost estimate shall be prepared in City standard format using the software program Microsoft Excel 2000 or newer release. The Consultant will provide unit costs, quantities and other estimating parameters for each component or work, reflecting current market conditions and costs. The Consultant will reconcile each successive estimate to the one provided at the preceding submittal. The Consultant shall incorporate appropriate contingencies based on the completed level of design. **If the cost estimate is not included in the design submittal, the City will**

consider the design submittal incomplete and may reject the submittal in its entirety. If rejected all costs for the resubmittal shall be borne by the Consultant.

100.6.13 Construction Change Orders

The City has a formal construction contract change order approval process. Proposed change orders are negotiated and reviewed by City Engineering and Construction Management staff (and the construction management consultant when one has been retained). Change orders are then reviewed for approval by the City Change Order Committee. Part of that approval process will be checking a box on the Change Oder Tracking Form indicating the reason for the change order based on information available to the committee at that time. If the change order appears to relate to a consultant design deficiency then either the Reason Code box "E&O Value" or "E&O No Value" will be checked. "E&O" value will be checked if it appears the apparent design deficiency results in added cost to the project but all, or a substantial part, of that cost would have been incurred in the original bid if the deficiency did not exist. "E&O No Value" will be checked if it appears that little or no cost to the project would have occurred if the deficiency did not exist. The City may use this data, as well as any other relevant data, in exercising its rights under this agreement to seek compensation for Consultant errors and omissions.

The City will make reasonable efforts to copy all approved change orders (with the tracking form included) and construction change directives to the consultant In order to provide the consultant an opportunity to prevent similar instances from occurring on future projects, to allow the consultant to review the potential for similar instances to occur during the progress of this project (and to work with City and Contractor to minimize the potential for future financial impacts when possible regardless of the reason code box checked) and to give advance notice to Consultant to prepare for potential financial impacts to the Consultant and/or for the Consultant to provide documentation to the City as whether the appropriate reason code box has been checked.

There may, at times, be a benefit for the consultant to review change orders or construction change directives prior to final negotiation and approval. This could provide the consultant with an opportunity, prior to finalization, to determine that a proposed change order or construction change directive may be excessively priced, not a legitimate change in the scope of the Contractor's work, outside of the Consultant's scope of work, detrimental to the Consultant's design, uncoordinated with the Construction Documents, potentially harmful to public safety, or a violation of codes, laws and regulations. Therefore the City will make reasonable efforts to notify the consultant of possible change orders or construction change directives prior to final negotiation and approval. And to, when appropriate, request the consultant to sign acknowledgement and concurrence on the final change order or construction change directive or to make formal revisions to the plans and/or specifications. However, given time constraints and the need to limit Contractor delay claims (that can often quickly exceed the cost of the change order), advance notice to the consultant is not always possible or practical. And, in fact, potential change order work, including force account work, is sometimes allowed to proceed prior to any change order being drafted or reason code applied by City.

100.6.14 The Consultant shall be responsible for performing all work necessary to complete the following schedule of work, more fully described in the following sections:

Upon written agreement with both parties an intermediate design submittal may be changed in definition of percentage complete without change to the basic service fee amounts (for example changing the 70% submittal to a 50% submittal). The written agreement would detail any resulting change in billing schedule. Should an additional submittal be requested by the City (for example adding a 50% submittal in addition to a 30% and a 90% submittal) this work would be paid for in accordance with Section 3.01, 3.02 and 7.02 of this Agreement.

100.6.14.1 Article 200 – Preliminary and General Items

100.6.14.2 Article 300 – 30% Design Phase

100.6.14.3 Article 400 – 70% Design Phase

100.6.14.4 Article 500 – 90% Design Phase

100.6.14.5 Article 600 – 100% Design Phase

100.6.14.6 Article 700 – Bid Phase

100.6.14.7 Article 800 – Construction Phase

100.6.14.8 Article 900 – Post Construction Phase

100.7 Responsibilities of the City

100.7.1 The City shall be responsible for the following:

100.7.1.1 Shall furnish a copy to, or make available for examination or use by, without a fee, the Consultant, any documents and data which the City has available including, reports, maps, plans, specifications, surveys, records, ordinances, codes, regulations, other documents related to the services required under this Agreement. The City shall assist the Consultant in obtaining data and documents from public agencies and from private citizens and business firms whenever the City determines that such material is necessary for the completion of the services required by this Agreement.

100.7.1.2 Access arrangements for the Consultant to enter upon City owned property as required to perform their services.

100.7.1.3 Acquire any property, authorizations to enter property, easements, or other project rights required to construct the Project

100.7.1.4 Provide and conduct bidding activities, including printing and distribution of bid and construction documents, except as specifically required to be provided by the Consultant in this Scope of Work

100.7.2 The City's Review Process

100.7.2.1 Upon receipt of any documents furnished by the Consultant, the City Representative shall conduct a preliminary review of such documents and determine whether the documents comply with the scope of the Project. After the preliminary review, if the City Representative determines that the documents are insufficient, inadequate, or incomplete, the City shall notify the Consultant and request documents which are professionally complete and appropriate for each service phase submitted. The decision by the City Representative in this matter shall be final.

100.7.2.2 If the City Representative determines, after requesting the Consultant to provide corrected and professionally complete Phase submittals, that the documents remain insufficient, inadequate, or incomplete, the City may: (i) declare the Consultant in default, or (ii) demand a letter of explanation from the Consultant as to the reason the furnished documents are insufficient, inadequate or incomplete. If the City elects the second option, the Consultant, at Consultant's own expense, shall furnish additional sets of all documents that are sufficient, adequate and complete in the discretion of the City Representative for review by the City. The Consultant, at Consultant's own expense, shall attend any meeting, whether formal or informal, including the City Council meeting when requested by City to explain the reason the Consultant presented inadequate, insufficient, or incomplete documents to the City, and the delay, if any, that such submittal and re-submittal may cause in completion of the Project.

100.7.2.3 The City's review period in the Project Schedule shall not begin until the City Representative determines that the documents presented by Consultant fully comply with the requirements. After the City Representative determines that the documents comply with such requirements, the City shall begin a review of the documents.

100.7.2.4 After the City reviews the documents, one or several set(s) of the documents shall be returned to the Consultant with comments and corrections noted thereon. The Consultant shall make the changes necessitated by the corrections or other comments into the documents, and return the correction set(s) with the corrected documents, together with written responses to the City's correction(s), comments(s), and change(s), which state the action taken and reason for such action for each item presented by the City.

ARTICLE 200: PRELIMINARY AND GENERAL ITEMS

200.1 Project Management

200.1.1 Project management will include work necessary for communication and completion of the project tasks on time and within budget. The Consultant's Project Manager or their primary duties will not be reassigned without the written consent of the City's Project Manager. The Consultant's staff will have the training and expertise necessary for the work tasks to which they are assigned.

200.1.2 The Consultant will provide invoices in the standard format provided by the City's Representative. Invoices will be accompanied by a cover letter explaining the general status of the project, including at a minimum the work completed to date, the anticipated remaining efforts and required schedule changes; progress report form; supporting data for direct expenses (when specified expenses are allowed per Exhibit D, herein); and an updated project status report reflecting Scope of Work activities identified by the City Representative.

200.1.3 On a weekly basis, or a time frame approved by the City's Representative, the Consultant's Project Manager will update the City Representative with regards to the status of the project schedule, budget and general status/progress. This task is in addition to Design Progress Meetings and may be performed in a phone, email or mailed correspondence as approved by the City Representative.

200.2 Kick-Off Meeting and Design Progress Meetings

200.2.1 Consultant shall prepare an agenda and schedule and attend a kick-off meeting with the City and other agencies as required within ten calendar days of the issuance of the Notice to Proceed. This meeting will be held to review the scope of work, discuss data and information provided by the City, review the project schedule (prepared by the Consultant using Microsoft Project or software approved by the City's Representative), introduce key personnel, establish lines of communications and clarify the City's and other government agency requirements for the Project, and identify any missing data and information necessary to proceed with the Project. Within five business days following the kick-off meeting, the Consultant will prepare and distribute draft meeting minutes to the City's Project Manager and meeting attendees (an e-mail to the City's Representative of the draft minutes is acceptable). The Consultant shall prepare and distribute final meeting minutes after the draft meeting minutes are approved by the City's Representative.

200.2.2 Deliverables: Project Kick-Off Meeting Agenda and copies for distribution at Kick-Off Meeting; Project Kick-Off Meeting Minutes.

200.2.3 Consultant shall attend approximately 10] progress/coordination meetings to be held with the City, other relevant agencies and utility companies. Design Progress meetings shall be conducted on a monthly basis, or a time frame approved by the City's Representative, at the City's offices and will be attended by the Consultant's Project Manager, Project Engineer and other key personnel as determined to be necessary. Consultant shall prepare an agenda for each of the progress meetings. Within five business days following the progress/coordination meeting, Consultant shall prepare and distribute draft meeting minutes to the City's Representative and meeting attendees (an email to the City's Project Manager and meeting attendees of the draft minutes is acceptable). The Consultant shall prepare and distribute final meeting minutes after the draft meeting minutes are approved by the City's Representative and after receipt of comments from all meeting attendees.

200.2.4 Deliverables: Design Progress Meeting Agenda and copies for distribution at Design Progress Meetings; Design Progress Meeting Minutes.

200.3 Utility and Agency Coordination

200.3.1 Consultant shall coordinate with all utilities and agencies having facilities within the limits of or adjacent to the Project throughout the duration of the project, this includes attendance to all related meetings. The Consultant will contact the utility companies and other governmental agencies early in the project to obtain information relating to the location, size and type of facilities owned by that Utility. The Consultant shall perform utility potholes, identify potential utility conflicts and meet with the affected utilities to ensure timely resolutions for the utilities conflicts. Utility companies and agencies to be contacted by the Consultant shall include, but are not limited to, the following:

200.3.1.1 Clark County Regional Flood Control District ("CCRFCD")

200.3.1.2 Clark County Department of Public Works

200.3.1.3 City of Las Vegas departments, including but not limited to, Fire Services, Flood Control, Parks, Collection System Planning, Traffic Engineering, Field Operations, and Land Development

200.3.1.4 Las Vegas Valley Water District ("LVVWD") and Southern Nevada Water Authority ("SNWA")

200.3.1.5 Freeway and Arterial System of Transportation ("FAST")

200.3.1.6 Utility providers, including but not limited to, Nevada Energy Transmission and Distribution, Century Link, Cox Communications, Southwest Gas Corporation, AT&T Fiber Optic Cable, American Fiber Systems (AFS)

200.3.1.7 Nevada Department of Transportation ("NDOT") and

200.3.1.8 Other local and state agencies as required.

200.3.2 The Consultant shall prepare a utility conflict schedule and pothole plan to advise the City's Representative of any utility conflicts, coordinate utility requests for information, monitor status of proposed utility projects within the projects limits and meet as required with

utility companies to resolve conflicts. Major utility relocation design plans are not anticipated, unless otherwise mentioned in this scope of services, and will be paid for separately under Additional Services Tasks upon separate authorization by the City.

200.3.2.1 Preparation of minor utility relocation plans, by the Consultant and coordination for incorporation of those prepared by the Utility Companies themselves that were anticipated by the Consultant, or reasonably should have been, at the time of this agreement shall be considered incidental to this task and no other applicable design tasks.

200.3.2.2 Coordination with utilities, incorporation of utility plans, and preparation of designs by the Consultant in relation to new services, connections for City facilities (such as power service for street lights and traffic signals and water hookups for City irrigation lines) that were anticipated by the Consultant, or reasonably should have been, at the time of this agreement shall be considered incidental to this task and no other applicable design tasks.

200.3.2.3 Nothing in this section shall be construed as preventing this Exhibit "A" from specifically detailing the Consultant's scope for anticipated minor utility relocations and/or new service connections with individual tasks identified and associated man hours and costs shown in Exhibit "D" when warranted.

200.3.3 The Consultant shall coordinate with the City of Las Vegas' Land Development Services Section for current projects, encroachment agreements, covenants running with the land and any other mapping that may have an impact on the project.

200.3.4 The Consultant shall submit design plans for review from the various utility companies for the 30%, 70%, 90% and Pre-Final submittals.

200.3.5 The Consultant shall submit design plans for review and obtain approval signatures from the various utility companies on final mylar prints prior to submitting to the City of Las Vegas.

200.3.6 Consultant shall notify the City of any required utility, application, permit and review fees, which will be paid for by the City.

200.3.7 The City's Representative shall give approval of documents prior to being submitted to any regulatory agency for permit review and approval.

200.3.8 City Engineer's Office is NOT A REGULATORY AUTHORITY. The Consultant does hereby acknowledge, understand and agree that the City Engineer's Office, acting as the City's representative for purposes of the Project, does not have any control, authority or influence over the decisions or requirements of other departments of the City acting in a regulatory capacity including, but not limited to, the Building Department, Fire Department, and Planning Department of the City of Las Vegas. The City's representative acts in a capacity similar to that of a representative working for a private property owner which is to ensure that the City receives a quality product, delivered on schedule, for a fair price. Furthermore, the City Engineer's Office does not speak or act for any regulatory authority, nor does any regulatory authority speak or act for the City Engineer's Office. The Consultant agrees that its relationship with the regulatory authorities having jurisdiction over the Project is separate from its relationship with the City, and that the Consultant's interaction with each regulatory authority is to be conducted without assistance from the City.

200.4 Project Permits

200.4.1 During the design process, the Consultant shall provide a permit matrix which will determine the permits needed for the Project. A summary matrix of required permits shall be prepared by the Consultant and included at the 70% Design Phase Submittal. Consultant shall prepare all permit applications and correspondence as required by the regulating agencies and assist the City in obtaining required permits. Any required permit not contemplated in this scope of work will be paid for separately under Additional Services upon separate authorization by the City.

200.4.2 The following permits are anticipated for this project :

200.4.2.1 NDOT Occupancy Permit – The consultant will coordinate with the Nevada Department of Transportation (NDOT) regarding Occupancy Permit issues. The Consultant shall apply for and obtain an NDOT Occupancy Permit, including any time extensions, as applicable.

200.4.2.2 North Las Vegas – The consultant will coordinate with the City of North Las Vegas regarding permit requirements at Owens Avenue and apply for and obtain said permits, including any time extensions, as necessary.

200.4.3 Deliverables: One (1) Matrix of required permits updated at the 30%, 70% and 90% submittals; copies of correspondence with permit agencies; preparation of permit applications and response to comments necessary for permit approval.

ARTICLE 300: 30% DESIGN PHASE

300.1 Survey

300.1.1 Control Survey. Control surveys for the project will include aerial panels and establishing a ground coordinate system. The control survey will be tied to the City's established horizontal and vertical control network. Existing monuments within the project limits will be tied into this control network. Consultant will establish roadway alignments from control information found in the field and record information.

300.1.2 Design Survey. Aerial mapping and field design surveys will be used to develop engineering base sheets and digital terrain models (DTM). All aerial mapping and DTM will be produced from aerials flown at an altitude to produce 1 inch to 40 feet horizontal scale with one-foot contour intervals per National Mapping Accuracy Standards. One-foot interval contours will be developed utilizing a digital terrain program and the aerial mapping. Topographic surveys of existing features will be completed in the field to supplement aerial mapping. Specifically these tasks shall include, but are not limited to, the following:

300.1.2.1 Research existing surveys, parcel maps, ownership records, and other records as necessary to obtain needed data in preparation of all existing rights-of-way and easements and control drawings. Also included is resolving dual centerline issues as applicable.

300.1.2.2 Set panel locations for control in obtaining aerial topography. Topographic mapping to be at 1" = 40' horizontal with a contour interval of 1-foot, based upon a published City benchmark

300.1.2.3 Establish both horizontal and vertical control for the Project including preparation of a horizontal control drawing sealed by a Nevada Professional Land Surveyor to identify, as a minimum, horizontal and vertical control points, Project alignment centerline indicating bearings, distances and control point coordinates

300.1.2.4 Establish Project coordinate system

300.1.2.5 All survey shall be in ground coordinates and tied to state plane coordinates (horizontal) and NAVD 88 (vertical)

300.1.2.6 Conduct field survey to identify and locate existing improvements as necessary to supplement aerial topography. Collect field survey data within the construction limits of the project, including but not limited to, existing edge of pavement, culvert and storm drain sizes and elevations, drop inlet locations, lengths and invert elevations, manhole lids and invert elevations, and gutter flow line, top of curb, back of sidewalk elevations, water valves, visible surface utilities and pothole hubs. In areas where it is anticipated that storm drain construction will require full street reconstruction, obtain field survey shots at 50-foot intervals along the top of curbs and street centerline, plus shots at edges of driveways, transitions, and curb returns. Field survey shall extend a minimum of 100 feet for minor street intersections and 150 feet for major street intersections beyond curb returns of adjacent street.

300.1.2.7 The Consultant will coordinate any required private property access with the City's Representative.

300.1.3 Record of Survey. The Consultant shall provide a Record of Survey to be reviewed by City of Las Vegas' City Surveyor. City Surveyor must approve the Record of Survey prior to recordation with the Clark County Recorder. Research available record information, parcel maps, subdivision maps and records of survey to establish a record alignment of the Project. Use this record alignment as a basis to assist in locating existing monuments, during the field survey phase of this Project. **The City will not accept the 30% design submittal unless the Record of Survey is formally submitted and approved in writing by the City Surveyor.**

300.1.4 Deliverables: The Consultant shall submit three (3) copies of the Record of Survey to the City. Consultant shall record the "approved" Record of Survey with the Clark County Recorder.

300.2 Right-of-Way

300.2.1 Consultant will use the City's Right-of-Way Plats, Title Reports that the City has on file, Parcel Maps, Records of Survey, plats and any other documentation necessary to identify and establish the right-of-way limits. Consultant will establish existing property lines and label all lots with the current owners name and APN and encumbrances in areas where right-of-way is to be acquired. Consultant will identify any additional right-of-way to be acquired for the chosen 80-foot wide alternative design and the 90-foot wide future design. *Consultant will prepare right-of-way drawings showing existing rights-of-way and easements and proposed rights-of-way and easements for both designs. Consultant shall coordinate with the City's Right-of-Way Section in the preparation of a right-of-way property schedule (all rights to be obtained or vacated, easements, rights of entry, construction easements as well as current status of the City's acquisitions) for the 80-foot wide alternative and regularly review and redline this schedule as to current status in coordination with the City's Right-of-Way Section.* Where existing property is to be disturbed by construction, Consultant shall prepare 8 ½ X 11 exhibits showing the location of Authorization

to Enter Property (AEP)/Temporary Construction Easement (TCE) areas and include the nature of the construction. For all AEPs, TCEs, easements or rights-of-way that must be acquired for either design condition, consultant may be asked to prepare legal descriptions with property maps showing topographic areas, easements and vesting by the City and will be paid for separately under Additional Services Tasks upon separate authorization by the City.

Title Reports, if deemed required to complete the final project will be provided by the City of Las Vegas.

300.2.2 Based on the 30% design, the Consultant will identify any additional right-of-way, including permanent right–of-way and easements and AEP/TCE's to be acquired for both design alternatives. A summary of proposed right of way acquisition will be provided by the Consultant in Microsoft Excel 2000 format in the format provided by the City Representative. During the 30% design review, the City will work with the Consultant to finalize project right-of-way requirements.

300.2.3 30% Submittal. Consultant shall prepare 24" x 36" exhibits, at a minimum 1" = 100' scale, that shall show schematically the project and identify all existing right-of-way and existing easements for both design alternatives. Areas identified (preliminarily) for proposed right-of-way acquisition shall be shown on the exhibit and differentiated from existing right-of-way by color coding. In addition, Consultant shall provide a right-of-way property schedule for the 80-foot wide design.

300.2.4 70% Submittal. Consultant shall prepare 24" x 36" exhibits that shall show all needed right-of-way, easements, AEP/TCE's, etc. for the selected 80-foot wide design at the 70% design level. The Consultant shall update the right-of-way property schedule, outlined in 300.2.1, to create an acquisition status table showing parcel numbers, acquisition type, acquisition status, property owner and contact information which will become the "acquisition status table".

300.2.5 90% Submittal. Consultant shall update the 24" x 36" exhibits to show the acquired right-of-way, easements and AEP/TCE's for the selected 80-foot wide design. The "acquisition status table" shall be updated and submitted to the City for review.

300.2.6 100% Submittal. Consultant shall update the 24" x 36" exhibits to show the acquired right-of-way, easements and AEP/TCE's for the selected 80-foot wide design. The "acquisition status table" shall be updated and submitted to the City for review. Consultant shall clearly identify, in the acquisition table, any right-of-way, easements or AEP/TCE's that have not been acquired and an explanation for not having acquired the right-of-way, easement or AEP/TCE's.

300.2.7 Prior to Bid. Prior to bid the Consultant shall cross check the right-of-way map verses the acquisition table and provide a letter summarizing the result of the check and identifying any right-of-way, easements or AEP/TCE's not yet acquired.

300.2.8 Deliverables: Deliverables are as described in sections 300.2.1, 300.2.2, 300.2.3, 300.2.4, 300.2.5, 300.2.6 and 300.2.7.

300.3 Records Review, Information Research and Analysis of Data

300.3.1 Consultant shall review data and information from the City including assessor's maps, parcel maps, improvement plans, drainage studies, utility plans, geotechnical studies, aerial topographic mapping and land development mapping currently being processed by the City which will likely affect the Project. Consultant shall provide ongoing supplemental research of public records during Project development.

300.3.2 The Consultant will review all data collected to determine impact/significance with regard to the Project and incorporate useful information into the Project documents. The Consultant will also identify deficiencies in the data collected and make recommendations for additional information needed for the successful completion of the project.

300.3.3 The Consultant will conduct field investigations, as necessary during the length of the project, to determine the location of collection facilities, establishment of problem flooding areas, existing drainage facilities, utilities, street improvements and other appurtenant items that may help in the development of the Project design. The Consultant will take pictures during the field investigation to document field conditions throughout the Project.

300.4 Utility Potholing

300.4.1 Utility Potholing work for the Project shall include gathering horizontal and vertical location information (potholing) on subsurface utilities that may be in conflict with the Project improvements. A total of fifty (50) potholes are anticipated to be performed for this Project. Basic Services will provide a limited potholing of twenty five (25), if more potholes are required to be completed, the final project will be provided additional potholing under Additional Services. This task shall include the refinement of the utility conflict information, identification of utility relocation by others and incorporate subsurface utility engineering into the Contract Drawings. Potholes will be surveyed for horizontal

location and shown on the plans. Patching of potholes will meet City of Las Vegas and NDOT (if applicable) requirements, including hot patches, polymer bag mix or concrete plug. No cold patches will be utilized.

300.4.2 For utilities that are concrete encased, Consultant will require the pothole sub-consultant to perform two potholes: one to identify the top of the encasement and one to identify the bottom of the encasement. The two potholes will be performed on either side of the encasement to determine the width of the encasement.

300.4.3 Consultant shall provide full-time inspection during the pothole process to confirm that the sub-consultant has accurately located and correctly identified the utilities to be investigated.

300.4.4 Deliverables: One (1) Matrix of utility conflicts and summary updated at the 70% and 90% submittals.

300.5 **Geotechnical Investigation** - Consultant shall provide geotechnical services to include research, field investigation, material testing, and analysis to develop geotechnical recommendations for the design and reconstruction of the existing roadway. Geotechnical Investigation Report to include existing pavement evaluations and rehabilitation recommendations and pavement section design alternatives.

It is anticipated that the Geotechnical Investigation Report(s) may include, but is not limited to the following:

- Review pertinent background data, including in-house geotechnical data, readily available geotechnical reports, stereoscopic aerial photographs, published geologic maps, soils data, and literature.
- Perform a site reconnaissance along the subject road alignments to evaluate the existing pavement conditions. Areas that exhibit significant pavement deterioration and cracking will be documented. Pavement cores will be taken at 300 to 500 foot centers to determine the actual existing pavement section(s) and substantiate the pavement rehabilitation or replacement recommendations.
- For field geotechnical investigations, a traffic control plan shall be formulated and submitted to the City for approval. Proper signage and barricading will be implemented for field studies.
- Perform laboratory testing on samples.
- Identify the corrosive characteristics of the soil.
- Locate ground water elevations at each of the borings if the groundwater level is above the bottom of the boring;
- Identify caliche and cemented soil deposits depth and make recommendations for excavation methods.
- Provide geotechnical recommendations for use in design of foundations, including allowable bearing capacity, passive pressure, coefficient of friction and estimated settlements, lateral resistance of the soil, recommendations for lateral support, excavated slope stability and data on excavated materials encountered and groundwater levels.
- Make recommendations for excavation and backfill requirements for bedding, pipe zone, trench backfill, asphalt pavement resurfacing and fill placement, suitability of existing soils for use as backfill materials. Make recommendation for cut/fill slopes and percent shrinkage for embankment.
- Make recommendations for pavement section, excavation and backfill requirements for bedding, pipe zone, trench backfill, fill placement, suitability of existing soils for use as backfill materials and asphalt pavement
- Make recommendations for type of cement for concrete in contact with onsite soils, structural recommendations, and other conditions applicable to the Project.
- A hydro geological report if required in area where shallow groundwater is discovered will be conducted only upon authorization under Additional Design Services.
- Make recommendation for trench patching.

300.5.1 The Consultant shall prepare a written report presenting the findings, conclusions, and geotechnical recommendations for the design and construction of the proposed improvements, including recommendations regarding pavement section thickness based on AASHTO design criteria, structural bearing capacity, earthwork and backfill requirements.

300.5.2 It is understood that the City may make and distribute copies of reports and boring logs as necessary in connection with the Project without incurring obligation for additional compensation.

300.5.3 Deliverables: The Consultant shall provide seven (7) bound copies of the draft and the final Geotechnical Investigation Reports to the City's Representative for review and one bound copy of the draft and the final Geotechnical Investigation Reports to the RTC.

300.6 **Sanitary Sewer Inspection**: The Consultant shall review the results of the City's sewer line inspection. Sewer repair/replacement design, if required, is not a part of this scope and will be conducted only upon separate authorization under Additional Design Services.

300.7 **Alternatives Analysis**

300.7.1 Consultant shall prepare an Alternatives Analysis Report that shall include, but not be limited to, the evaluation of three (3) 80-foot wide street design alternatives accommodating 3 northbound lanes and 2 southbound lanes, considering a combination of the following options: bus turnouts and right turn lanes, center turn lanes, parking lanes and bike lanes. Also included shall be one (1) 90-foot wide street design accommodating 3 lanes each direction with median island including recommendations for landscaping and aesthetics, bus turnouts, and other features and that depicts future right-of-way and/or easement needs.

The report shall include a summary of assumptions and design criteria that the consultant has considered and identified in the development of alternatives. Consultant shall prepare a right-of-way analysis to be included with the Alternatives Analysis Report that shall identify all existing right-of-way, prior rights issues and areas of concern pertaining to both the 80-foot design and 90-foot design. This shall include identification of utility conflicts within the right-of-way and 20 feet outside the 80-foot right-of-way. The Alternatives Analysis Report shall include a roll plot depicting the existing topography and right-of-way limits, and utility information as discussed above. The Consultant shall include a photo inventory of existing conditions in the report.

300.7.2 Deliverables: The Consultant shall provide seven (7) bound copies of the Alternative Analysis Report and the Final Alternatives Analysis Report that includes discussion of the evaluation criteria used to determine the preferred alternative to the City and one bound copy of the draft and final Alternative Analysis Report to the RTC.

300.8 **30% Design Phase Submittal**

300.8.1 30% Design Phase Plans

300.8.1.1 The 30% plans are to be prepared for the preferred overall Project Alternative and limits as agreed on and directed by the City of Las Vegas. The north arrow on all plan sheets shall point to the top or right side unless otherwise approved by the City. The plan and profile sheets shall be at 1" = 40' scale (or other scale as directed or approved by the Engineer) and appropriate vertical scale with stationing from left to right. All lettering shall be of sufficient size and clarity to permit easy reading when reduced to one-half (1/2) scale.

The 30% submittal will include, but is not limited to, the following:

- Permit Matrix
- Record of Survey and approval from City Surveyor
- Right-of-Way Exhibit
- Utility Conflicts Matrix and Summary
- Draft Geotechnical Data Report and Draft Hydrogeologic Report if applicable
- 30% Design Phase Plans of the selected alternative
- 30% Construction Cost Estimate

300.8.1.2 Deliverables: Response to comments; Submit twelve (12) copies of the half scale plans (11" x 17") and two (2) copies of full size plans (24" x 36") to the City: Submit one (1) full size set and two (2) half size sets of the 30% Design Plans to the RTC. The Consultant will provide a distribution list; Submit copies of 30% Plans to utilities (size determined by each individual Utility Company) as necessary for review by the utility companies.

300.8.1.3 30% Design Phase Construction Cost Estimate - a Preliminary construction cost estimate shall be prepared by the Consultant for the 30% submittal.

300.8.1.4 Deliverables: Submit a 30% cost estimate to the City in both hard copy and electronic format (excel spreadsheet, pdf format will not be accepted); Submit two (2) copies of the 30% cost estimate to the RTC.

ARTICLE 400: 70% DESIGN PHASE

400.1 **70% Design Phase Submittal**

400.1.1 **Technical Drainage Report** – The consultant shall prepare a technical drainage study with recommendations in accordance with CCRFCD Hydrologic Criteria and Drainage Design Manual (HCDDM). The drainage system will be designed to include a 10-year level of protection and meet the dry lane criteria. However, both the 10-year and 100-year flows must be indentified for compliance with RTC criteria and the CCRFCD Design Manual. The Technical Drainage Report shall incorporate the following information:

- A hydrologic model using HEC-1 to establish flows for the existing condition and proposed design selected from the Alternatives Analysis.
- A hydraulic model for the conveyance facilities using HEC-RAS, WSPG or other appropriate engineering software. The hydraulic models shall include hydraulic grade line, energy grade line, flow velocity and depth and other pertinent hydraulic parameters for the main storm drain line and laterals.
- Drop inlet sizing calculations.
- Provide complete Storm Drain Plan and Profiles (including lateral plan and profiles) and Storm Drain Details.
- Flow split analysis at project intersections.
- 10-year and dry lane hydraulic analysis to determine the facility sizing and to determine the RTC costs.

Incorporate the location, depth of pipe, approximate slopes and inlet locations for storm drain requirements based on the results of the hydrologic review and hydraulic analysis into the Technical Drainage Report.

The Consultant shall compile all comments and written responses to comments along with all final design information, calculations and models and include in a standalone Final Technical Drainage Report to be used as a record for the basis of design for the project. The Final Technical Drainage Report shall include all information included in the Technical Drainage Report and all associated revisions made as applicable. This report will also include any information, calculations or models that were revised since the Initial Technical Drainage Report was submitted. The Consultant will provide a complete electronic submittal of the Final Technical Drainage Report with all associated input & output files, calculations and all associated revisions made as applicable.

400.1.1.1 Deliverables: Submit six (6) copies of the Draft and Final Technical Drainage Reports with recommendations to the City and two (2) copies of the Draft and Final Technical Drainage Report to RTC. Submit one (1) copy of the Draft and Final Technical Drainage Report with recommendations to the CCRFCD for concurrence.

400.1.1.2 Traffic Study – Consultant shall prepare a traffic study with recommendations in accordance with City and RTC requirements. The traffic study shall include the following elements:

- Obtain new AM/PM peak volume count at major intersections and ADT counts, preferably after the opening of the City of North Las Vegas (NLV) North 5th Street project .
- Recommendations for lane configurations (i.e., single or dual left turns, exclusive rights, storage lengths) based on existing and projected traffic volumes at each intersection using Synchro/HCS analysis.
- Perform parking evaluation including documenting existing parking and review metered parking usage from CLV Parking and Enforcement to determine if parking can be removed.
- Obtain and evaluate accident data from NDOT
- Consultant to obtain new approach volumes and turning movement counts at intersections. Projected 2025 or 2030 volumes (whichever are applicable) shall be obtained by the Consultant from the RTC TransCAD model and shall be submitted to the City for approval prior to use. Review/Compare study data from NLV North 5th Street project to ensure geometric design compatibilities.

400.1.1.3 Deliverables: Submit six (6) copies of the Draft and Final Traffic Study with recommendations to the City and two (2) copies of the Draft and Final Traffic Study to RTC.

400.1.2 70% Design Phase Plans – This submittal will include further refinement of the 30% Design Phase Submittal and response to comments. Plans shall be identified with the level of design with Engineer's seal in accordance with NRS 625. The 70% plans shall include, but not limited to, the following:

400.1.2.1 City Standard Cover Sheet identifying Project Participants
400.1.2.2 Note sheet with plan index, vicinity map, benchmark, and basis of bearings
400.1.2.3 Notes Sheet with General Notes, LVVWD Notes, and City of Las Vegas Sewer, Traffic, Grading, Fire Department, Street Lighting, and Encroachment Permit Notes
400.1.2.4 Abbreviations and Symbols
400.1.2.5 Survey Control Plan identifying project limits, horizontal control for centerline and rights-of-way, monumentation and sheet index
400.1.2.6 Horizontal control for centerline and right-of-way with monumentation plan
400.1.2.7 Recorded Record of Survey as part of Horizontal Control Plan (to be included in all submittals hereafter as well)
400.1.2.8 Sheet Index with key map
400.1.2.9 Typical Cross Section Sheets
400.1.2.10 Removal Plans

400.1.2.11 Roadway Plan and Profiles
400.1.2.12 Construction Details
400.1.2.13 Storm Drain Plan and Profiles (including lateral plan and profiles)
400.1.2.14 Storm Drain Details
400.1.2.15 Utility Plans
400.1.2.16 Traffic Striping and Signing Plans
400.1.2.17 Traffic Lighting Plans including underground conduit and conductors
400.1.2.18 Traffic Signal Plans
400.1.2.19 Structural Drawings
400.1.2.20 Special Details as required for the Project
400.1.2.21 FAST Interconnect Plans

400.1.2.22 Deliverables: Response to comments; Submit twelve (12) copies of the half scale plans (11" x 17") and two (2) copies of full size plans (24" x 36") to the City: Submit one (1) full size set and two (2) half size sets of the 70% Design Plans to the RTC. The Consultant will provide a distribution list; Submit copies of 70% Plans to utilities (size determined by each individual Utility Company) as necessary for review by the utility companies.

400.1.2.23 70% Design Phase Construction Cost Estimate - a Project cost estimate broken out by funding source, bid item, and plan sheet shall be prepared by the Consultant. The cost estimate breakdown by funding source may include, but is not limited to, the following: RTC (may require further breakdown within this category, i.e. RTC-Q10, RTC-Arterial Restoration Fund, etc.), CCRFCD.

400.1.2.24 Deliverables: Submit the 70% cost estimate by funding source to the City in both hard copy and electronic format (excel spreadsheet, pdf format will not be accepted); Submit two (2) copies of the 70% cost estimate to the RTC.

400.1.3 70% Walk Through - At the direction of the City, Consultant shall schedule a walkthrough of the Project with City of Las Vegas personnel and other stakeholders (as determined by the City) during the 70% Design Phase period. The Consultant will note any changes or adjustments to the plans as needed to fit field conditions and incorporate these changes into the 90% submittal.

400.1.4 Deliverables: The Consultant shall submit a walk though Memorandum to the City's Representative to document field observations.

ARTICLE 500: 90% DESIGN PHASE

500.1 90% Design Phase Submittal

500.1.1 90% Design Phase Plans – This submittal will include further refinement of the 70% plans (including any necessary structural details) to reflect 90% completion and response to comments. The 90% plans shall include all the utility conflicts and the resolutions. The 90% plans shall include project quantity tables broken down by individual plan sheet. The 90% plans shall include construction and right-of-way lines and all encroachments onto private property with proposed improvements. The owners name, property address and assessor parcel number shall be shown.

500.1.1.1 Deliverables: Response to comments; Submit twelve (12) copies of the half scale plans (11" x 17") and two (2) copies of full size plans (24" x 36") to the City: Submit one (1) full size set and two (2) half size sets of the 90% Design Plans to the RTC The Consultant will provide a distribution list; Submit copies of 90% Plans to utilities (size determined by each individual Utility Company) as necessary for review by the utility companies.

500.1.1.2 90% Design Phase Construction Cost Estimate - a Project cost estimate broken out by funding source, bid item, and plan sheet shall be prepared by the Consultant. The cost estimate breakdown by funding source may include, but is not limited to, the following RTC (may require further breakdown within this category, i.e. RTC-Q10, RTC-Arterial Restoration Fund, etc.), CCRFCD.

500.1.1.3 Deliverables: Submit the 90% cost estimate by funding source to the City in both hard copy and electronic format (excel spreadsheet, pdf format will not be accepted); Submit two (2) copies of the 90% cost estimate to RTC. The Consultant will provide a distribution list.

500.1.2 90% Design Phase Special Provisions - The Project Special Provisions shall be submitted utilizing the City's standard boilerplate set of Special Provisions provided. The Project Special Provisions shall use the same format as the *Uniform Standard Specifications for Public Works' Construction Off-Site Improvements Clark County Area Nevada.* All items of construction shown on the Project Plans shall be represented in the Special Provisions as bid items utilizing the corresponding related specification section's nomenclature. The applicable items shall be described for the method of "Measurement" and "Payment" subsection for each section. Do not modify the City's format without prior approval by the City.

500.1.2.1 Deliverables: Submit five (5) copies of the bound Special Provisions to the City; Submit two (2) copies of the bound Special Provisions to RTC. The Consultant will provide a distribution list.

500.1.3 90% Walk Through - At the direction of the City, Consultant shall schedule a walkthrough of the Project with City of Las Vegas personnel and other stakeholders (as determined by the City) during the 90% Design Phase period. An inventory of all items of work shown on the plans will be verified and compared to field conditions. The Consultant will note any changes or adjustments to the plans as needed to fit field conditions. The Consultant will note any changes or adjustments to the plans as needed to fit field conditions and incorporate these changes into the 100% Design Phase Submittal.

500.1.4 Deliverables: The Consultant shall submit a walk though Memorandum to the City's Representative to document field observations.

500.1.5 Bidability and Constructability (B&C) - Consultant shall coordinate with a City selected B&C consultant or City in-house B&C review team. The Consultant will provide the B&C consultant or in-house B&C review team with the 90% submittal and Final Design Report (and any other documents necessary to complete the B&C review). The City may also chose to provide the B&C consultant or in-house B&C review team with earlier submittals for review. Consultant shall attend meetings and respond to comments as required to resolve disagreements on B&C comments.

500.1.5.1 Deliverables: The Consultant shall attend one (1) meeting and prepare a comment and response matrix. Design changes warranted by the Bidability and Constructability review will be paid for as an Additional Service.

500.1.6 Public Meetings – Consultant shall attend and provide support to the City for two (2) public meetings and prepare exhibits and handouts as necessary.

ARTICLE 600: 100% DESIGN PHASE

600.1 100% Design Phase Submittal

600.1.1 The 100% submittal shall include all the elements of Article 500, which shall be advanced to a completed level of design and shall incorporate comments from the 90% submittal. The 100% submittal will consist of two steps: (1) a 100% pre-final (bond) submittal will be made for final comment by the City and RTC, and (2) the Consultant will incorporate all comments on the pre-final submittal into the 100% final (mylar) submittal. Plan set mylars and copies sealed in accordance with NRS 625, sealed Special Provisions, including Bid Proposal and Construction Cost Estimate shall be submitted to the City. The Engineer's estimate broken out by bid item, plan sheet and funding source will be submitted as a Microsoft Excel Work Sheet electronic file. The Consultant shall coordinate with utility companies and obtain all utility signatures on the Cover Sheet and elsewhere in the plans as required. Consultant shall submit a pre-mylar bond set of the final plans before preparing mylars for this project.

600.1.1.1 Deliverables for the 100% Pre-Final (Bond) Submittal: Response to Comments; Submit two (2) full size sets (24" X 36"); twelve (12) half size sets (11" X 17") of the 100% Pre-Final (Bond) Submittal to the City; five (5) bound copies of the Special Provisions and 100% Pre-final Cost Estimate by funding source to the City; Consultant shall determine if any utility companies require submittal of the 100% Pre-Final (Bond) submittal to obtain mylar signature and if so, submit accordingly.

600.1.1.2 Deliverables for the 100% Final (mylar) Submittal: One set of 24" X 36" mylar plan sheets stamped and signed by a Nevada P.E. which includes the cover sheet containing all approval signatures; One set of original Special Provisions (unbound) stamped and signed by a Nevada P.E. and the Word document; One copy of the City Formatted Final Cost Estimate and Bid Schedule; One copy of the Plan Sheet Index as a single Word document. Additionally, submit two copies of the half scale plans, bound Special Provisions and 100% Final Cost Estimate to RTC. Electronic copies of both the plans (AutoCAD format) and Special Provisions (Microsoft Word format) shall be submitted to the City. The Final Cost Estimate and Bid Schedule will be submitted as a Microsoft Excel Work Sheet electronic file.

ARTICLE 700: NOT USED

ARTICLE 800: NOT USED

ARTICLE 900: NOT USED

END OF EXHIBIT "A"

EXHIBIT "B"

REQUIRED SUBMITTALS

ARTICLE 200: GENERAL

200.1 When requested by the City electronic files shall accompany hard copies for all submittals referenced in this paragraph and unless otherwise directed by the City. All cost estimates shall be provided in Microsoft Excel format, all schedules in Microsoft Project format, all Special Provisions in Microsoft Word format, all Bid Schedules in Microsoft Excel format and all spreadsheets associated with additional service requests in Microsoft Excel format. Pdf submittals will not be accepted unless specifically requested by the City.

200.2 All submittal requirements are outlined in Exhibit A – Scope of Services. Consultant shall refer to deliverables or other submittal requirements outlined in Exhibit A.

200.3 **Certificates of Insurance**
The Consultant shall deliver to Insurance Tracking Services, Inc. (ITS), the City's authorized designated representative, a certificate of insurance with respect to each required policy to be provided by the Consultant under this Agreement. The required certificates must be signed by the authorized representative of the insurance company shown on the certificate with proof that such person is an authorized representative thereof, and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon.

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) shall be provided to the City upon request.

The Consultant shall promptly deliver to ITS a certificate of insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the terms specified herein. Such certificate shall be delivered to ITS not less than 30 days prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof.

END OF EXHIBIT "B"

EXHIBIT "C"

PERFORMANCE SCHEDULE

ARTICLE 300: NOTICE TO PROCEED

300.1 The start date for the Consultant's scope of services shall be, without any further notice requirement, the date of this Agreement signed by the parties. The Consultant shall perform the services required as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Scope of Service set forth in this Agreement and the compensation to the Consultant for said Scope of Services is based upon the Consultant and the City each performing its responsibilities in a timely manner.

300.2 *Performance Schedule.* The parties hereto have agreed to a general performance schedule (the "Performance Schedule") which is set forth herein. Subsequent to the execution of this Agreement, the Consultant shall furnish to the City's Representative for approval a more detailed schedule of performance (herein the "Detailed Performance Schedule").

300.3 *Revised Performance Schedule.* If the Consultant's performance is delayed or the sequence of tasks changed, the Consultant shall notify the City's Representative in writing of the reasons for the delay or the change. The Consultant shall then prepare a revised General and Detailed Performance Schedule for submission to and approval by the City's Representative.

ARTICLE 301: PERFORMANCE SCHEDULE

301.1 The maximum allowed time to complete each phase of the work is shown in the following table:

PHASE	CALENDAR DAYS TO COMPLETE	REMARKS
ALTERNATIVES ANALYSIS REPORT	60	Time begins after completion of topo and right-of-way
30% DESIGN PHASE	60	Upon selection of preferred alternative
70% DESIGN PHASE	120	Upon completion of 30% comment review meeting
90% DESIGN PHASE	60	Upon completion of 70% comment review meeting
100% DESIGN PHASE	35	Upon completion of 90% comment review meeting
TOTAL CALENDAR DAYS TO COMPLETE:	**335**	**Does not include City review time or other delay time**

ARTICLE 302: DESIGN AND PERMITTING SCHEDULE DELAYS

302.1 The Consultant declares that they are experienced and knowledgeable with all governmental, agency, and utility company design approval processes, procedures, applications, fees, design standards, reviews, required corrective actions, and time schedules required for the Project, and that the schedule set forth for the Scope of Services is reasonable and achievable within these design approval parameters.

302.2 Although it is acknowledged that neither the City nor the Consultant have full control over these design approval processes, the Consultant shall be held accountable for any impacts to the City resulting from their actions or lack of actions, including but not limited to their failure to make timely submittals, their failure to routinely follow-up on submittals, their failure to notify the City of anticipated delays and required design changes, and their failure to process and re-submit comments and corrections received in a timely manner.

END OF EXHIBIT "C"

EXHIBIT "D"

FEE BREAKDOWN

ARTICLE 400: COMPENSATION AND TERMS OF PAYMENT

400.1 *General.* At the time of approval of this Agreement by the City Council, the City agrees to set aside FOUR HUNDRED SIXTY ONE THOUSAND SEVEN HUNDRED AND SEVEN DOLLARS AND SIXTY CENTS ($461,707.60) as the total appropriation for the performance of this Agreement. In no event shall the total payments to the Consultant for the services (basic services and additional compensation) provided under this Agreement exceed the aforementioned amount appropriated without prior approval of the City.

400.2 *Compensation: Basic Services (Lump Sum by Task).* The City agrees to pay the lump sum amount attributable to each task and, if applicable, each subtask, set forth in Exhibit "A" which is completed by the Consultant. The Consultant agrees to complete each task and, if applicable, each subtask, for the amount of the lump sum set forth in Exhibit "D" regardless of the number of manhours which must be expended to complete the performance of this Agreement. The total payments to the Consultant for the completion of these tasks shall not exceed THREE HUNDRED SIXTY ONE THOUSAND FOUR HUNDREND THIRTY NINE DOLLARS AND SIXTY CENTS ($361,439.60) without prior written approval from the City. Such payment is based upon the individual lump sum amounts that are identified in Exhibit "D".

400.3 *Compensation: Additional Compensation.* For the additional services set forth in Exhibit "E," the City shall pay to the Consultant either a lump sum or an hourly fee based upon the hourly rates set forth in Exhibit "E" attached hereto, whichever is approved in writing by the City's Representative. Such payment shall not exceed ONE HUNDRED THOUSAND TWO HUNDRED SIXTY EIGHT DOLLARS ($100,268) without the prior written approval of the City.

BASIC SERVICES FEE BREAKDOWN

EXHIBT D-1 – BASIC SERVICES FEE BREAKDOWN

TASK	DESCRIPTION	PRINCIPAL	PM	ENGR-5	ENGR-4	ENGR-3	ENGR-2	Tech 4	Tech 3	Tech2	Tech1	Clerical	Admin	Hours Subtotal	Direct Expenses	Lump Sum Task Amounts
		$230	$171	$165	$130	$102	$94	$115	$112	$90	$80	$60	$60			
200	PRELIMINARY AND GENERAL ITEMS															
200.1	Project Management	0	40	8	0	0	0	0	0	0	0	0	0	48	$0.00	$8,161.60
200.2	Kick-Off Meeting and Progress Meetings	0	3		3	0	3	0	0	0	0	0	0	9	$0.00	$1,185.60
200.3	Utility and Agency Coordination	0	2	0	24	24	8	0	0	0	0	0	0	58	$0.00	$6,660.40
200.4	Project Permits	0	2	0	16	8		0	0	0	0	0	0	26	$0.00	$3,234.80
200	Subtotal Hours	0	47	8	43	32	11	0	0	0	0	0	0	141		
200	Subtotal Fee	$0.00	$8,037.00	$1,321.60	$5,581.40	$3,264.00	$1,038.40	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00		$0.00	$19,242.40
300	30% DESIGN PHASE															
300.1	Survey	0	0	0	0	0	0	0	0	0	0	0	2	2	$28,460.00	$28,580.00
	Control Survey (Aerial Maping)												2	2	$7,580.00	$7,700.00
	Field Design Survey													0	$20,880.00	$20,880.00
300.1.3	Record of Survey													0	$3,340.00	$3,340.00
300.2	Right-of-Way	0	0	0	0	0	0	0	0	0	0	0	0	0	$17,430.00	$17,430.00
	Field Boundary Survey													0	$10,220.00	$10,220.00
	Boundary resolution													0	$7,210.00	$7,210.00
	R/W Exhibits													0	$5,130.00	$5,130.00
300.3	Records Review, Information Research and Analysis of Data	0	8	1	4	4		0	0	0	0	0	0	17	$0.00	$2,460.40
300.4	Utility Potholing (25)	0	0	0	4	0	0	0	0	0	0	0	0	4	$28,000.00	$28,519.20
300.5	Geotechnical Investigation	0	4	0	0	0	0	0	0	0	0	0	0	4	$32,000.00	$32,684.00
300.6	Sanitary Sewer Inspection	0	1	0	0	0	0	0	0	0	0	0	0	1	$0.00	$171.00
300.7	Alternatives Analysis & Report	4	32	60	45	0	35	32	32	0	0	0	8	248	$0.00	$33,193.40
300.8	30% Design Phase Plans	0	43	42	80	40	56	84	32	0	0	0	0	377	$6,500.00	$53,785.80
300	Subtotal Hours	4	88	103	133	44	91	116	64	0	0	0	10	653		
300	Subtotal Fee	$920.40	$15,048.00	$17,015.60	$17,263.40	$4,488.00	$8,590.40	$13,340.00	$7,168.00	$0.00	$0.00	$0.00	$600.00		$120,860.00	$205,293.80
400	70% DESIGN PHASE															
400.1.1	Technical Drainage Report	0	8		40	35	0	35	35		0	0	8	161	$0.00	$18,555.00
400.1.1.2	Traffic Study	0	0	104	0	0	66	0	24	0	0	8	0	202	$1,600	$28,179.20
400.1.2	70% Design Phase Plans	4	22	20	84	0	120	0	76	0	0	0	0	326	$0.00	$38,729.60
400.1.2.23	70% Design Phase Construction Cost Estimate	0	2		16	16		0	0	0	0	0	0	34	$0.00	$4,050.80
400.1.3	70% Walk Through	0	4	4		0	0	0	0	0	0	0	0	8	$0.00	$1,344.80
400	Subtotal Hours	4	36	128	140	51	186	35	135	0	0	8	8	731		
400	Subtotal Fee	$920.40	$6,156.00	$21,145.60	$18,172.00	$5,202.00	$17,556.40	$4,025.00	$15,120.00	$0.00	$0.00	$480.00	$480.00		$1,600.00	$90,359.40
500	90% DESIGN PHASE															
500.1.1	90% Design Phase Plans	2	16	8	40	0	40	0	32	32	0	0	0	170	$0.00	$19,949.80
500.1.1.2	90% Design Phase Construction Cost Estimate	0	2		8	16	0	0	0	0	0	0	0	26	$0.00	$3,012.40
500.1.2	90% Design Phase Special Provisions	0	2	4	16	0	0	0	0	0	0	0	0	22	$0.00	$3,079.60
500.1.3	90% Walk Through	0	4		4	0	0	0	0	0	0	0	0	8	$0.00	$1,203.20
500.1.5	Bidability and Constructability Meeting	0	2	2	2	0	0	0	0	0	0	0	0	6	$0.00	$932.00
500.1.6	Public Meetings	0	6	2	4	0	2	0	0	0	0	0	0	14	$0.00	$2,064.40
500	Subtotal Hours	2	32	16	74	16	42	0	32	32	0	0	0	246		
500	Subtotal Fee	$460.20	$5,472.00	$2,643.20	$9,605.20	$1,632.00	$3,964.80	$0.00	$3,584.00	$2,880.00	$0.00	$0.00	$0.00		$0.00	$30,241.40
600	100% DESIGN PHASE															
600.1.1.1	100% Pre-Final (Bond) Submittal	1	16	0	16	0	16		16	0	0	0		65	$0.00	$8,345.30
600.1.1.2	100% Final (Mylar) Submittal	1	8	0	16	0	16		16	0	0	0	8	65	$0.00	$7,457.30
600	Subtotal Hours	2	24	0	32	0	32	0	32	0	0	0	8	130		
600	Subtotal Fee	$460.20	$4,104.00	$0.00	$4,153.60	$0.00	$3,020.80	$0.00	$3,584.00	$0.00	$0.00	$0.00	$480.00		$0.00	$15,802.60
	Total Basic Services Hours	12	227	255	422	143	362	151	263	32	0	8	26	1,901		
	Total Basic Services Fee	$2,761.20	$38,817.00	$42,126.00	$54,775.60	$14,586.00	$34,172.80	$17,365.00	$29,456.00	$2,880.00	$0.00	$480.00	$1,560.00		$122,460.00	$361,439.60

EXHIBIT "E"

ARTICLE 500: ADDITIONAL COMPENSATION

500.1 Reimbursable Expenses. Reimbursable Expenses are not allowed.

500.2 Upon written authorization by the City, the Consultant shall provide Additional Services which may include the following:

500.3 **Additional Design Services** – As required by the City, Consultant shall perform additional design services required for the Project.

Additional Meetings – As required by the City, Consultant shall attend, participate and support the City in additional project or public meetings.

Right-of-Way – As required by the City, Consultant shall prepare legal descriptions and exhibits in locations where additional right-of-way, easements or AEPs/TCEs are required for the Project.

Environmental Clearance/Permits - As required by the City, Consultant shall prepare a Section 106, 404 permit, groundwater discharge permit, or other necessary required environmental permit applications.

Sewer Design – As required by the City, Consultant shall provide plan and profile design of new, reconstructed, or relocated sewer pipelines.

Utility Potholing – As required by the City, Consultant shall provide additional utility potholing, prepare pothole location map and obtain information for subsurface utilities.

Waterline Design – As required by the City, Consultant shall provide plan and profile design of new, reconstructed, or relocated water pipelines.

Landscaping and Irrigation – As requested by the City, Consultant shall provide additional design for landscaping and irrigation, including preliminary landscaping design, determination of landscaping features (may include Art, plantings and associated improvements, rock mulch, or other treatments as determined by the City), design submittals as described in Article A, and incorporation of public involvement comments, if any.

Utility Relocation - As requested by the City, Consultant shall provide utility relocation design and coordination with all utility companies. This task will include Subsurface Utility Engineering SUE.

Bidability and Constructibility – As requested by the City, Consultant shall revise design as a result of the Bidability and Constructability review.

EXHIBIT E-1 - ADDITIONAL SERVICES FEE BREAKDOWN

TASK	DESCRIPTION	PRINCIPAL	PM	ENGR-5	ENGR-4	ENGR-3	ENGR-2	Tech 4	Tech 3	Tech2	Tech1	Clerical	Admin	HOURS SUBTOTAL	Direct Expenses	Lump Sum Task Amounts
		$230	$171	$165	$130	$102	$84	$115	$112	$90	$80	$60	$60			
500.3	ADDITIONAL SERVICES	0	32	84	48	80	72	0	16	128	0	7	0	926	$46,000.00	$100,268.00
	Total Additional Services - Hours	0	32	84	48	80	72	0	16	128	0	7	0	926		
	Total Additional Services - Fee	$0.00	$5,472.00	$13,876.80	$6,230.40	$8,160.00	$6,796.80	$0.00	$1,792.00	$11,520.00	$0.00	$420.00	$0.00		$46,000.00	$100,268.00

EXHIBIT "F"

KEY PERSONNEL LIST

CITY PERSONNEL

Program Manager: Jeremy Leavitt
Project Manager: Gina Venglass

CONSULTANT'S PROJECT STAFF

The following personnel will be assigned by the Consultant to work on the Project.
Any changes require City approval.

Principal In Charge: Raymond Herweg
Project Manager: Jack Sjostrom

CONSULTANT'S SUB-CONSULTANTS

The following subconsultants will be contracted with and utilized by the Consultant to work on the Project.
Any changes require City approval.

Aerial Mapping: VTN
Survey: VTN
Geotechnical: Kleinfelder
Landscaping:
Potholing: VTN
Environmental:

END OF EXHIBIT "F"

EXHIBIT "G"

CERTIFICATE
DISCLOSURE OF OWNERSHIP/PRINCIPALS

1. Definitions

"City" means the City of Las Vegas.

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

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

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

2. Policy

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

3. Instructions

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

4. Incorporation

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

Block 1 **Contracting Entity**	
Name	Parsons Transportation Group, Inc.
Address	6795 Edmond Street, Suite 150 Las Vegas, NV 89118
Telephone	702-789-2000
EIN	36-0982270

Block 2 **Description**
Subject Matter of Contract/Agreement: Design services for roadway and drainage improvements along an approximately 1 mile section of Main Street from US95 to Owens Avenue. RFP #:

Block 3 **Type of Business**							
☐	Individual	☐	Partnership	☐	Limited Liability Company	X	Corporation

CERTIFICATE – DISCLOSURE OF OWNERSHIP/PRINCIPALS (CONTINUED)

Block 4 **Disclosure of Ownership and Principals**

In the space below, the Contracting Entity must disclose all principals (including partners) of the Contracting Entity, as well as persons or entities holding more than one-percent (1%) ownership interest in the Contracting Entity.

	FULL NAME/TITLE	BUSINESS ADDRESS	BUSINESS PHONE
1.	* Thomas E. Barron, President	100 M Street SE, Washington, DC	202-775-3320
2.	* Earnest O. Robbins II, Ex. VP, Operations	100 M Street SE, Washington, DC	202-469-6461
3.	* Lynn L. Schrier-Behler, Sr. VP, Finance	100 M Street SE, Washington, DC	202-775-3313
4.	* Richard L. Reddy, Sr. Counsel	100 M Street SE, Washington, DC	202-775-3303

** "Persons Transportation Group, Inc. is a wholly-owned subsidiary of Parsons Corporation (Pasadena, CA) which is a 100% employee-owned company. No employee owns more than 1% of the company."*

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

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

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

Name of Attached Document: _____

Date of Attached Document: _____ Number of Pages: _____

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

Raymond Kenney
Name

7.8.10
Date

State: *Nevada*
County: *Clark*

Subscribed and sworn to before me this 8th day of July, 20 10.

Notary Public

Valerie DeJohnette

VALERIE M. DEJOHNETTE
NOTARY PUBLIC
STATE OF NEVADA
CLARK COUNTY
APPT. No. 05-94302-1
MY APPT. EXP. DEC. 22, 2012

City of Las Vegas Agenda Item No.: **44.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of award of Bid No. 09.1730.01-LED, Las Vegas Wash Middle Branch Storm Drain Improvements Decatur Boulevard to Elkhorn Road and the construction conflicts and contingency reserve set by Finance and Business Services - Department of Public Works - Award recommended to: MEADOW VALLEY CONTRACTORS, INC. ($24,975,369.50 - Road and Flood Capital Projects Fund) - Ward 6 (Ross)

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☒ **Budget Funds Available**
Amount: $24,975,369.50
Funding Source: Road and Flood CPF
Dept./Division: Public Works

PURPOSE/BACKGROUND:
This project consists of improvements of approximately 16,800 feet of new storm drain facilities including reinforced concrete boxes, laterals, confluence and transition structures, storm drain inlets and manholes of various types and sizes, roadway reconstruction and restriping for the existing pavement, roadway improvements and waterline and sewer line relocations. This project also includes one additive alternate bid item to extend the dual 15' by 8' reinforced concrete box facility at the Northern CC-215 Bruce Woodbury Beltway. Funding for this project is being provided by the Regional Flood Control District.

PCC: L.E. Davis
POC: Robert Terril - (702) 643-9472

RECOMMENDATION:
That City Council approve award of Bid No. 09.1730.01-LED, Las Vegas Wash Middle Branch Storm Drain Improvements Decatur Boulevard to Elkhorn Road to Meadow Valley Contractors, Inc. in the amount of $24,975,369.50 and approve the construction conflicts and contingency reserve of $2,497,537. Authority to execute the Contract is given to the Purchasing Manager per R-48-2006.

BACKUP DOCUMENTATION:
Bid Abstract

Bid Abstract
09.1730.01-LED
Las Vegas Wash Middle Branch
Storm Drain Improvements
Decatur & Elkhorn

				Meadow Valley Contractors, Inc.		Wells Cargo, Inc.		Contri Construction Company	
ITEM NO.	DESCRIPTION	U O M	QTY	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
109.01	OWNER CAUSED DELAY ALLOWANCE	DAY	45	$500.00	$22,500.00	$500.00	$22,500.00	$500.00	$22,500.00
109.02	OWNER CAUSED DELAY AMOUNT IN ADDITION TO ALLOWANCE	DAY	45	$500.00	$22,500.00	$250.00	$11,250.00	$500.00	$22,500.00
200.01	MOBILIZATION AND DEMOBILIZATION	LS	1	$1,671,800.00	$1,671,800.00	$1,671,800.00	$1,671,800.00	$1,671,800.00	$1,671,800.00
202.01	REMOVE STORM DRAIN PIPE	LF	4721	$11.00	$51,931.00	$7.00	$33,047.00	$8.00	$37,768.00
202.02	REMOVE STORM DRAIN MANHOLE	EA	24	$780.00	$18,720.00	$150.00	$3,600.00	$954.00	$22,896.00
202.03	REMOVE DROP INLET	EA	8	$900.00	$7,200.00	$100.00	$800.00	$527.00	$4,216.00
202.04	REMOVE SANITARY SEWER MANHOLE	EA	9	$800.00	$7,200.00	$150.00	$1,350.00	$760.00	$6,840.00
202.05	REMOVE 8-INCH SANITARY SEWER PIPE	LF	2154	$10.00	$21,540.00	$5.00	$10,770.00	$4.00	$8,616.00
202.06	REMOVE 12-INCH SANITARY SEWER PIPE	LF	15	$58.00	$870.00	$10.00	$150.00	$70.00	$1,050.00
202.07	REMOVE 15-INCH SANITARY SEWER PIPE	LF	144	$22.00	$3,168.00	$10.00	$1,440.00	$21.00	$3,024.00
202.08	REMOVE ASPHALT PAVEMENT	SY	79147	$2.00	$158,294.00	$1.80	$142,464.60	$1.25	$98,933.75
202.09	REMOVE TACK ON MEDIAN ISLAND	SF	598	$2.00	$1,196.00	$1.50	$897.00	$0.25	$149.50
202.10	REMOVE TYPE "A" MEDIAN CURB	LF	7204	$1.50	$10,806.00	$0.60	$4,322.40	$0.40	$2,881.60
202.11	REMOVE CURB AND GUTTER	LF	285	$5.50	$1,567.50	$1.75	$498.75	$12.00	$3,420.00
202.12	REMOVE CONCRETE SIDEWALK	SF	1423	$2.00	$2,846.00	$0.45	$640.35	$5.00	$7,115.00
202.13	REMOVE CONCRETE VALLEY GUTTER	SF	773	$3.50	$2,705.50	$1.00	$773.00	$6.00	$4,638.00
202.14	REMOVE AND REPLACE ARTICULATED CONCRETE MAT	SF	2195	$4.00	$8,780.00	$10.00	$21,950.00	$3.00	$6,585.00
202.15	PLUG AND GROUT FILL 14-INCH STORM DRAIN PIPE	LF	340	$11.00	$3,740.00	$2.50	$850.00	$28.00	$9,520.00
202.16	PLUG AND GROUT FILL 18-INCH STORM DRAIN PIPE	LF	669	$12.00	$8,028.00	$6.00	$4,014.00	$20.00	$13,380.00
202.17	PLUG AND GROUT FILL 24-INCH STORM DRAIN PIPE	LF	694	$14.00	$9,716.00	$7.00	$4,858.00	$10.00	$6,940.00
202.18	PLUG AND GROUT FILL 36-INCH STORM DRAIN PIPE	LF	57	$55.00	$3,135.00	$17.00	$969.00	$28.00	$1,596.00
202.19	PLUG AND GROUT FILL STORM DRAIN MANHOLE	EA	3	$1,100.00	$3,300.00	$830.00	$2,490.00	$768.00	$2,304.00
202.20	PIPE	LF	172	$10.00	$1,720.00	$1.50	$258.00	$17.00	$2,924.00
202.21	REMOVE EXISTING GROUND MOUNTED SIGN	EA	3	$30.00	$90.00	$70.00	$210.00	$25.00	$75.00
202.22	REMOVE GUARDRAIL	LF	208	$3.00	$624.00	$6.00	$1,248.00	$3.00	$624.00
202.23	REMOVE RIPRAP	SY	2925	$6.00	$17,550.00	$2.00	$5,850.00	$4.00	$11,700.00
203.01	OVEREXCAVATION	CY	20000	$12.00	$240,000.00	$22.00	$440,000.00	$16.00	$320,000.00
203.02	CHANNEL EXCAVATION - "DE" 144+27.83 TO "DE" 151+95	CY	16600	$6.00	$99,600.00	$8.50	$141,100.00	$5.00	$83,000.00
212.01	REMOVE AND REPLACE DECATUR BOULEVARD MEDIAN LANDSCAPING	LS	1	$57,000.00	$57,000.00	$57,000.00	$57,000.00	$57,504.00	$57,504.00
212.02	REMOVE AND REPLACE ELKHORN ROAD LANDSCAPING	LS	1	$27,000.00	$27,000.00	$27,000.00	$27,000.00	$26,166.00	$26,166.00
212.03	12-MONTH LANDSCAPE MAINTENANCE	LS	1	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$9,718.00	$9,718.00
302.01	TYPE II AGGREGATE BASE	CY	39485	$23.50	$927,897.50	$17.75	$700,858.75	$22.00	$868,670.00
302.02	TYPE II AGGREGATE BASE - "ER" 127+13 TO "ER" 134+00	CY	625	$32.00	$20,000.00	$22.80	$14,250.00	$23.00	$14,375.00
302.03	TYPE II AGGREGATE BASE - "DB" 69+40 TO "DB" 73+80	CY	175	$32.00	$5,600.00	$23.00	$4,025.00	$23.00	$4,025.00
402.01	6-INCH PLANTMIX BITUMINOUS SURFACE	SY	78967	$19.50	$1,539,856.50	$18.00	$1,421,406.00	$21.00	$1,658,307.00
402.02	6-INCH PLANTMIX BITUMINOUS SURFACE - "ER" 127+13 TO "ER" 134+00	SY	1245	$19.50	$24,277.50	$18.00	$22,410.00	$19.00	$23,655.00
402.03	6-INCH PLANTMIX BITUMINOUS SURFACE - "DB" 69+40 TO "DB" 73+80	SY	355	$19.50	$6,922.50	$18.00	$6,390.00	$19.00	$6,745.00
403.01	PLANTMIX BITUMINOUS OPEN-GRADED SURFACE (3/4-INCH)	SY	7660	$4.60	$35,236.00	$4.15	$31,789.00	$5.00	$38,300.00

ITEM NO.	DESCRIPTION	U O M	QTY	Meadow Valley Contractors, Inc.		Wells Cargo, Inc.		Contri Construction Company	
				UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
502.01	6' X 4' REINFORCED CONCRETE BOX (RCB)	LF	62	$700.00	$43,400.00	$380.00	$23,560.00	$443.00	$27,466.00
502.02	8' X 7' REINFORCED CONCRETE BOX (RCB)	LF	51	$970.00	$49,470.00	$526.00	$26,826.00	$636.00	$32,436.00
502.03	13' X 8' REINFORCED CONCRETE BOX (RCB)	LF	1595	$700.00	$1,116,500.00	$721.00	$1,149,995.00	$816.00	$1,301,520.00
502.04	15' X 8' REINFORCED CONCRETE BOX (RCB)	LF	6934	$800.00	$5,547,200.00	$889.00	$6,164,326.00	$933.00	$6,469,422.00
502.05	24' X 8' REINFORCED CONCRETE BOX (RCB)	LF	7541	$1,010.00	$7,616,410.00	$1,063.00	$8,016,083.00	$1,064.00	$8,023,624.00
502.06	DUAL 15' X 8' REINFORCED CONCRETE BOX (RCB)	LF	696	$1,400.00	$974,400.00	$2,000.00	$1,392,000.00	$1,749.00	$1,217,304.00
502.07	CONFLUENCE STRUCTURE @ "DE" 89+25.00 TO "DE" 89+69.00	LS	1	$52,000.00	$52,000.00	$53,735.00	$53,735.00	$72,855.00	$72,855.00
502.08	CONFLUENCE STRUCTURE @ "DE" 130+70.15 TO "DE" 131+25.15 AND "DW" 130+70.68 TO "DW"	LS	1	$80,000.00	$80,000.00	$112,292.00	$112,292.00	$112,684.00	$112,684.00
502.09	TRANSITION STRUCTURE @ "DE" 89+69.00 TO "DE" 90+21.50	LS	1	$51,000.00	$51,000.00	$62,370.00	$62,370.00	$69,510.00	$69,510.00
502.10	TRANSITION STRUCTURE @ "DW" 101+75.00 TO "DW" 101+85.00	LS	1	$11,000.00	$11,000.00	$15,580.00	$15,580.00	$15,116.00	$15,116.00
502.11	TRANSITION STRUCTURE @ "DE" 131+25.15 TO "DE" 131+35.15	LS	1	$15,000.00	$15,000.00	$33,214.00	$33,214.00	$20,236.00	$20,236.00
502.12	TRANSITION STRUCTURE @ "DE" 138+31.63 TO "DE" 138+36.63	LS	1	$10,000.00	$10,000.00	$24,605.00	$24,605.00	$11,944.00	$11,944.00
502.13	TRANSITION STRUCTURE @ "EL" 10+90.13 TO "EL" 11+40.13	LS	1	$65,000.00	$65,000.00	$88,928.00	$88,928.00	$75,483.00	$75,483.00
502.14	TRANSITION STRUCTURE @ "EL" 86+80.69 TO "EL" 87+00.69	LS	1	$31,000.00	$31,000.00	$43,500.00	$43,500.00	$38,085.00	$38,085.00
502.15	12' X 8' GRATED ACCESS	LS	1	$23,000.00	$23,000.00	$25,200.00	$25,200.00	$23,439.00	$23,439.00
502.16	14' X 8' ACCESS GRATE INLET	LS	1	$25,000.00	$25,000.00	$33,500.00	$33,500.00	$26,135.00	$26,135.00
502.17	DUAL 13' X 8' RCB STRUCTURE	LS	1	$36,000.00	$36,000.00	$57,300.00	$57,300.00	$48,105.00	$48,105.00
502.18	DROP STRUCTURE @ "EL" 30+06.59	LS	1	$8,000.00	$8,000.00	$10,500.00	$10,500.00	$11,113.00	$11,113.00
502.19	DROP STRUCTURE @ "EL" 31+94.02	LS	1	$6,200.00	$6,200.00	$8,160.00	$8,160.00	$9,338.00	$9,338.00
502.20	DUAL 15' X 8' REINFORCED CONCRETE BOX (RCB) - TYPE 1	LF	144	$1,700.00	$244,800.00	$1,983.00	$285,552.00	$1,958.00	$281,952.00
502.21	DUAL 15' X 8' REINFORCED CONCRETE BOX (RCB) - TYPE 2	LF	225	$1,800.00	$405,000.00	$2,270.00	$510,750.00	$1,965.00	$442,125.00
502.22	DUAL 15' X 8' REINFORCED CONCRETE BOX (RCB) - TYPE 3	LF	228	$2,000.00	$456,000.00	$2,660.00	$606,480.00	$2,180.00	$497,040.00
502.23	12' LOW FLOW CHANNEL	LF	746	$170.00	$126,820.00	$160.00	$119,360.00	$219.00	$163,374.00
502.24	HEADWALL - "DE" 144+27.83	LS	1	$13,000.00	$13,000.00	$13,000.00	$13,000.00	$15,062.00	$15,062.00
502.25	LOW FLOW CHANNEL TRANSITION - "DE" 144+27.83 TO "DE" 144+37.33	LS	1	$6,200.00	$6,200.00	$2,670.00	$2,670.00	$7,115.00	$7,115.00
502.26	LOW FLOW CHANNEL TRANSITION - "DE" 151+83.15 TO "DE" 151+95	LS	1	$6,200.00	$6,200.00	$2,485.00	$2,485.00	$7,081.00	$7,081.00
603.01	18-INCH RCP (CLASS III)	LF	709	$95.00	$67,355.00	$78.00	$55,302.00	$130.00	$92,170.00
603.02	24-INCH RCP (CLASS III)	LF	294	$100.00	$29,400.00	$110.00	$32,340.00	$81.00	$23,814.00
603.03	30-INCH RCP (CLASS III)	LF	186	$105.00	$19,530.00	$112.00	$20,832.00	$102.00	$18,972.00
603.04	36-INCH RCP (CLASS III)	LF	300	$110.00	$33,000.00	$132.00	$39,600.00	$104.00	$31,200.00
603.05	42-INCH RCP (CLASS III)	LF	211	$145.00	$30,595.00	$163.00	$34,393.00	$131.00	$27,641.00
603.06	48-INCH RCP (CLASS III)	LF	371	$155.00	$57,505.00	$184.00	$68,264.00	$166.00	$61,586.00
603.07	54-INCH RCP (CLASS III)	LF	228	$160.00	$36,480.00	$221.00	$50,388.00	$173.00	$39,444.00
609.01	5-FOOT TYPE 'CM2' DROP INLET	EA	2	$6,500.00	$13,000.00	$6,811.00	$13,622.00	$7,830.00	$15,660.00
609.02	10-FOOT TYPE 'CM2' DROP INLET	EA	1	$7,600.00	$7,600.00	$7,652.00	$7,652.00	$7,885.00	$7,885.00
609.03	20-FOOT TYPE 'CM2' DROP INLET	EA	1	$12,000.00	$12,000.00	$12,618.00	$12,618.00	$12,537.00	$12,537.00
609.04	5-FOOT TYPE 'DM2' DROP INLET	EA	4	$5,800.00	$23,200.00	$6,064.00	$24,256.00	$6,778.00	$27,112.00
609.05	10-FOOT TYPE 'DM2' DROP INLET	EA	4	$7,700.00	$30,800.00	$8,136.00	$32,544.00	$9,110.00	$36,440.00
609.06	15-FOOT TYPE 'DM2' DROP INLET	EA	2	$10,000.00	$20,000.00	$10,684.00	$21,368.00	$11,660.00	$23,320.00
609.07	10-FOOT TYPE 'DM2B' DROP INLET	EA	2	$7,900.00	$15,800.00	$8,243.00	$16,486.00	$9,405.00	$18,810.00
609.08	15-FOOT TYPE 'DM2B' DROP INLET	EA	4	$10,000.00	$40,000.00	$10,480.00	$41,920.00	$11,057.00	$44,228.00
609.09	20-FOOT TYPE 'DM2B' DROP INLET	EA	3	$12,000.00	$36,000.00	$12,567.00	$37,701.00	$13,320.00	$39,960.00
609.10	10-FOOT MODIFIED TYPE 'DM2' DROP INLET W/ REAR SIDEWALK DRAIN INLET	EA	1	$8,600.00	$8,600.00	$9,466.00	$9,466.00	$10,854.00	$10,854.00

				Meadow Valley Contractors, Inc.		Wells Cargo, Inc.		Contri Construction Company	
ITEM NO.	DESCRIPTION	U O M	QTY	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
609.11	10-FOOT MODIFIED TYPE 'DM2' DROP INLET W/ DUAL REAR SIDEWALK DRAIN INLET	EA	1	$10,000.00	$10,000.00	$10,433.00	$10,433.00	$12,093.00	$12,093.00
609.12	20-FOOT MODIFIED TYPE 'DM2B' DROP INLET W/ REAR SIDEWALK DRAIN INLET	EA	1	$14,000.00	$14,000.00	$13,974.00	$13,974.00	$16,032.00	$16,032.00
609.13	MODIFIED TYPE 8 DROP INLET	EA	3	$5,500.00	$16,500.00	$5,408.00	$16,224.00	$7,919.00	$23,757.00
609.14	MODIFIED NDOT TYPE 2B DROP INLET W/ CONCRETE APRON	EA	7	$3,200.00	$22,400.00	$3,742.00	$26,194.00	$4,197.00	$29,379.00
609.15	48-INCH TYPE 1 STORM DRAIN MANHOLE RISER	EA	43	$2,900.00	$124,700.00	$3,281.00	$141,083.00	$3,591.00	$154,413.00
609.16	48-INCH TYPE 1A STORM DRAIN MANHOLE RISER	EA	4	$2,600.00	$10,400.00	$2,922.00	$11,688.00	$3,307.00	$13,228.00
609.17	48-INCH TYPE 1 STORM DRAIN MANHOLE	EA	1	$2,300.00	$2,300.00	$3,994.00	$3,994.00	$4,807.00	$4,807.00
609.18	60-INCH TYPE 1 STORM DRAIN MANHOLE	EA	1	$2,400.00	$2,400.00	$3,585.00	$3,585.00	$3,585.00	$3,585.00
609.19	60-INCH CLARK COUNTY TYPE III STORM DRAIN MANHOLE	EA	2	$4,400.00	$8,800.00	$5,361.00	$10,722.00	$5,764.00	$11,528.00
609.20	NDOT TYPE 4 STORM DRAIN MANHOLE	EA	5	$6,200.00	$31,000.00	$6,544.00	$32,720.00	$8,192.00	$40,960.00
609.21	MODIFIED NDOT TYPE 4 STORM DRAIN MANHOLE AT "BR" 9+35.66	EA	1	$11,000.00	$11,000.00	$10,934.00	$10,934.00	$12,881.00	$12,881.00
609.22	MODIFIED NDOT TYPE 4 STORM DRAIN MANHOLE AT "DL" 8+05.89	EA	1	$7,600.00	$7,600.00	$7,900.00	$7,900.00	$9,389.00	$9,389.00
609.23	MODIFIED NDOT TYPE 4 STORM DRAIN MANHOLE AT "DSW" 8+90.74	EA	1	$8,600.00	$8,600.00	$8,861.00	$8,861.00	$10,306.00	$10,306.00
610.01	HEAVY RIPRAP - D50 = 18-INCHES	CY	5900	$30.00	$177,000.00	$28.50	$168,150.00	$37.00	$218,300.00
613.01	TACK ON CONCRETE MEDIAN ISLAND	SF	2239	$6.00	$13,434.00	$5.70	$12,762.30	$6.00	$13,434.00
613.02	TYPE "A" MEDIAN CURB	LF	8147	$10.00	$81,470.00	$9.20	$74,952.40	$13.00	$105,911.00
613.03	TYPE "L" CURB AND GUTTER	LF	285	$21.00	$5,985.00	$28.35	$8,079.75	$16.00	$4,560.00
613.04	CONCRETE SIDEWALK	SF	1423	$6.00	$8,538.00	$5.60	$7,968.80	$5.00	$7,115.00
613.05	CONCRETE VALLEY GUTTER	SF	503	$10.00	$5,030.00	$11.60	$5,834.80	$9.00	$4,527.00
613.06	TACK ON CONCRETE MEDIAN ISLAND - "ER" 127+36.43 TO "ER" 130+20.43	SF	1109	$6.00	$6,654.00	$5.70	$6,321.30	$7.00	$7,763.00
613.07	TYPE "L" CURB AND GUTTER - "ER" 127+24.80 TO "ER" 128+74.78	LF	150	$21.00	$3,150.00	$28.35	$4,252.50	$17.00	$2,550.00
613.08	CONCRETE SIDEWALK - "ER" 127+24.80 TO "ER" 127+55.70	SF	155	$6.00	$930.00	$5.60	$868.00	$6.00	$930.00
616.01	6-FOOT WROUGHT IRON FENCE	LF	77	$64.00	$4,928.00	$64.00	$4,928.00	$62.00	$4,774.00
616.02	REMOVE AND REPLACE 6-FOOT WROUGHT IRON FENCE	LF	50	$78.00	$3,900.00	$78.00	$3,900.00	$76.00	$3,800.00
616.03	12' X 6' WROUGHT IRON DOUBLE SWING GATE	EA	1	$3,100.00	$3,100.00	$3,100.00	$3,100.00	$3,037.00	$3,037.00
616.04	REMOVE AND REPLACE CHAIN LINK FENCE	LF	6	$98.00	$588.00	$98.00	$588.00	$96.00	$576.00
616.05	REMOVE AND REPLACE POST AND CABLE RAILING	LF	79	$35.00	$2,765.00	$35.00	$2,765.00	$34.00	$2,686.00
618.01	W-BEAM GUARDRAIL	LF	208	$25.00	$5,200.00	$24.80	$5,158.40	$32.00	$6,656.00
622.01	CONSTRUCTION SURVEYING	LS	1	$300,000.00	$300,000.00	$29,000.00	$29,000.00	$43,526.00	$43,526.00
623.01	NO. 7 PULLBOX	EA	1	$2,000.00	$2,000.00	$246.00	$246.00	$506.00	$506.00
623.02	3-INCH CONDUIT FOR FUTURE TRAFFIC SIGNAL WITH 1-#8 BARE TRACER WIRE AND PULLSTRING	LF	232	$52.00	$12,064.00	$13.20	$3,062.40	$45.00	$10,440.00
624.01	TRAFFIC CONTROL AND MAINTENANCE	LS	1	$160,000.00	$160,000.00	$226,100.00	$226,100.00	$122,629.00	$122,629.00
625.01	PORTABLE CHANGEABLE MESSAGE SIGN	DAY	60	$93.00	$5,580.00	$31.00	$1,860.00	$51.00	$3,060.00
625.02	ARROW DISPLAY	DAY	1200	$26.00	$31,200.00	$10.50	$12,600.00	$14.00	$16,800.00
627.01	PERMANENT SIGN PANEL (GROUND MOUNTED)	SF	89	$45.00	$4,005.00	$56.80	$5,055.20	$43.00	$3,827.00
627.02	REMOVE STOP SIGN W/ TRAFFIC DRUM AND SOLAR POWER FLASHER AND REINSTALL	EA	1	$158.00	$158.00	$258.00	$258.00	$152.00	$152.00
627.03	REMOVE STOP SIGN W/ TRAFFIC DRUM AND REINSTALL	EA	1	$132.00	$132.00	$258.00	$258.00	$127.00	$127.00
627.04	REMOVE AND REPLACE GROUND MOUNTED SIGN	EA	23	$100.00	$2,300.00	$115.00	$2,645.00	$96.00	$2,208.00
628.01	WHITE - TYPE II PAVEMENT MARKING FILM (CROSSWALKS, STOP BARS, CHEVRONS, DIAGONALS)	SF	7190	$3.20	$23,008.00	$3.20	$23,008.00	$3.00	$21,570.00
628.02	YELLOW - TYPE II PAVEMENT MARKING FILM (DIAGONALS)	SF	3000	$3.20	$9,600.00	$3.15	$9,450.00	$3.00	$9,000.00

				Meadow Valley Contractors, Inc.		Wells Cargo, Inc.		Contri Construction Company	
ITEM NO.	DESCRIPTION	U O M	QTY	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
628.03	6-INCH WHITE SOLID LINE (POLYUREA OR EPOXY)	LF	12062	$0.60	$7,237.20	$0.35	$4,221.70	$0.60	$7,237.20
628.04	6-INCH YELLOW SOLID LINE (POLYUREA OR EPOXY)	LF	1245	$0.60	$747.00	$0.35	$435.75	$0.60	$747.00
628.05	TYPE II PAVEMENT MARKING FILM FOR ARROWS	SF	1159	$7.40	$8,576.60	$10.85	$12,575.15	$7.00	$8,113.00
628.06	TYPE II PAVEMENT MARKING FILM FOR "ONLY"	EA	37	$116.00	$4,292.00	$165.00	$6,105.00	$111.00	$4,107.00
628.07	WHITE - TYPE II PAVEMENT MARKING FILM (CROSSWALKS, STOP BARS, CHEVRONS, DIAGONALS) - "ER" 127+25 TO "ER" 132+35	SF	604	$3.20	$1,932.80	$3.15	$1,902.60	$3.00	$1,812.00
628.08	6-INCH WHITE SOLID LINE (POLYUREA OR EPOXY) - "ER" 127+25 TO "ER" 132+35	LF	1101	$0.60	$660.60	$0.30	$330.30	$1.00	$1,101.00
628.09	TYPE II PAVEMENT MARKING FILM FOR ARROWS - "ER" 127+25 TO "ER" 132+35	SF	109	$7.40	$806.60	$15.50	$1,689.50	$7.00	$763.00
628.10	TYPE II PAVEMENT MARKING FILM FOR "ONLY" - "ER" 127+25 TO "ER" 132+35	EA	4	$116.00	$464.00	$201.50	$806.00	$111.00	$444.00
629.01	6-INCH WATERLINE AND APPURTENANCES AT "ER" 153+52.74 TO "ER" 153+52.01	LS	1	$8,000.00	$8,000.00	$4,890.00	$4,890.00	$4,747.95	$4,747.95
629.02	6-INCH WATERLINE AND APPURTENANCES AT "ER" 161+43.86 TO "ER" 161+42.86	LS	1	$800.00	$800.00	$4,966.00	$4,966.00	$4,940.00	$4,940.00
629.03	6-INCH WATERLINE AND APPURTENANCES AT "ER" 167+47.59 TO "ER" 167+47.30	LS	1	$8,000.00	$8,000.00	$4,955.00	$4,955.00	$4,964.00	$4,964.00
629.04	8-INCH WATERLINE AND APPURTENANCES AT "ER" 146+11.15 TO "ER" 146+13.87	LS	1	$9,000.00	$9,000.00	$5,744.00	$5,744.00	$6,685.00	$6,685.00
629.05	8-INCH WATERLINE AND APPURTENANCES AT "OL" 8+81.08 TO "DB" 75+20.26	LS	1	$18,000.00	$18,000.00	$12,000.00	$12,000.00	$12,023.00	$12,023.00
629.06	8-INCH WATERLINE AND APPURTENANCES AT "DSW" 8+03.98 TO "DSW" 9+20.45	LS	1	$20,000.00	$20,000.00	$16,000.00	$16,000.00	$18,393.00	$18,393.00
629.07	8-INCH WATERLINE AND APPURTENANCES AT "DB" 88+34.26 TO "DB" 88+85.36	LS	1	$9,000.00	$9,000.00	$4,655.00	$4,655.00	$5,505.00	$5,505.00
629.08	10-INCH WATERLINE AND APPURTENANCES AT "ER" 166+75.56 TO "ER" 166+77.36	LS	1	$12,000.00	$12,000.00	$8,735.00	$8,735.00	$8,767.00	$8,767.00
629.09	12-INCH WATERLINE AND APPURTENANCES AT "ER" 159+16.60 TO "ER" 159+16.26	LS	1	$22,000.00	$22,000.00	$20,460.00	$20,460.00	$17,804.00	$17,804.00
629.10	12-INCH WATERLINE AND APPURTENANCES AT "ER" 171+52.09 TO "ER" 173+60.47	LS	1	$34,000.00	$34,000.00	$33,780.00	$33,780.00	$30,482.00	$30,482.00
629.11	12-INCH WATERLINE AND APPURTENANCES AT "W1" 10+00.00 TO "W1" 16+97.37	LS	1	$52,000.00	$52,000.00	$59,000.00	$59,000.00	$35,296.00	$35,296.00
629.12	INSTALL 8-INCH GATE VALVE AT "EL" 52+67	LS	1	$1,700.00	$1,700.00	$2,290.00	$2,290.00	$2,924.00	$2,924.00
629.13	ADJUST WATER VALVE TO FINISHED GRADE	EA	5	$700.00	$3,500.00	$264.00	$1,320.00	$342.00	$1,710.00
629.14	ADJUST WATER BLOW-OFF TO FINISHED GRADE	EA	2	$1,400.00	$2,800.00	$497.00	$994.00	$482.00	$964.00
629.15	INSTALL 6-INCH FIRE HYDRANT LATERAL AT "ER" 171+70.83	LS	1	$7,000.00	$7,000.00	$5,150.00	$5,150.00	$5,008.00	$5,008.00
630.01	8-INCH PVC SANITARY SEWER PIPE	LF	2473	$50.00	$123,650.00	$84.00	$207,732.00	$31.00	$76,663.00
630.02	15-INCH PVC (SDR35) SANITARY SEWER PIPE	LF	52	$125.00	$6,500.00	$85.00	$4,420.00	$123.00	$6,396.00
630.03	16-INCH PVC (C905) SANITARY SEWER PIPE	LF	127	$150.00	$19,050.00	$96.50	$12,255.50	$122.00	$15,494.00
630.04	48-INCH TYPE 1 SANITARY SEWER MANHOLE	EA	10	$2,700.00	$27,000.00	$3,820.00	$38,200.00	$4,281.00	$42,810.00
630.05	ADJUST SANITARY SEWER MANHOLE TO FINISHED GRADE	EA	14	$600.00	$8,400.00	$284.00	$3,976.00	$342.00	$4,788.00
633.01	REFLECTIVE RAISED PAVEMENT MARKERS	EA	1656	$2.30	$3,808.80	$2.25	$3,726.00	$2.00	$3,312.00
633.02	NON-REFLECTIVE RAISED PAVEMENT MARKERS	EA	4184	$1.20	$5,020.80	$1.15	$4,811.60	$1.00	$4,184.00
633.03	REFLECTIVE RAISED PAVEMENT MARKERS - "ER" 127+25 TO "ER" 132+35	EA	87	$2.30	$200.10	$2.30	$200.10	$2.00	$174.00
633.04	NON-REFLECTIVE RAISED PAVEMENT MARKERS - "ER" 127+25 TO "ER" 132+35	EA	185	$1.20	$222.00	$1.15	$212.75	$1.00	$185.00
637.01	DUST CONTROL	LS	1	$105,000.00	$105,000.00	$222,700.00	$222,700.00	$49,256.00	$49,256.00
637.02	NPDES DISCHARGE PERMIT	LS	1	$35,000.00	$35,000.00	$11,264.00	$11,264.00	$31,026.00	$31,026.00
637.03	POST CONSTRUCTION DUST PALLIATIVE	ACRE	7	$3,600.00	$25,200.00	$1,500.00	$10,500.00	$3,259.00	$22,813.00
650.01	NV ENERGY TRANSMISSION POLE SUPPORT	EA	11	$57,000.00	$627,000.00	$45,000.00	$495,000.00	$26,241.00	$288,651.00
650.02	NV ENERGY FEES	FA	1	$60,000.00	$60,000.00	$60,000.00	$60,000.00	$60,000.00	$60,000.00

				Meadow Valley Contractors, Inc.		Wells Cargo, Inc.		Contri Construction Company	
ITEM NO.	DESCRIPTION	U.O.M	QTY	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
	Total Base Bid Amount				**$24,975,369.50**		**$26,435,438.65**		$26,388,769.00
					CORRECTED TOTAL		CORRECTED TOTAL		
	Engineer's Estimate $35,121,522								
	Responsive Bidder				Yes				
	Responsible Bidder				Yes				

TO: Cheri Edelman Please review and approve recommended award to

Meadow Valley Contractors, Inc. in the amount of $ 24,975,369.50.

Purchasing & Contracts Representative — 8/12/10 Date

Using Department Authorized Rep Signature — 8/12/10 Date

Bid Abstract
09.1730.01-LED
Las Vegas Wash Middle Branch
Storm Drain Improvements
Decatur & Elkhorn

ITEM NO.	DESCRIPTION	U O M	QTY	TAB Contractors, Inc.		Fisher Sand and Gravel Co.		W. A. Rasic Construction Co., Inc.	
				UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
109.01	OWNER CAUSED DELAY ALLOWANCE	DAY	45	$500.00	$22,500.00	$500.00	$22,500.00	$500.00	$22,500.00
109.02	OWNER CAUSED DELAY AMOUNT IN ADDITION TO ALLOWANCE	DAY	45	$105.00	$4,725.00	$2,500.00	$112,500.00	$900.00	$40,500.00
200.01	MOBILIZATION AND DEMOBILIZATION	LS	1	$1,671,800.00	$1,671,800.00	$1,671,800.00	$1,671,800.00	$1,671,800.00	$1,671,800.00
202.01	REMOVE STORM DRAIN PIPE	LF	4721	$19.00	$89,699.00	$20.00	$94,420.00	$6.00	$28,326.00
202.02	REMOVE STORM DRAIN MANHOLE	EA	24	$400.00	$9,600.00	$700.00	$16,800.00	$330.00	$7,920.00
202.03	REMOVE DROP INLET	EA	8	$850.00	$6,800.00	$700.00	$5,600.00	$340.00	$2,720.00
202.04	REMOVE SANITARY SEWER MANHOLE	EA	9	$500.00	$4,500.00	$1,700.00	$15,300.00	$350.00	$3,150.00
202.05	REMOVE 8-INCH SANITARY SEWER PIPE	LF	2154	$2.50	$5,385.00	$20.00	$43,080.00	$5.00	$10,770.00
202.06	REMOVE 12-INCH SANITARY SEWER PIPE	LF	15	$2.50	$37.50	$25.00	$375.00	$60.00	$900.00
202.07	REMOVE 15-INCH SANITARY SEWER PIPE	LF	144	$2.50	$360.00	$30.00	$4,320.00	$5.00	$720.00
202.08	REMOVE ASPHALT PAVEMENT	SY	79147	$5.00	$395,735.00	$3.00	$237,441.00	$1.25	$98,933.75
202.09	REMOVE TACK ON MEDIAN ISLAND	SF	598	$2.00	$1,196.00	$3.00	$1,794.00	$1.60	$956.80
202.10	REMOVE TYPE "A" MEDIAN CURB	LF	7204	$1.00	$7,204.00	$2.00	$14,408.00	$2.80	$20,171.20
202.11	REMOVE CURB AND GUTTER	LF	285	$2.00	$570.00	$5.50	$1,567.50	$19.00	$5,415.00
202.12	REMOVE CONCRETE SIDEWALK	SF	1423	$2.00	$2,846.00	$5.00	$7,115.00	$2.20	$3,130.60
202.13	REMOVE CONCRETE VALLEY GUTTER	SF	773	$3.00	$2,319.00	$10.00	$7,730.00	$3.00	$2,319.00
202.14	REMOVE AND REPLACE ARTICULATED CONCRETE MAT	SF	2195	$15.00	$32,925.00	$10.00	$21,950.00	$11.00	$24,145.00
202.15	PLUG AND GROUT FILL 14-INCH STORM DRAIN PIPE	LF	340	$14.00	$4,760.00	$8.00	$2,720.00	$14.00	$4,760.00
202.16	PLUG AND GROUT FILL 18-INCH STORM DRAIN PIPE	LF	669	$12.00	$8,028.00	$12.00	$8,028.00	$15.00	$10,035.00
202.17	PLUG AND GROUT FILL 24-INCH STORM DRAIN PIPE	LF	694	$17.00	$11,798.00	$20.00	$13,880.00	$18.00	$12,492.00
202.18	PLUG AND GROUT FILL 36-INCH STORM DRAIN PIPE	LF	57	$41.00	$2,337.00	$22.00	$1,254.00	$23.00	$1,311.00
202.19	PLUG AND GROUT FILL STORM DRAIN MANHOLE	EA	3	$550.00	$1,650.00	$2,000.00	$6,000.00	$900.00	$2,700.00
202.20	PIPE	LF	172	$6.00	$1,032.00	$2.50	$430.00	$23.00	$3,956.00
202.21	REMOVE EXISTING GROUND MOUNTED SIGN	EA	3	$60.00	$180.00	$30.00	$90.00	$64.00	$192.00
202.22	REMOVE GUARDRAIL	LF	208	$5.00	$1,040.00	$3.00	$624.00	$16.00	$3,328.00
202.23	REMOVE RIPRAP	SY	2925	$12.00	$35,100.00	$6.50	$19,012.50	$4.50	$13,162.50
203.01	OVEREXCAVATION	CY	20000	$16.00	$320,000.00	$10.00	$200,000.00	$4.00	$80,000.00
203.02	CHANNEL EXCAVATION - "DE" 144+27.83 TO "DE" 151+95	CY	16600	$8.50	$141,100.00	$5.00	$83,000.00	$18.00	$298,800.00
212.01	REMOVE AND REPLACE DECATUR BOULEVARD MEDIAN LANDSCAPING	LS	1	$57,000.00	$57,000.00	$50,000.00	$50,000.00	$22,000.00	$22,000.00
212.02	REMOVE AND REPLACE ELKHORN ROAD LANDSCAPING	LS	1	$27,000.00	$27,000.00	$25,000.00	$25,000.00	$30,000.00	$30,000.00
212.03	12-MONTH LANDSCAPE MAINTENANCE	LS	1	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00
302.01	TYPE II AGGREGATE BASE	CY	39485	$24.00	$947,640.00	$20.00	$789,700.00	$18.00	$710,730.00
302.02	TYPE II AGGREGATE BASE - "ER" 127+13 TO "ER" 134+00	CY	625	$25.00	$15,625.00	$20.00	$12,500.00	$23.00	$14,375.00
302.03	TYPE II AGGREGATE BASE - "DB" 69+40 TO "DB" 73+80	CY	175	$25.00	$4,375.00	$20.00	$3,500.00	$25.00	$4,375.00
402.01	6-INCH PLANTMIX BITUMINOUS SURFACE	SY	78967	$20.00	$1,579,340.00	$21.50	$1,697,790.50	$20.00	$1,579,340.00
402.02	6-INCH PLANTMIX BITUMINOUS SURFACE - "ER" 127+13 TO "ER" 134+00	SY	1245	$27.00	$33,615.00	$21.50	$26,767.50	$27.00	$33,615.00
402.03	6-INCH PLANTMIX BITUMINOUS SURFACE - "DB" 69+40 TO "DB" 73+80	SY	355	$30.00	$10,650.00	$21.50	$7,632.50	$30.00	$10,650.00
403.01	PLANTMIX BITUMINOUS OPEN-GRADED SURFACE (3/4-INCH)	SY	7660	$4.00	$30,640.00	$3.50	$26,810.00	$4.00	$30,640.00

ITEM NO.	DESCRIPTION	U O M	QTY	TAB Contractors, Inc.		Fisher Sand and Gravel Co.		W. A. Rasic Construction Co., Inc.	
				UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
502.01	6' X 4' REINFORCED CONCRETE BOX (RCB)	LF	62	$740.00	$45,880.00	$400.00	$24,800.00	$700.00	$43,400.00
502.02	8' X 7' REINFORCED CONCRETE BOX (RCB)	LF	51	$1,025.00	$52,275.00	$500.00	$25,500.00	$800.00	$40,800.00
502.03	13' X 8' REINFORCED CONCRETE BOX (RCB)	LF	1595	$770.00	$1,228,150.00	$615.00	$980,925.00	$840.00	$1,339,800.00
502.04	15' X 8' REINFORCED CONCRETE BOX (RCB)	LF	6934	$890.00	$6,171,260.00	$810.00	$5,616,540.00	$974.00	$6,753,716.00
502.05	24' X 8' REINFORCED CONCRETE BOX (RCB)	LF	7541	$990.00	$7,465,590.00	$1,220.00	$9,200,020.00	$1,133.00	$8,543,953.00
502.06	DUAL 15' X 8' REINFORCED CONCRETE BOX (RCB)	LF	696	$2,150.00	$1,496,400.00	$2,000.00	$1,392,000.00	$2,103.00	$1,463,688.00
502.07	CONFLUENCE STRUCTURE @ "DE" 89+25.00 TO "DE" 89+69.00	LS	1	$78,300.00	$78,300.00	$35,000.00	$35,000.00	$60,000.00	$60,000.00
502.08	CONFLUENCE STRUCTURE @ "DE" 130+70.15 TO "DE" 131+25.15 AND "DW" 130+70.68 TO "DW"	LS	1	$128,700.00	$128,700.00	$210,000.00	$210,000.00	$91,000.00	$91,000.00
502.09	TRANSITION STRUCTURE @ "DE" 89+69.00 TO "DE" 90+21.50	LS	1	$86,300.00	$86,300.00	$45,000.00	$45,000.00	$56,000.00	$56,000.00
502.10	TRANSITION STRUCTURE @ "DW" 101+75.00 TO "DW" 101+85.00	LS	1	$17,200.00	$17,200.00	$12,500.00	$12,500.00	$25,000.00	$25,000.00
502.11	TRANSITION STRUCTURE @ "DE" 131+25.15 TO "DE" 131+35.15	LS	1	$24,900.00	$24,900.00	$15,500.00	$15,500.00	$30,000.00	$30,000.00
502.12	TRANSITION STRUCTURE @ "DE" 138+31.63 TO "DE" 138+36.63	LS	1	$15,200.00	$15,200.00	$10,000.00	$10,000.00	$16,000.00	$16,000.00
502.13	TRANSITION STRUCTURE @ "EL" 10+90.13 TO "EL" 11+40.13	LS	1	$88,800.00	$88,800.00	$55,000.00	$55,000.00	$84,000.00	$84,000.00
502.14	TRANSITION STRUCTURE @ "EL" 86+80.69 TO "EL" 87+00.69	LS	1	$44,800.00	$44,800.00	$25,000.00	$25,000.00	$39,000.00	$39,000.00
502.15	12' X 8' GRATED ACCESS	LS	1	$24,500.00	$24,500.00	$2,000.00	$2,000.00	$18,000.00	$18,000.00
502.16	14' X 8' ACCESS GRATE INLET	LS	1	$23,400.00	$23,400.00	$8,000.00	$8,000.00	$15,000.00	$15,000.00
502.17	DUAL 13' X 8' RCB STRUCTURE	LS	1	$48,200.00	$48,200.00	$40,000.00	$40,000.00	$46,000.00	$46,000.00
502.18	DROP STRUCTURE @ "EL" 30+06.59	LS	1	$9,800.00	$9,800.00	$10,000.00	$10,000.00	$22,000.00	$22,000.00
502.19	DROP STRUCTURE @ "EL" 31+94.02	LS	1	$8,300.00	$8,300.00	$7,500.00	$7,500.00	$15,000.00	$15,000.00
502.20	DUAL 15' X 8' REINFORCED CONCRETE BOX (RCB) - TYPE 1	LF	144	$3,150.00	$453,600.00	$1,500.00	$216,000.00	$2,200.00	$316,800.00
502.21	DUAL 15' X 8' REINFORCED CONCRETE BOX (RCB) - TYPE 2	LF	225	$3,200.00	$720,000.00	$2,000.00	$450,000.00	$2,500.00	$562,500.00
502.22	DUAL 15' X 8' REINFORCED CONCRETE BOX (RCB) - TYPE 3	LF	228	$3,200.00	$729,600.00	$2,000.00	$456,000.00	$2,300.00	$524,400.00
502.23	12' LOW FLOW CHANNEL	LF	746	$200.00	$149,200.00	$150.00	$111,900.00	$120.00	$89,520.00
502.24	HEADWALL - "DE" 144+27.83	LS	1	$13,400.00	$13,400.00	$15,000.00	$15,000.00	$3,500.00	$3,500.00
502.25	LOW FLOW CHANNEL TRANSITION - "DE" 144+27.83 TO "DE" 144+37.33	LS	1	$6,800.00	$6,800.00	$7,500.00	$7,500.00	$18,000.00	$18,000.00
502.26	LOW FLOW CHANNEL TRANSITION - "DE" 151+83.15 TO "DE" 151+95	LS	1	$7,400.00	$7,400.00	$7,500.00	$7,500.00	$18,000.00	$18,000.00
603.01	18-INCH RCP (CLASS III)	LF	709	$111.00	$78,699.00	$95.00	$67,355.00	$250.00	$177,250.00
603.02	24-INCH RCP (CLASS III)	LF	294	$116.00	$34,104.00	$100.00	$29,400.00	$160.00	$47,040.00
603.03	30-INCH RCP (CLASS III)	LF	186	$139.00	$25,854.00	$125.00	$23,250.00	$170.00	$31,620.00
603.04	36-INCH RCP (CLASS III)	LF	300	$158.00	$47,400.00	$145.00	$43,500.00	$210.00	$63,000.00
603.05	42-INCH RCP (CLASS III)	LF	211	$198.00	$41,778.00	$175.00	$36,925.00	$220.00	$46,420.00
603.06	48-INCH RCP (CLASS III)	LF	371	$238.00	$88,298.00	$190.00	$70,490.00	$280.00	$103,880.00
603.07	54-INCH RCP (CLASS III)	LF	228	$282.00	$64,296.00	$240.00	$54,720.00	$300.00	$68,400.00
609.01	5-FOOT TYPE 'CM2' DROP INLET	EA	2	$7,000.00	$14,000.00	$7,000.00	$14,000.00	$6,700.00	$13,400.00
609.02	10-FOOT TYPE 'CM2' DROP INLET	EA	1	$8,000.00	$8,000.00	$7,250.00	$7,250.00	$12,300.00	$12,300.00
609.03	20-FOOT TYPE 'CM2' DROP INLET	EA	1	$13,300.00	$13,300.00	$12,500.00	$12,500.00	$20,000.00	$20,000.00
609.04	5-FOOT TYPE 'DM2' DROP INLET	EA	4	$6,250.00	$25,000.00	$6,000.00	$24,000.00	$6,600.00	$26,400.00
609.05	10-FOOT TYPE 'DM2' DROP INLET	EA	4	$8,350.00	$33,400.00	$7,500.00	$30,000.00	$11,200.00	$44,800.00
609.06	15-FOOT TYPE 'DM2' DROP INLET	EA	2	$11,000.00	$22,000.00	$10,000.00	$20,000.00	$13,300.00	$26,600.00
609.07	10-FOOT TYPE 'DM2B' DROP INLET	EA	2	$8,750.00	$17,500.00	$7,500.00	$15,000.00	$11,500.00	$23,000.00
609.08	15-FOOT TYPE 'DM2B' DROP INLET	EA	4	$11,000.00	$44,000.00	$10,000.00	$40,000.00	$14,300.00	$57,200.00
609.09	20-FOOT TYPE 'DM2B' DROP INLET	EA	3	$13,300.00	$39,900.00	$15,000.00	$45,000.00	$19,000.00	$57,000.00
609.10	10-FOOT MODIFIED TYPE 'DM2' DROP INLET W/ REAR SIDEWALK DRAIN INLET	EA	1	$9,400.00	$9,400.00	$8,500.00	$8,500.00	$12,400.00	$12,400.00

ITEM NO.	DESCRIPTION	U O M	QTY	TAB Contractors, Inc.		Fisher Sand and Gravel Co.		W. A. Rasic Construction Co., Inc.	
				UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
609.11	10-FOOT MODIFIED TYPE 'DM2' DROP INLET W/ DUAL REAR SIDEWALK DRAIN INLET	EA	1	$10,700.00	$10,700.00	$10,000.00	$10,000.00	$12,400.00	$12,400.00
609.12	20-FOOT MODIFIED TYPE 'DM2B' DROP INLET W/ REAR SIDEWALK DRAIN INLET	EA	1	$14,800.00	$14,800.00	$15,000.00	$15,000.00	$20,000.00	$20,000.00
609.13	MODIFIED TYPE 8 DROP INLET	EA	3	$6,900.00	$20,700.00	$6,500.00	$19,500.00	$13,500.00	$40,500.00
609.14	MODIFIED NDOT TYPE 2B DROP INLET W/ CONCRETE APRON	EA	7	$4,050.00	$28,350.00	$3,500.00	$24,500.00	$6,800.00	$47,600.00
609.15	48-INCH TYPE 1 STORM DRAIN MANHOLE RISER	EA	43	$3,100.00	$133,300.00	$3,500.00	$150,500.00	$1,700.00	$73,100.00
609.16	48-INCH TYPE 1A STORM DRAIN MANHOLE RISER	EA	4	$2,800.00	$11,200.00	$3,000.00	$12,000.00	$2,200.00	$8,800.00
609.17	48-INCH TYPE 1 STORM DRAIN MANHOLE	EA	1	$3,100.00	$3,100.00	$2,500.00	$2,500.00	$4,800.00	$4,800.00
609.18	60-INCH TYPE 1 STORM DRAIN MANHOLE	EA	1	$3,500.00	$3,500.00	$3,000.00	$3,000.00	$5,000.00	$5,000.00
609.19	60-INCH CLARK COUNTY TYPE III STORM DRAIN MANHOLE	EA	2	$5,300.00	$10,600.00	$5,000.00	$10,000.00	$5,600.00	$11,200.00
609.20	NDOT TYPE 4 STORM DRAIN MANHOLE	EA	5	$7,200.00	$36,000.00	$6,500.00	$32,500.00	$13,500.00	$67,500.00
609.21	MODIFIED NDOT TYPE 4 STORM DRAIN MANHOLE AT "BR" 9+35.66	EA	1	$13,000.00	$13,000.00	$12,000.00	$12,000.00	$16,200.00	$16,200.00
609.22	MODIFIED NDOT TYPE 4 STORM DRAIN MANHOLE AT "DL" 8+05.89	EA	1	$8,450.00	$8,450.00	$8,500.00	$8,500.00	$16,200.00	$16,200.00
609.23	MODIFIED NDOT TYPE 4 STORM DRAIN MANHOLE AT "DSW" 8+90.74	EA	1	$9,400.00	$9,400.00	$10,000.00	$10,000.00	$16,200.00	$16,200.00
610.01	HEAVY RIPRAP - D50 = 18-INCHES	CY	5900	$34.50	$203,550.00	$55.00	$324,500.00	$66.00	$389,400.00
613.01	TACK ON CONCRETE MEDIAN ISLAND	SF	2239	$6.00	$13,434.00	$10.00	$22,390.00	$10.50	$23,509.50
613.02	TYPE "A" MEDIAN CURB	LF	8147	$9.00	$73,323.00	$7.50	$61,102.50	$15.00	$122,205.00
613.03	TYPE "L" CURB AND GUTTER	LF	285	$24.00	$6,840.00	$20.00	$5,700.00	$19.00	$5,415.00
613.04	CONCRETE SIDEWALK	SF	1423	$6.00	$8,538.00	$5.50	$7,826.50	$4.50	$6,403.50
613.05	CONCRETE VALLEY GUTTER	SF	503	$12.00	$6,036.00	$20.00	$10,060.00	$12.50	$6,287.50
613.06	TACK ON CONCRETE MEDIAN ISLAND - "ER" 127+36.43 TO "ER" 130+20.43	SF	1109	$6.00	$6,654.00	$7.50	$8,317.50	$11.00	$12,199.00
613.07	TYPE "L" CURB AND GUTTER - "ER" 127+24.80 TO "ER" 128+74.78	LF	150	$24.00	$3,600.00	$20.00	$3,000.00	$32.00	$4,800.00
613.08	CONCRETE SIDEWALK - "ER" 127+24.80 TO "ER" 127+55.70	SF	155	$6.00	$930.00	$5.50	$852.50	$4.00	$620.00
616.01	6-FOOT WROUGHT IRON FENCE	LF	77	$50.00	$3,850.00	$75.00	$5,775.00	$50.00	$3,850.00
616.02	REMOVE AND REPLACE 6-FOOT WROUGHT IRON FENCE	LF	50	$70.00	$3,500.00	$100.00	$5,000.00	$35.00	$1,750.00
616.03	12' X 6' WROUGHT IRON DOUBLE SWING GATE	EA	1	$3,600.00	$3,600.00	$3,500.00	$3,500.00	$2,800.00	$2,800.00
616.04	REMOVE AND REPLACE CHAIN LINK FENCE	LF	6	$105.00	$630.00	$100.00	$600.00	$160.00	$960.00
616.05	REMOVE AND REPLACE POST AND CABLE RAILING	LF	79	$57.00	$4,503.00	$45.00	$3,555.00	$15.00	$1,185.00
618.01	W-BEAM GUARDRAIL	LF	208	$25.00	$5,200.00	$30.00	$6,240.00	$90.00	$18,720.00
622.01	CONSTRUCTION SURVEYING	LS	1	$115,000.00	$115,000.00	$50,000.00	$50,000.00	$65,000.00	$65,000.00
623.01	NO. 7 PULLBOX	EA	1	$800.00	$800.00	$1,250.00	$1,250.00	$1,600.00	$1,600.00
623.02	3-INCH CONDUIT FOR FUTURE TRAFFIC SIGNAL WITH 1-#8 BARE TRACER WIRE AND PULLSTRING	LF	232	$50.00	$11,600.00	$5.50	$1,276.00	$70.00	$16,240.00
624.01	TRAFFIC CONTROL AND MAINTENANCE	LS	1	$166,000.00	$166,000.00	$550,000.00	$550,000.00	$150,000.00	$150,000.00
625.01	PORTABLE CHANGEABLE MESSAGE SIGN	DAY	60	$80.00	$4,800.00	$100.00	$6,000.00	$265.00	$15,900.00
625.02	ARROW DISPLAY	DAY	1200	$50.00	$60,000.00	$35.00	$42,000.00	$20.00	$24,000.00
627.01	PERMANENT SIGN PANEL (GROUND MOUNTED)	SF	89	$57.00	$5,073.00	$50.00	$4,450.00	$11.00	$979.00
627.02	REMOVE STOP SIGN W/ TRAFFIC DRUM AND SOLAR POWER FLASHER AND REINSTALL	EA	1	$260.00	$260.00	$170.00	$170.00	$300.00	$300.00
627.03	REMOVE STOP SIGN W/ TRAFFIC DRUM AND REINSTALL	EA	1	$260.00	$260.00	$140.00	$140.00	$240.00	$240.00
627.04	REMOVE AND REPLACE GROUND MOUNTED SIGN	EA	23	$115.00	$2,645.00	$110.00	$2,530.00	$250.00	$5,750.00
628.01	WHITE - TYPE II PAVEMENT MARKING FILM (CROSSWALKS, STOP BARS, CHEVRONS, DIAGONALS)	SF	7190	$3.25	$23,367.50	$4.00	$28,760.00	$4.30	$30,917.00
628.02	YELLOW - TYPE II PAVEMENT MARKING FILM (DIAGONALS)	SF	3000	$3.25	$9,750.00	$4.00	$12,000.00	$4.30	$12,900.00

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				UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
628.03	6-INCH WHITE SOLID LINE (POLYUREA OR EPOXY)	LF	12062	$0.35	$4,221.70	$0.75	$9,046.50	$0.60	$7,237.20
628.04	6-INCH YELLOW SOLID LINE (POLYUREA OR EPOXY)	LF	1245	$0.35	$435.75	$0.75	$933.75	$0.60	$747.00
628.05	TYPE II PAVEMENT MARKING FILM FOR ARROWS	SF	1159	$10.90	$12,633.10	$8.00	$9,272.00	$4.50	$5,215.50
628.06	TYPE II PAVEMENT MARKING FILM FOR "ONLY"	EA	37	$166.00	$6,142.00	$125.00	$4,625.00	$165.00	$6,105.00
628.07	WHITE - TYPE II PAVEMENT MARKING FILM (CROSSWALKS, STOP BARS, CHEVRONS, DIAGONALS) - "ER" 127+25 TO "ER" 132+35	SF	604	$4.00	$2,416.00	$4.00	$2,416.00	$4.30	$2,597.20
628.08	6-INCH WHITE SOLID LINE (POLYUREA OR EPOXY) - "ER" 127+25 TO "ER" 132+35	LF	1101	$1.00	$1,101.00	$0.75	$825.75	$0.60	$660.60
628.09	TYPE II PAVEMENT MARKING FILM FOR ARROWS - "ER" 127+25 TO "ER" 132+35	SF	109	$16.00	$1,744.00	$8.00	$872.00	$4.30	$468.70
628.10	TYPE II PAVEMENT MARKING FILM FOR "ONLY" - "ER" 127+25 TO "ER" 132+35	EA	4	$202.00	$808.00	$125.00	$500.00	$165.00	$660.00
629.01	6-INCH WATERLINE AND APPURTENANCES AT "ER" 153+52.74 TO "ER" 153+52.01	LS	1	$6,400.00	$6,400.00	$12,500.00	$12,500.00	$24,200.00	$24,200.00
629.02	6-INCH WATERLINE AND APPURTENANCES AT "ER" 161+43.86 TO "ER" 161+42.88	LS	1	$6,200.00	$6,200.00	$10,000.00	$10,000.00	$24,200.00	$24,200.00
629.03	6-INCH WATERLINE AND APPURTENANCES AT "ER" 167+47.59 TO "ER" 167+47.30	LS	1	$6,200.00	$6,200.00	$11,000.00	$11,000.00	$24,200.00	$24,200.00
629.04	8-INCH WATERLINE AND APPURTENANCES AT "ER" 146+11.15 TO "ER" 146+13.87	LS	1	$7,300.00	$7,300.00	$15,000.00	$15,000.00	$24,800.00	$24,800.00
629.05	8-INCH WATERLINE AND APPURTENANCES AT "DL" 8+81.08 TO "DB" 75+20.26	LS	1	$13,000.00	$13,000.00	$25,000.00	$25,000.00	$33,000.00	$33,000.00
629.06	8-INCH WATERLINE AND APPURTENANCES AT "DSW" 8+03.98 TO "DSW" 9+20.45	LS	1	$17,400.00	$17,400.00	$30,000.00	$30,000.00	$35,800.00	$35,800.00
629.07	8-INCH WATERLINE AND APPURTENANCES AT "DB" 88+34.26 TO "DB" 88+85.36	LS	1	$6,500.00	$6,500.00	$8,000.00	$8,000.00	$24,700.00	$24,700.00
629.08	10-INCH WATERLINE AND APPURTENANCES AT "ER" 166+75.56 TO "ER" 166+77.36	LS	1	$10,800.00	$10,800.00	$15,000.00	$15,000.00	$28,000.00	$28,000.00
629.09	12-INCH WATERLINE AND APPURTENANCES AT "ER" 159+16.60 TO "ER" 159+16.26	LS	1	$21,000.00	$21,000.00	$40,000.00	$40,000.00	$39,800.00	$39,800.00
629.10	12-INCH WATERLINE AND APPURTENANCES AT "ER" 171+52.09 TO "ER" 173+60.47	LS	1	$37,500.00	$37,500.00	$61,000.00	$61,000.00	$48,800.00	$48,800.00
629.11	12-INCH WATERLINE AND APPURTENANCES AT "W1" 10+00.00 TO "W1" 16+97.37	LS	1	$63,000.00	$63,000.00	$55,000.00	$55,000.00	$64,700.00	$64,700.00
629.12	INSTALL 8-INCH GATE VALVE AT "EL" 52+67	LS	1	$1,500.00	$1,500.00	$2,250.00	$2,250.00	$6,500.00	$6,500.00
629.13	ADJUST WATER VALVE TO FINISHED GRADE	EA	5	$300.00	$1,500.00	$1,000.00	$5,000.00	$300.00	$1,500.00
629.14	ADJUST WATER BLOW-OFF TO FINISHED GRADE	EA	2	$600.00	$1,200.00	$2,500.00	$5,000.00	$500.00	$1,000.00
629.15	INSTALL 6-INCH FIRE HYDRANT LATERAL AT "ER" 171+70.83	LS	1	$5,000.00	$5,000.00	$2,750.00	$2,750.00	$7,600.00	$7,600.00
630.01	8-INCH PVC SANITARY SEWER PIPE	LF	2473	$125.00	$309,125.00	$75.00	$185,475.00	$38.00	$93,974.00
630.02	15-INCH PVC (SDR35) SANITARY SEWER PIPE	LF	52	$300.00	$15,600.00	$200.00	$10,400.00	$325.00	$16,900.00
630.03	16-INCH PVC (C905) SANITARY SEWER PIPE	LF	127	$355.00	$45,085.00	$200.00	$25,400.00	$190.00	$24,130.00
630.04	48-INCH TYPE 1 SANITARY SEWER MANHOLE	EA	10	$3,200.00	$32,000.00	$3,500.00	$35,000.00	$4,500.00	$45,000.00
630.05	ADJUST SANITARY SEWER MANHOLE TO FINISHED GRADE	EA	14	$300.00	$4,200.00	$1,000.00	$14,000.00	$550.00	$7,700.00
633.01	REFLECTIVE RAISED PAVEMENT MARKERS	EA	1656	$2.50	$4,140.00	$2.50	$4,140.00	$2.70	$4,471.20
633.02	NON-REFLECTIVE RAISED PAVEMENT MARKERS	EA	4184	$1.25	$5,230.00	$1.25	$5,230.00	$1.60	$6,694.40
633.03	REFLECTIVE RAISED PAVEMENT MARKERS - "ER" 127+25 TO "ER" 132+35	EA	87	$2.00	$174.00	$2.50	$217.50	$2.70	$234.90
633.04	NON-REFLECTIVE RAISED PAVEMENT MARKERS - "ER" 127+25 TO "ER" 132+35	EA	185	$1.00	$185.00	$1.25	$231.25	$1.60	$296.00
637.01	DUST CONTROL	LS	1	$191,400.00	$191,400.00	$95,000.00	$95,000.00	$100,000.00	$100,000.00
637.02	NPDES DISCHARGE PERMIT	LS	1	$1,400.00	$1,400.00	$5,500.00	$5,500.00	$1,000.00	$1,000.00
637.03	POST CONSTRUCTION DUST PALLIATIVE	ACRE	7	$3,350.00	$23,450.00	$2,500.00	$17,500.00	$1,000.00	$7,000.00
650.01	NV ENERGY TRANSMISSION POLE SUPPORT	EA	11	$10,600.00	$116,600.00	$35,000.00	$385,000.00	$20,000.00	$220,000.00
650.02	NV ENERGY FEES	FA	1	$60,000.00	$60,000.00	$60,000.00	$60,000.00	$60,000.00	$60,000.00

				TAB Contractors, Inc.		Fisher Sand and Gravel Co.		W. A. Rasic Construction Co., Inc.	
ITEM NO.	DESCRIPTION	U O M	QTY	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
	Total Base Bid Amount				$27,335,429.55		$27,430,594.26		**$28,149,948.05**
									CORRECTED TOTAL
	Engineer's Estimate								
	Responsive Bidder								
	Responsible Bidder								

Bid Abstract
09.1730.01-LED
Las Vegas Wash Middle Branch
Storm Drain Improvements
Decatur & Elkhorn

				Las Vegas Paving Corporation		Eagle View Contractors		Layne Christensen Co.	
ITEM NO.	DESCRIPTION	U O M	QTY	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
109.01	OWNER CAUSED DELAY ALLOWANCE	DAY	45	$500.00	$22,500.00	$500.00	$22,500.00	$500.00	$22,500.00
109.02	OWNER CAUSED DELAY AMOUNT IN ADDITION TO ALLOWANCE	DAY	45	$200.00	$9,000.00	$500.00	$22,500.00	$500.00	$22,500.00
200.01	MOBILIZATION AND DEMOBILIZATION	LS	1	$1,671,800.00	$1,671,800.00	$1,671,800.00	$1,671,800.00	$1,671,800.00	$1,671,800.00
202.01	REMOVE STORM DRAIN PIPE	LF	4721	$10.00	$47,210.00	$29.20	$137,853.20	$12.40	$58,540.40
202.02	REMOVE STORM DRAIN MANHOLE	EA	24	$500.00	$12,000.00	$1,253.00	$30,072.00	$660.00	$15,840.00
202.03	REMOVE DROP INLET	EA	8	$650.00	$5,200.00	$1,134.00	$9,072.00	$790.00	$6,320.00
202.04	REMOVE SANITARY SEWER MANHOLE	EA	9	$525.00	$4,725.00	$767.00	$6,903.00	$840.00	$7,560.00
202.05	REMOVE 8-INCH SANITARY SEWER PIPE	LF	2154	$3.00	$6,462.00	$21.60	$46,526.40	$8.15	$17,555.10
202.06	REMOVE 12-INCH SANITARY SEWER PIPE	LF	15	$10.00	$150.00	$26.00	$390.00	$10.85	$162.75
202.07	REMOVE 15-INCH SANITARY SEWER PIPE	LF	144	$15.00	$2,160.00	$29.00	$4,176.00	$11.45	$1,648.80
202.08	REMOVE ASPHALT PAVEMENT	SY	79147	$1.00	$79,147.00	$4.32	$341,915.04	$1.60	$126,635.20
202.09	REMOVE TACK ON MEDIAN ISLAND	SF	598	$3.00	$1,794.00	$3.46	$2,069.08	$2.50	$1,495.00
202.10	REMOVE TYPE "A" MEDIAN CURB	LF	7204	$2.00	$14,408.00	$2.81	$20,243.24	$2.65	$19,090.60
202.11	REMOVE CURB AND GUTTER	LF	285	$5.00	$1,425.00	$2.81	$800.85	$3.55	$1,011.75
202.12	REMOVE CONCRETE SIDEWALK	SF	1423	$2.00	$2,846.00	$3.46	$4,923.58	$1.40	$1,992.20
202.13	REMOVE CONCRETE VALLEY GUTTER	SF	773	$5.00	$3,865.00	$4.75	$3,671.75	$2.85	$2,203.05
202.14	REMOVE AND REPLACE ARTICULATED CONCRETE MAT	SF	2195	$17.00	$37,315.00	$15.59	$34,220.05	$9.90	$21,730.50
202.15	PLUG AND GROUT FILL 14-INCH STORM DRAIN PIPE	LF	340	$12.00	$4,080.00	$32.40	$11,016.00	$9.90	$3,366.00
202.16	PLUG AND GROUT FILL 18-INCH STORM DRAIN PIPE	LF	669	$16.00	$10,704.00	$32.40	$21,675.60	$14.75	$9,867.75
202.17	PLUG AND GROUT FILL 24-INCH STORM DRAIN PIPE	LF	694	$27.00	$18,738.00	$35.64	$24,734.16	$23.55	$16,343.70
202.18	PLUG AND GROUT FILL 36-INCH STORM DRAIN PIPE	LF	57	$75.00	$4,275.00	$38.00	$2,166.00	$37.30	$2,126.10
202.19	PLUG AND GROUT FILL STORM DRAIN MANHOLE	EA	3	$1,000.00	$3,000.00	$1,123.00	$3,369.00	$700.00	$2,100.00
202.20	PIPE	LF	172	$9.00	$1,548.00	$29.20	$5,022.40	$4.70	$808.40
202.21	REMOVE EXISTING GROUND MOUNTED SIGN	EA	3	$50.00	$150.00	$27.00	$81.00	$99.50	$298.50
202.22	REMOVE GUARDRAIL	LF	208	$3.00	$624.00	$3.00	$624.00	$13.40	$2,787.20
202.23	REMOVE RIPRAP	SY	2925	$11.00	$32,175.00	$11.90	$34,807.50	$1.00	$2,925.00
203.01	OVEREXCAVATION	CY	20000	$16.00	$320,000.00	$18.90	$378,000.00	$1.00	$20,000.00
203.02	CHANNEL EXCAVATION - "DE" 144+27.83 TO "DE" 151+95	CY	16600	$16.00	$265,600.00	$18.52	$307,432.00	$3.85	$63,910.00
212.01	REMOVE AND REPLACE DECATUR BOULEVARD MEDIAN LANDSCAPING	LS	1	$36,000.00	$36,000.00	$58,320.00	$58,320.00	$25,700.00	$25,700.00
212.02	REMOVE AND REPLACE ELKHORN ROAD LANDSCAPING	LS	1	$21,500.00	$21,500.00	$14,580.00	$14,580.00	$48,200.00	$48,200.00
212.03	12-MONTH LANDSCAPE MAINTENANCE	LS	1	$10,000.00	$10,000.00	$10,800.00	$10,800.00	$52,200.00	$52,200.00
302.01	TYPE II AGGREGATE BASE	CY	39485	$20.00	$789,700.00	$19.82	$782,592.70	$16.85	$665,322.25
302.02	TYPE II AGGREGATE BASE - "ER" 127+13 TO "ER" 134+00	CY	625	$20.00	$12,500.00	$19.80	$12,375.00	$19.00	$11,875.00
302.03	TYPE II AGGREGATE BASE - "DB" 69+40 TO "DB" 73+80	CY	175	$20.00	$3,500.00	$20.40	$3,570.00	$19.00	$3,325.00
402.01	6-INCH PLANTMIX BITUMINOUS SURFACE	SY	78967	$18.00	$1,421,406.00	$2.01	$158,723.67	$24.30	$1,918,898.10
402.02	6-INCH PLANTMIX BITUMINOUS SURFACE - "ER" 127+13 TO "ER" 134+00	SY	1245	$18.00	$22,410.00	$21.70	$27,016.50	$23.50	$29,257.50
402.03	6-INCH PLANTMIX BITUMINOUS SURFACE - "DB" 69+40 TO "DB" 73+80	SY	355	$18.00	$6,390.00	$21.30	$7,561.50	$23.60	$8,378.00
403.01	PLANTMIX BITUMINOUS OPEN-GRADED SURFACE (3/4-INCH)	SY	7660	$5.00	$38,300.00	$5.08	$38,912.80	$3.80	$29,108.00

ITEM NO.	DESCRIPTION	U O M	QTY	Las Vegas Paving Corporation		Eagle View Contractors		Layne Christensen Co.	
				UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
502.01	6' X 4' REINFORCED CONCRETE BOX (RCB)	LF	62	$545.00	$33,790.00	$813.00	$50,406.00	$710.00	$44,020.00
502.02	8' X 7' REINFORCED CONCRETE BOX (RCB)	LF	51	$640.00	$32,640.00	$1,122.00	$57,222.00	$850.00	$43,350.00
502.03	13' X 8' REINFORCED CONCRETE BOX (RCB)	LF	1595	$777.00	$1,239,315.00	$774.92	$1,235,997.40	$768.00	$1,224,960.00
502.04	15' X 8' REINFORCED CONCRETE BOX (RCB)	LF	6934	$898.00	$6,226,732.00	$1,138.71	$7,895,815.14	$900.00	$6,240,600.00
502.05	24' X 8' REINFORCED CONCRETE BOX (RCB)	LF	7541	$1,310.00	$9,878,710.00	$1,192.32	$8,991,285.12	$1,452.00	$10,949,532.00
502.06	DUAL 15' X 8' REINFORCED CONCRETE BOX (RCB)	LF	696	$2,040.00	$1,419,840.00	$1,742.00	$1,212,432.00	$1,830.00	$1,273,680.00
502.07	CONFLUENCE STRUCTURE @ "DE" 89+25.00 TO "DE" 89+69.00	LS	1	$73,000.00	$73,000.00	$44,280.00	$44,280.00	$76,200.00	$76,200.00
502.08	CONFLUENCE STRUCTURE @ "DE" 130+70.15 TO "DE" 131+25.15 AND "DW" 130+70.68 TO "DW"	LS	1	$168,000.00	$168,000.00	$92,988.00	$92,988.00	$148,210.00	$148,210.00
502.09	TRANSITION STRUCTURE @ "DE" 89+69.00 TO "DE" 90+21.50	LS	1	$76,000.00	$76,000.00	$47,520.00	$47,520.00	$81,900.00	$81,900.00
502.10	TRANSITION STRUCTURE @ "DW" 101+75.00 TO "DW" 101+85.00	LS	1	$10,000.00	$10,000.00	$7,992.00	$7,992.00	$18,945.00	$18,945.00
502.11	TRANSITION STRUCTURE @ "DE" 131+25.15 TO "DE" 131+35.15	LS	1	$31,000.00	$31,000.00	$18,900.00	$18,900.00	$36,200.00	$36,200.00
502.12	TRANSITION STRUCTURE @ "DE" 138+31.63 TO "DE" 138+36.63	LS	1	$2,500.00	$2,500.00	$8,964.00	$8,964.00	$17,400.00	$17,400.00
502.13	TRANSITION STRUCTURE @ "EL" 10+90.13 TO "EL" 11+40.13	LS	1	$92,000.00	$92,000.00	$65,880.00	$65,880.00	$98,321.00	$98,321.00
502.14	TRANSITION STRUCTURE @ "EL" 86+80.69 TO "EL" 87+00.69	LS	1	$43,000.00	$43,000.00	$28,080.00	$28,080.00	$52,480.00	$52,480.00
502.15	12' X 8' GRATED ACCESS	LS	1	$24,000.00	$24,000.00	$46,440.00	$46,440.00	$16,570.00	$16,570.00
502.16	14' X 8' ACCESS GRATE INLET	LS	1	$28,000.00	$28,000.00	$51,840.00	$51,840.00	$30,900.00	$30,900.00
502.17	DUAL 13' X 8' RCB STRUCTURE	LS	1	$55,000.00	$55,000.00	$38,988.00	$38,988.00	$63,750.00	$63,750.00
502.18	DROP STRUCTURE @ "EL" 30+06.59	LS	1	$12,000.00	$12,000.00	$12,744.00	$12,744.00	$17,260.00	$17,260.00
502.19	DROP STRUCTURE @ "EL" 31+94.02	LS	1	$10,000.00	$10,000.00	$10,908.00	$10,908.00	$12,700.00	$12,700.00
502.20	DUAL 15' X 8' REINFORCED CONCRETE BOX (RCB) - TYPE 1	LF	144	$2,540.00	$365,760.00	$1,949.70	$280,756.80	$2,441.00	$351,504.00
502.21	DUAL 15' X 8' REINFORCED CONCRETE BOX (RCB) - TYPE 2	LF	225	$2,170.00	$488,250.00	$2,334.00	$525,150.00	$2,671.00	$600,975.00
502.22	DUAL 15' X 8' REINFORCED CONCRETE BOX (RCB) - TYPE 3	LF	228	$2,550.00	$581,400.00	$1,838.80	$419,246.40	$2,570.00	$585,960.00
502.23	12' LOW FLOW CHANNEL	LF	746	$163.00	$121,598.00	$124.80	$93,100.80	$255.00	$190,230.00
502.24	HEADWALL - "DE" 144+27.83	LS	1	$16,000.00	$16,000.00	$14,688.00	$14,688.00	$18,670.00	$18,670.00
502.25	LOW FLOW CHANNEL TRANSITION - "DE" 144+27.83 TO "DE" 144+37.33	LS	1	$9,000.00	$9,000.00	$4,320.00	$4,320.00	$6,140.00	$6,140.00
502.26	LOW FLOW CHANNEL TRANSITION - "DE" 151+83.15 TO "DE" 151+95	LS	1	$8,000.00	$8,000.00	$7,560.00	$7,560.00	$6,825.00	$6,825.00
603.01	18-INCH RCP (CLASS III)	LF	709	$95.00	$67,355.00	$81.60	$57,854.40	$70.00	$49,630.00
603.02	24-INCH RCP (CLASS III)	LF	294	$96.00	$28,224.00	$85.20	$25,048.80	$75.50	$22,197.00
603.03	30-INCH RCP (CLASS III)	LF	186	$120.00	$22,320.00	$110.20	$20,497.20	$116.00	$21,576.00
603.04	36-INCH RCP (CLASS III)	LF	300	$148.00	$44,400.00	$129.40	$38,820.00	$130.00	$39,000.00
603.05	42-INCH RCP (CLASS III)	LF	211	$166.00	$35,026.00	$163.80	$34,561.80	$154.00	$32,494.00
603.06	48-INCH RCP (CLASS III)	LF	371	$208.00	$77,168.00	$179.90	$66,742.90	$181.00	$67,151.00
603.07	54-INCH RCP (CLASS III)	LF	228	$251.00	$57,228.00	$211.90	$48,313.20	$197.00	$44,916.00
609.01	5-FOOT TYPE 'CM2' DROP INLET	EA	2	$6,700.00	$13,400.00	$7,156.00	$14,312.00	$6,945.00	$13,890.00
609.02	10-FOOT TYPE 'CM2' DROP INLET	EA	1	$8,000.00	$8,000.00	$8,964.00	$8,964.00	$9,760.00	$9,760.00
609.03	20-FOOT TYPE 'CM2' DROP INLET	EA	1	$13,900.00	$13,900.00	$14,796.00	$14,796.00	$14,055.00	$14,055.00
609.04	5-FOOT TYPE 'DM2' DROP INLET	EA	4	$6,000.00	$24,000.00	$6,448.00	$25,792.00	$6,675.00	$26,700.00
609.05	10-FOOT TYPE 'DM2' DROP INLET	EA	4	$8,400.00	$33,600.00	$9,342.00	$37,368.00	$9,575.00	$38,300.00
609.06	15-FOOT TYPE 'DM2' DROP INLET	EA	2	$11,200.00	$22,400.00	$12,096.00	$24,192.00	$11,500.00	$23,000.00
609.07	10-FOOT TYPE 'DM2B' DROP INLET	EA	2	$8,600.00	$17,200.00	$9,612.00	$19,224.00	$9,575.00	$19,150.00
609.08	15-FOOT TYPE 'DM2B' DROP INLET	EA	4	$11,200.00	$44,800.00	$12,096.00	$48,384.00	$11,700.00	$46,800.00
609.09	20-FOOT TYPE 'DM2B' DROP INLET	EA	3	$13,900.00	$41,700.00	$14,796.00	$44,388.00	$14,400.00	$43,200.00
609.10	10-FOOT MODIFIED TYPE 'DM2' DROP INLET W/ REAR SIDEWALK DRAIN INLET	EA	1	$9,300.00	$9,300.00	$10,152.00	$10,152.00	$11,425.00	$11,425.00

ITEM NO.	DESCRIPTION	U.O.M	QTY	Las Vegas Paving Corporation		Eagle View Contractors		Layne Christensen Co.	
				UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
609.11	10-FOOT MODIFIED TYPE 'DM2' DROP INLET W/ DUAL REAR SIDEWALK DRAIN INLET	EA	1	$10,500.00	$10,500.00	$11,556.00	$11,556.00	$11,500.00	$11,500.00
609.12	20-FOOT MODIFIED TYPE 'DM2B' DROP INLET W/ REAR SIDEWALK DRAIN INLET	EA	1	$15,200.00	$15,200.00	$16,308.00	$16,308.00	$18,500.00	$18,500.00
609.13	MODIFIED TYPE 8 DROP INLET	EA	3	$7,400.00	$22,200.00	$8,640.00	$25,920.00	$10,100.00	$30,300.00
609.14	MODIFIED NDOT TYPE 2B DROP INLET W/ CONCRETE APRON	EA	7	$4,400.00	$30,800.00	$5,508.00	$38,556.00	$8,635.00	$60,445.00
609.15	48-INCH TYPE 1 STORM DRAIN MANHOLE RISER	EA	43	$3,700.00	$159,100.00	$4,709.00	$202,487.00	$3,925.00	$168,775.00
609.16	48-INCH TYPE 1A STORM DRAIN MANHOLE RISER	EA	4	$3,500.00	$14,000.00	$4,709.00	$18,836.00	$3,596.00	$14,384.00
609.17	48-INCH TYPE 1 STORM DRAIN MANHOLE	EA	1	$3,600.00	$3,600.00	$3,381.00	$3,381.00	$3,913.00	$3,913.00
609.18	60-INCH TYPE 1 STORM DRAIN MANHOLE	EA	1	$4,000.00	$4,000.00	$3,564.00	$3,564.00	$4,364.00	$4,364.00
609.19	60-INCH CLARK COUNTY TYPE III STORM DRAIN MANHOLE	EA	2	$6,000.00	$12,000.00	$6,156.00	$12,312.00	$9,160.00	$18,320.00
609.20	NDOT TYPE 4 STORM DRAIN MANHOLE	EA	5	$8,000.00	$40,000.00	$8,316.00	$41,580.00	$174.00	$870.00
609.21	MODIFIED NDOT TYPE 4 STORM DRAIN MANHOLE AT "BR" 9+35.66	EA	1	$13,000.00	$13,000.00	$13,284.00	$13,284.00	$16,785.00	$16,785.00
609.22	MODIFIED NDOT TYPE 4 STORM DRAIN MANHOLE AT "DL" 8+05.89	EA	1	$10,000.00	$10,000.00	$10,152.00	$10,152.00	$17,985.00	$17,985.00
609.23	MODIFIED NDOT TYPE 4 STORM DRAIN MANHOLE AT "DSW" 8+90.74	EA	1	$11,000.00	$11,000.00	$11,124.00	$11,124.00	$17,950.00	$17,950.00
610.01	HEAVY RIPRAP - D50 = 18-INCHES	CY	5900	$51.00	$300,900.00	$52.65	$310,635.00	$78.00	$460,200.00
613.01	TACK ON CONCRETE MEDIAN ISLAND	SF	2239	$4.00	$8,956.00	$7.72	$17,285.08	$9.00	$20,151.00
613.02	TYPE "A" MEDIAN CURB	LF	8147	$9.00	$73,323.00	$11.31	$92,142.57	$13.60	$110,799.20
613.03	TYPE "L" CURB AND GUTTER	LF	285	$24.00	$6,840.00	$19.33	$5,509.05	$21.15	$6,027.75
613.04	CONCRETE SIDEWALK	SF	1423	$6.00	$8,538.00	$4.25	$6,047.75	$5.70	$8,111.10
613.05	CONCRETE VALLEY GUTTER	SF	503	$11.00	$5,533.00	$10.74	$5,402.22	$9.75	$4,904.25
613.06	TACK ON CONCRETE MEDIAN ISLAND - "ER" 127+36.43 TO "ER" 130+20.43	SF	1109	$5.00	$5,545.00	$7.69	$8,528.21	$17.90	$19,851.10
613.07	TYPE "L" CURB AND GUTTER - "ER" 127+24.80 TO "ER" 128+74.78	LF	150	$25.00	$3,750.00	$17.00	$2,550.00	$19.10	$2,865.00
613.08	CONCRETE SIDEWALK - "ER" 127+24.80 TO "ER" 127+55.70	SF	155	$8.00	$1,240.00	$4.00	$620.00	$6.00	$930.00
616.01	6-FOOT WROUGHT IRON FENCE	LF	77	$65.00	$5,005.00	$67.00	$5,159.00	$220.00	$16,940.00
616.02	REMOVE AND REPLACE 6-FOOT WROUGHT IRON FENCE	LF	50	$80.00	$4,000.00	$82.00	$4,100.00	$220.00	$11,000.00
616.03	12' X 6' WROUGHT IRON DOUBLE SWING GATE	EA	1	$3,100.00	$3,100.00	$3,240.00	$3,240.00	$8,915.00	$8,915.00
616.04	REMOVE AND REPLACE CHAIN LINK FENCE	LF	6	$100.00	$600.00	$103.00	$618.00	$55.00	$330.00
616.05	REMOVE AND REPLACE POST AND CABLE RAILING	LF	79	$35.00	$2,765.00	$37.00	$2,923.00	$34.50	$2,725.50
618.01	W-BEAM GUARDRAIL	LF	208	$25.00	$5,200.00	$26.00	$5,408.00	$74.00	$15,392.00
622.01	CONSTRUCTION SURVEYING	LS	1	$35,000.00	$35,000.00	$70,049.00	$70,049.00	$77,500.00	$77,500.00
623.01	NO. 7 PULLBOX	EA	1	$1,600.00	$1,600.00	$7,560.00	$7,560.00	$4,275.00	$4,275.00
623.02	3-INCH CONDUIT FOR FUTURE TRAFFIC SIGNAL WITH 1-#8 BARE TRACER WIRE AND PULLSTRING	LF	232	$16.00	$3,712.00	$59.00	$13,688.00	$25.00	$5,800.00
624.01	TRAFFIC CONTROL AND MAINTENANCE	LS	1	$300,000.00	$300,000.00	$216.00	$216.00	$210,000.00	$210,000.00
625.01	PORTABLE CHANGEABLE MESSAGE SIGN	DAY	60	$70.00	$4,200.00	$38.00	$2,280.00	$100.00	$6,000.00
625.02	ARROW DISPLAY	DAY	1200	$20.00	$24,000.00	$16.20	$19,440.00	$30.00	$36,000.00
627.01	PERMANENT SIGN PANEL (GROUND MOUNTED)	SF	89	$45.00	$4,005.00	$46.00	$4,094.00	$48.00	$4,272.00
627.02	REMOVE STOP SIGN W/ TRAFFIC DRUM AND SOLAR POWER FLASHER AND REINSTALL	EA	1	$160.00	$160.00	$162.00	$162.00	$167.00	$167.00
627.03	REMOVE STOP SIGN W/ TRAFFIC DRUM AND REINSTALL	EA	1	$150.00	$150.00	$135.00	$135.00	$139.00	$139.00
627.04	REMOVE AND REPLACE GROUND MOUNTED SIGN	EA	23	$100.00	$2,300.00	$103.00	$2,369.00	$76.00	$1,748.00
628.01	WHITE - TYPE II PAVEMENT MARKING FILM (CROSSWALKS, STOP BARS, CHEVRONS, DIAGONALS)	SF	7190	$4.00	$28,760.00	$3.29	$23,655.10	$3.50	$25,165.00
628.02	YELLOW - TYPE II PAVEMENT MARKING FILM (DIAGONALS)	SF	3000	$4.00	$12,000.00	$3.29	$9,870.00	$3.50	$10,500.00

ITEM NO.	DESCRIPTION	U O M	QTY	Las Vegas Paving Corporation		Eagle View Contractors		Layne Christensen Co.	
				UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
628.03	6-INCH WHITE SOLID LINE (POLYUREA OR EPOXY)	LF	12062	$1.00	$12,062.00	$0.59	$7,116.58	$0.75	$9,046.50
628.04	6-INCH YELLOW SOLID LINE (POLYUREA OR EPOXY)	LF	1245	$1.00	$1,245.00	$0.59	$734.55	$0.75	$933.75
628.05	TYPE II PAVEMENT MARKING FILM FOR ARROWS	SF	1159	$8.00	$9,272.00	$7.56	$8,762.04	$8.00	$9,272.00
628.06	TYPE II PAVEMENT MARKING FILM FOR "ONLY"	EA	37	$115.00	$4,255.00	$119.00	$4,403.00	$122.00	$4,514.00
628.07	WHITE - TYPE II PAVEMENT MARKING FILM (CROSSWALKS, STOP BARS, CHEVRONS, DIAGONALS) - "ER" 127+25 TO "ER" 132+35	SF	604	$4.00	$2,416.00	$3.30	$1,993.20	$3.50	$2,114.00
628.08	6-INCH WHITE SOLID LINE (POLYUREA OR EPOXY) - "ER" 127+25 TO "ER" 132+35	LF	1101	$1.00	$1,101.00	$0.60	$660.60	$0.75	$825.75
628.09	TYPE II PAVEMENT MARKING FILM FOR ARROWS - "ER" 127+25 TO "ER" 132+35	SF	109	$8.00	$872.00	$7.60	$828.40	$8.00	$872.00
628.10	TYPE II PAVEMENT MARKING FILM FOR "ONLY" - "ER" 127+25 TO "ER" 132+35	EA	4	$115.00	$460.00	$119.00	$476.00	$122.00	$488.00
629.01	6-INCH WATERLINE AND APPURTENANCES AT "ER" 153+52.74 TO "ER" 153+52.01	LS	1	$6,500.00	$6,500.00	$10,800.00	$10,800.00	$9,285.00	$9,285.00
629.02	6-INCH WATERLINE AND APPURTENANCES AT "ER" 161+43.86 TO "ER" 161+42.88	LS	1	$6,300.00	$6,300.00	$9,936.00	$9,936.00	$9,860.00	$9,860.00
629.03	6-INCH WATERLINE AND APPURTENANCES AT "ER" 167+47.59 TO "ER" 167+47.30	LS	1	$6,300.00	$6,300.00	$9,936.00	$9,936.00	$10,230.00	$10,230.00
629.04	8-INCH WATERLINE AND APPURTENANCES AT "ER" 146+11.15 TO "ER" 146+13.87	LS	1	$7,100.00	$7,100.00	$11,448.00	$11,448.00	$10,850.00	$10,850.00
629.05	8-INCH WATERLINE AND APPURTENANCES AT "DL" 8+81.08 TO "DB" 75+20.26	LS	1	$19,500.00	$19,500.00	$15,768.00	$15,768.00	$14,530.00	$14,530.00
629.06	8-INCH WATERLINE AND APPURTENANCES AT "DSW" 8+03.98 TO "DSW" 9+20.45	LS	1	$21,600.00	$21,600.00	$26,568.00	$26,568.00	$20,750.00	$20,750.00
629.07	8-INCH WATERLINE AND APPURTENANCES AT "DB" 88+34.26 TO "DB" 88+85.36	LS	1	$6,800.00	$6,800.00	$10,800.00	$10,800.00	$12,300.00	$12,300.00
629.08	10-INCH WATERLINE AND APPURTENANCES AT "ER" 166+75.56 TO "ER" 166+77.36	LS	1	$13,200.00	$13,200.00	$18,360.00	$18,360.00	$13,750.00	$13,750.00
629.09	12-INCH WATERLINE AND APPURTENANCES AT "ER" 159+16.60 TO "ER" 159+16.26	LS	1	$28,600.00	$28,600.00	$28,080.00	$28,080.00	$26,245.00	$26,245.00
629.10	12-INCH WATERLINE AND APPURTENANCES AT "ER" 171+52.09 TO "ER" 173+60.47	LS	1	$50,900.00	$50,900.00	$51,840.00	$51,840.00	$54,212.00	$54,212.00
629.11	12-INCH WATERLINE AND APPURTENANCES AT "W1" 10+00.00 TO "W1" 16+97.37	LS	1	$75,000.00	$75,000.00	$78,624.00	$78,624.00	$97,500.00	$97,500.00
629.12	INSTALL 8-INCH GATE VALVE AT "EL" 52+67	LS	1	$2,400.00	$2,400.00	$3,272.00	$3,272.00	$2,540.00	$2,540.00
629.13	ADJUST WATER VALVE TO FINISHED GRADE	EA	5	$500.00	$2,500.00	$346.00	$1,730.00	$250.00	$1,250.00
629.14	ADJUST WATER BLOW-OFF TO FINISHED GRADE	EA	2	$1,100.00	$2,200.00	$540.00	$1,080.00	$1,080.00	$2,160.00
629.15	INSTALL 6-INCH FIRE HYDRANT LATERAL AT "ER" 171+70.83	LS	1	$7,000.00	$7,000.00	$15,120.00	$15,120.00	$5,630.00	$5,630.00
630.01	8-INCH PVC SANITARY SEWER PIPE	LF	2473	$82.00	$202,786.00	$115.60	$285,878.80	$164.25	$406,190.25
630.02	15-INCH PVC (SDR35) SANITARY SEWER PIPE	LF	52	$650.00	$33,800.00	$464.00	$24,128.00	$272.00	$14,144.00
630.03	16-INCH PVC (C905) SANITARY SEWER PIPE	LF	127	$475.00	$60,325.00	$108.00	$13,716.00	$260.25	$33,051.75
630.04	48-INCH TYPE 1 SANITARY SEWER MANHOLE	EA	10	$4,300.00	$43,000.00	$6,048.00	$60,480.00	$2,955.00	$29,550.00
630.05	ADJUST SANITARY SEWER MANHOLE TO FINISHED GRADE	EA	14	$600.00	$8,400.00	$471.00	$6,594.00	$355.00	$4,970.00
633.01	REFLECTIVE RAISED PAVEMENT MARKERS	EA	1656	$3.00	$4,968.00	$2.40	$3,974.40	$2.50	$4,140.00
633.02	NON-REFLECTIVE RAISED PAVEMENT MARKERS	EA	4184	$1.50	$6,276.00	$1.30	$5,439.20	$1.30	$5,439.20
633.03	REFLECTIVE RAISED PAVEMENT MARKERS - "ER" 127+25 TO "ER" 132+35	EA	87	$3.00	$261.00	$2.00	$174.00	$2.50	$217.50
633.04	NON-REFLECTIVE RAISED PAVEMENT MARKERS - "ER" 127+25 TO "ER" 132+35	EA	185	$1.50	$277.50	$1.00	$185.00	$1.30	$240.50
637.01	DUST CONTROL	LS	1	$66,500.00	$66,500.00	$163,447.00	$163,447.00	$72,800.00	$72,800.00
637.02	NPDES DISCHARGE PERMIT	LS	1	$500.00	$500.00	$25,685.00	$25,685.00	$7,100.00	$7,100.00
637.03	POST CONSTRUCTION DUST PALLIATIVE	ACRE	7	$3,300.00	$23,100.00	$4,471.00	$31,297.00	$2,725.00	$19,075.00
650.01	NV ENERGY TRANSMISSION POLE SUPPORT	EA	11	$1,400.00	$15,400.00	$25,920.00	$285,120.00	$12,760.00	$140,360.00
650.02	NV ENERGY FEES	FA	1	$60,000.00	$60,000.00	$60,000.00	$60,000.00	$60,000.00	$60,000.00

				Las Vegas Paving Corporation		Eagle View Contractors		Layne Christensen Co.	
ITEM NO.	DESCRIPTION	U.O.M	QTY	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
	Total Base Bid Amount				$28,559,921.50		$28,383,130.73		$30,217,142.95
					CORRECTED TOTAL		CORRECTED TOTAL		CORRECTED TOTAL
	Engineer's Estimate								
	Responsive Bidder								
	Responsible Bidder								

Bid Abstract
09.1730.01-LED
Las Vegas Wash Middle Branch
Storm Drain Improvements
Decatur & Elkhorn

ITEM NO.	DESCRIPTION	U.O.M	QTY	Granite Construction Company		M & H Enterprises Inc.		Capriati Construction Corp, Inc.	
				UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
109.01	OWNER CAUSED DELAY ALLOWANCE	DAY	45	$500.00	$22,500.00	$500.00	$22,500.00	$500.00	$22,500.00
109.02	OWNER CAUSED DELAY AMOUNT IN ADDITION TO ALLOWANCE	DAY	45	$100.00	$4,500.00	$3,659.26	$164,666.70	$1,723.56	$77,560.20
200.01	MOBILIZATION AND DEMOBILIZATION	LS	1	$1,671,800.00	$1,671,800.00	$1,671,800.00	$1,671,800.00	$1,671,800.00	$1,671,800.00
202.01	REMOVE STORM DRAIN PIPE	LF	4721	$3.00	$14,163.00	$24.80	$117,080.80	$30.63	$144,604.23
202.02	REMOVE STORM DRAIN MANHOLE	EA	24	$20.00	$480.00	$1,970.78	$47,298.72	$1,051.40	$25,233.60
202.03	REMOVE DROP INLET	EA	8	$1,000.00	$8,000.00	$2,188.68	$17,509.44	$1,084.01	$8,672.08
202.04	REMOVE SANITARY SEWER MANHOLE	EA	9	$600.00	$5,400.00	$969.29	$8,723.61	$1,056.21	$9,505.89
202.05	REMOVE 8-INCH SANITARY SEWER PIPE	LF	2154	$1.00	$2,154.00	$15.13	$32,590.02	$33.34	$71,814.36
202.06	REMOVE 12-INCH SANITARY SEWER PIPE	LF	15	$3.00	$45.00	$87.73	$1,315.95	$84.19	$1,262.85
202.07	REMOVE 15-INCH SANITARY SEWER PIPE	LF	144	$4.00	$576.00	$22.22	$3,199.68	$87.95	$12,664.80
202.08	REMOVE ASPHALT PAVEMENT	SY	79147	$3.00	$237,441.00	$0.70	$55,402.90	$3.05	$241,398.35
202.09	REMOVE TACK ON MEDIAN ISLAND	SF	598	$6.00	$3,588.00	$2.15	$1,285.70	$1.29	$771.42
202.10	REMOVE TYPE "A" MEDIAN CURB	LF	7204	$2.00	$14,408.00	$4.29	$30,905.16	$2.24	$16,136.96
202.11	REMOVE CURB AND GUTTER	LF	285	$12.00	$3,420.00	$5.37	$1,530.45	$2.60	$741.00
202.12	REMOVE CONCRETE SIDEWALK	SF	1423	$3.00	$4,269.00	$1.61	$2,291.03	$1.25	$1,778.75
202.13	REMOVE CONCRETE VALLEY GUTTER	SF	773	$3.00	$2,319.00	$2.85	$2,203.05	$2.80	$2,164.40
202.14	REMOVE AND REPLACE ARTICULATED CONCRETE MAT	SF	2195	$5.00	$10,975.00	$22.06	$48,421.70	$26.19	$57,487.05
202.15	PLUG AND GROUT FILL 14-INCH STORM DRAIN PIPE	LF	340	$11.00	$3,740.00	$6.44	$2,189.60	$21.13	$7,184.20
202.16	PLUG AND GROUT FILL 18-INCH STORM DRAIN PIPE	LF	669	$13.00	$8,697.00	$10.73	$7,178.37	$24.44	$16,350.36
202.17	PLUG AND GROUT FILL 24-INCH STORM DRAIN PIPE	LF	694	$17.00	$11,798.00	$20.39	$14,150.66	$30.65	$21,271.10
202.18	PLUG AND GROUT FILL 36-INCH STORM DRAIN PIPE	LF	57	$48.00	$2,736.00	$20.39	$1,162.23	$53.54	$3,051.78
202.19	PLUG AND GROUT FILL STORM DRAIN MANHOLE	EA	3	$750.00	$2,250.00	$1,849.49	$5,548.47	$1,055.65	$3,166.95
202.20	PIPE	LF	172	$16.00	$2,752.00	$2.15	$369.80	$19.51	$3,355.72
202.21	REMOVE EXISTING GROUND MOUNTED SIGN	EA	3	$25.00	$75.00	$76.84	$230.52	$26.50	$79.50
202.22	REMOVE GUARDRAIL	LF	208	$3.00	$624.00	$2.68	$557.44	$2.65	$551.20
202.23	REMOVE RIPRAP	SY	2925	$2.50	$7,312.50	$6.44	$18,837.00	$7.09	$20,738.25
203.01	OVEREXCAVATION	CY	20000	$1.00	$20,000.00	$15.98	$319,600.00	$26.35	$527,000.00
203.02	CHANNEL EXCAVATION - "DE" 144+27.83 TO "DE" 151+95	CY	16600	$7.00	$116,200.00	$9.66	$160,356.00	$9.61	$159,526.00
212.01	REMOVE AND REPLACE DECATUR BOULEVARD MEDIAN LANDSCAPING	LS	1	$58,000.00	$58,000.00	$59,037.58	$59,037.58	$21,200.00	$21,200.00
212.02	REMOVE AND REPLACE ELKHORN ROAD LANDSCAPING	LS	1	$28,000.00	$28,000.00	$27,747.67	$27,747.67	$9,010.00	$9,010.00
212.03	12-MONTH LANDSCAPE MAINTENANCE	LS	1	$10,000.00	$10,000.00	$10,304.74	$10,304.74	$12,720.00	$12,720.00
302.01	TYPE II AGGREGATE BASE	CY	39485	$17.00	$671,245.00	$19.16	$756,532.60	$19.98	$788,910.30
302.02	TYPE II AGGREGATE BASE - "ER" 127+13 TO "ER" 134+00	CY	625	$20.00	$12,500.00	$23.08	$14,425.00	$20.26	$12,662.50
302.03	TYPE II AGGREGATE BASE - "DB" 69+40 TO "DB" 73+80	CY	175	$25.00	$4,375.00	$25.76	$4,508.00	$21.04	$3,682.00
402.01	6-INCH PLANTMIX BITUMINOUS SURFACE	SY	78967	$20.00	$1,579,340.00	$21.07	$1,663,834.69	$20.41	$1,611,716.47
402.02	6-INCH PLANTMIX BITUMINOUS SURFACE - "ER" 127+13 TO "ER" 134+00	SY	1245	$20.00	$24,900.00	$27.10	$33,739.50	$26.77	$33,328.65
402.03	6-INCH PLANTMIX BITUMINOUS SURFACE - "DB" 69+40 TO "DB" 73+80	SY	355	$20.00	$7,100.00	$30.59	$10,859.45	$30.21	$10,724.55
403.01	PLANTMIX BITUMINOUS OPEN-GRADED SURFACE (3/4-INCH)	SY	7660	$5.00	$38,300.00	$3.76	$28,801.60	$3.71	$28,418.60

ITEM NO.	DESCRIPTION	U O M	QTY	Granite Construction Company		M & H Enterprises Inc.		Capriati Construction Corp, Inc.	
				UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
502.01	6' X 4' REINFORCED CONCRETE BOX (RCB)	LF	62	$550.00	$34,100.00	$859.36	$53,280.32	$756.14	$46,880.68
502.02	8' X 7' REINFORCED CONCRETE BOX (RCB)	LF	51	$650.00	$33,150.00	$1,088.53	$55,515.03	$1,047.22	$53,408.22
502.03	13' X 8' REINFORCED CONCRETE BOX (RCB)	LF	1595	$850.00	$1,355,750.00	$797.81	$1,272,506.95	$825.62	$1,316,863.90
502.04	15' X 8' REINFORCED CONCRETE BOX (RCB)	LF	6934	$950.00	$6,587,300.00	$1,042.80	$7,230,775.20	$1,036.06	$7,184,040.04
502.05	24' X 8' REINFORCED CONCRETE BOX (RCB)	LF	7541	$1,105.00	$8,332,805.00	$1,086.67	$8,194,576.47	$1,525.00	$11,500,025.00
502.06	DUAL 15' X 8' REINFORCED CONCRETE BOX (RCB)	LF	696	$2,200.00	$1,531,200.00	$1,679.89	$1,169,203.44	$2,741.39	$1,908,007.44
502.07	CONFLUENCE STRUCTURE @ "DE" 89+25.00 TO "DE" 89+69.00	LS	1	$80,000.00	$80,000.00	$76,623.28	$76,623.28	$94,961.36	$94,961.36
502.08	CONFLUENCE STRUCTURE @ "DE" 130+70.15 TO "DE" 131+25.15 AND "DW" 130+70.68 TO "DW"	LS	1	$230,000.00	$230,000.00	$134,276.17	$134,276.17	$169,119.70	$169,119.70
502.09	TRANSITION STRUCTURE @ "DE" 89+69.00 TO "DE" 90+21.50	LS	1	$85,000.00	$85,000.00	$63,109.04	$63,109.04	$98,180.66	$98,180.66
502.10	TRANSITION STRUCTURE @ "DW" 101+75.00 TO "DW" 101+85.00	LS	1	$20,000.00	$20,000.00	$17,381.75	$17,381.75	$40,452.00	$40,452.00
502.11	TRANSITION STRUCTURE @ "DE" 131+25.15 TO "DE" 131+35.15	LS	1	$45,000.00	$45,000.00	$25,625.56	$25,625.56	$58,131.74	$58,131.74
502.12	TRANSITION STRUCTURE @ "DE" 138+31.63 TO "DE" 138+36.63	LS	1	$32,000.00	$32,000.00	$15,395.95	$15,395.95	$47,093.96	$47,093.96
502.13	TRANSITION STRUCTURE @ "EL" 10+90.13 TO "EL" 11+40.13	LS	1	$95,000.00	$95,000.00	$85,382.31	$85,382.31	$110,064.32	$110,064.32
502.14	TRANSITION STRUCTURE @ "EL" 86+80.69 TO "EL" 87+00.69	LS	1	$45,000.00	$45,000.00	$45,344.11	$45,344.11	$87,458.76	$87,458.76
502.15	12' X 8' GRATED ACCESS	LS	1	$6,000.00	$6,000.00	$32,180.85	$32,180.85	$21,273.20	$21,273.20
502.16	14' X 8' ACCESS GRATE INLET	LS	1	$19,000.00	$19,000.00	$35,637.24	$35,637.24	$39,238.08	$39,238.08
502.17	DUAL 13' X 8' RCB STRUCTURE	LS	1	$120,000.00	$120,000.00	$62,949.12	$62,949.12	$171,028.03	$171,028.03
502.18	DROP STRUCTURE @ "EL" 30+06.59	LS	1	$34,000.00	$34,000.00	$15,038.00	$15,038.00	$37,474.46	$37,474.46
502.19	DROP STRUCTURE @ "EL" 31+94.02	LS	1	$25,000.00	$25,000.00	$49.00	$49.00	$34,824.46	$34,824.46
502.20	DUAL 15' X 8' REINFORCED CONCRETE BOX (RCB) - TYPE 1	LF	144	$3,400.00	$489,600.00	$1,688.50	$243,144.00	$3,155.62	$454,409.28
502.21	DUAL 15' X 8' REINFORCED CONCRETE BOX (RCB) - TYPE 2	LF	225	$3,400.00	$765,000.00	$1,848.43	$415,896.75	$3,155.62	$710,014.50
502.22	DUAL 15' X 8' REINFORCED CONCRETE BOX (RCB) - TYPE 3	LF	228	$3,400.00	$775,200.00	$2,101.76	$479,201.28	$3,155.62	$719,481.36
502.23	12' LOW FLOW CHANNEL	LF	746	$170.00	$126,820.00	$140.34	$104,693.64	$180.22	$134,444.12
502.24	HEADWALL - "DE" 144+27.83	LS	1	$4,000.00	$4,000.00	$14,129.32	$14,129.32	$29,614.96	$29,614.96
502.25	LOW FLOW CHANNEL TRANSITION - "DE" 144+27.83 TO "DE" 144+37.33	LS	1	$3,500.00	$3,500.00	$2,660.99	$2,660.99	$7,369.12	$7,369.12
502.26	LOW FLOW CHANNEL TRANSITION - "DE" 151+83.15 TO "DE" 151+95	LS	1	$4,000.00	$4,000.00	$3,396.26	$3,396.26	$8,056.00	$8,056.00
603.01	18-INCH RCP (CLASS III)	LF	709	$130.00	$92,170.00	$139.37	$98,813.33	$68.90	$48,850.10
603.02	24-INCH RCP (CLASS III)	LF	294	$140.00	$41,160.00	$99.88	$29,364.72	$90.10	$26,489.40
603.03	30-INCH RCP (CLASS III)	LF	186	$170.00	$31,620.00	$124.48	$23,153.28	$106.10	$19,734.60
603.04	36-INCH RCP (CLASS III)	LF	300	$220.00	$66,000.00	$132.55	$39,765.00	$121.90	$36,570.00
603.05	42-INCH RCP (CLASS III)	LF	211	$230.00	$48,530.00	$167.74	$35,393.14	$148.40	$31,312.40
603.06	48-INCH RCP (CLASS III)	LF	371	$260.00	$96,460.00	$174.82	$64,858.22	$169.60	$62,921.60
603.07	54-INCH RCP (CLASS III)	LF	228	$270.00	$61,560.00	$214.79	$48,972.12	$201.40	$45,919.20
609.01	5-FOOT TYPE 'CM2' DROP INLET	EA	2	$8,000.00	$16,000.00	$8,372.61	$16,745.22	$7,844.00	$15,688.00
609.02	10-FOOT TYPE 'CM2' DROP INLET	EA	1	$10,000.00	$10,000.00	$9,016.65	$9,016.65	$13,038.00	$13,038.00
609.03	20-FOOT TYPE 'CM2' DROP INLET	EA	1	$16,000.00	$16,000.00	$14,630.58	$14,630.58	$21,677.00	$21,677.00
609.04	5-FOOT TYPE 'DM2' DROP INLET	EA	4	$7,500.00	$30,000.00	$7,621.22	$30,484.88	$8,057.00	$32,228.00
609.05	10-FOOT TYPE 'DM2' DROP INLET	EA	4	$10,000.00	$40,000.00	$9,360.14	$37,440.56	$12,296.00	$49,184.00
609.06	15-FOOT TYPE 'DM2' DROP INLET	EA	2	$12,000.00	$24,000.00	$12,279.82	$24,559.64	$20,617.00	$41,234.00
609.07	10-FOOT TYPE 'DM2B' DROP INLET	EA	2	$11,000.00	$22,000.00	$9,714.37	$19,428.74	$6,254.00	$12,508.00
609.08	15-FOOT TYPE 'DM2B' DROP INLET	EA	4	$14,000.00	$56,000.00	$12,290.55	$49,162.20	$21,359.00	$85,436.00
609.09	20-FOOT TYPE 'DM2B' DROP INLET	EA	3	$16,000.00	$48,000.00	$14,630.59	$43,891.77	$22,260.00	$66,780.00
609.10	10-FOOT MODIFIED TYPE 'DM2' DROP INLET W/ REAR SIDEWALK DRAIN INLET	EA	1	$13,000.00	$13,000.00	$10,433.56	$10,433.56	$13,780.00	$13,780.00

ITEM NO.	DESCRIPTION	U.O.M	QTY	Granite Construction Company		M & H Enterprises Inc.		Capriati Construction Corp, Inc.	
				UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
609.11	10-FOOT MODIFIED TYPE 'DM2' DROP INLET W/ DUAL REAR SIDEWALK DRAIN INLET	EA	1	$14,000.00	$14,000.00	$11,818.25	$11,818.25	$13,780.00	$13,780.00
609.12	20-FOOT MODIFIED TYPE 'DM2B' DROP INLET W/ REAR SIDEWALK DRAIN INLET	EA	1	$18,000.00	$18,000.00	$16,122.63	$16,122.63	$24,380.00	$24,380.00
609.13	MODIFIED TYPE 8 DROP INLET	EA	3	$7,000.00	$21,000.00	$6,526.34	$19,579.02	$12,296.00	$36,888.00
609.14	MODIFIED NDOT TYPE 2B DROP INLET W/ CONCRETE APRON	EA	7	$4,500.00	$31,500.00	$4,154.10	$29,078.70	$7,950.00	$55,650.00
609.15	48-INCH TYPE 1 STORM DRAIN MANHOLE RISER	EA	43	$3,100.00	$133,300.00	$1,674.52	$72,004.36	$4,240.00	$182,320.00
609.16	48-INCH TYPE 1A STORM DRAIN MANHOLE RISER	EA	4	$2,800.00	$11,200.00	$1,674.52	$6,698.08	$8,374.00	$33,496.00
609.17	48-INCH TYPE 1 STORM DRAIN MANHOLE	EA	1	$2,500.00	$2,500.00	$3,424.18	$3,424.18	$8,374.00	$8,374.00
609.18	60-INCH TYPE 1 STORM DRAIN MANHOLE	EA	1	$2,800.00	$2,800.00	$3,531.52	$3,531.52	$8,374.00	$8,374.00
609.19	60-INCH CLARK COUNTY TYPE III STORM DRAIN MANHOLE	EA	2	$4,500.00	$9,000.00	$6,215.05	$12,430.10	$8,374.00	$16,748.00
609.20	NDOT TYPE 4 STORM DRAIN MANHOLE	EA	5	$6,500.00	$32,500.00	$8,093.52	$40,467.60	$8,162.00	$40,810.00
609.21	MODIFIED NDOT TYPE 4 STORM DRAIN MANHOLE AT "BR" 9+35.66	EA	1	$11,000.00	$11,000.00	$12,891.66	$12,891.66	$22,737.00	$22,737.00
609.22	MODIFIED NDOT TYPE 4 STORM DRAIN MANHOLE AT "DL" 8+05.89	EA	1	$7,800.00	$7,800.00	$9,574.83	$9,574.83	$12,296.00	$12,296.00
609.23	MODIFIED NDOT TYPE 4 STORM DRAIN MANHOLE AT "DSW" 8+90.74	EA	1	$8,800.00	$8,800.00	$10,626.76	$10,626.76	$12,826.00	$12,826.00
610.01	HEAVY RIPRAP - D50 = 18-INCHES	CY	5900	$45.00	$265,500.00	$27.91	$164,669.00	$37.10	$218,890.00
613.01	TACK ON CONCRETE MEDIAN ISLAND	SF	2239	$7.00	$15,673.00	$8.27	$18,516.53	$5.30	$11,866.70
613.02	TYPE "A" MEDIAN CURB	LF	8147	$8.00	$65,176.00	$15.04	$122,530.88	$7.42	$60,450.74
613.03	TYPE "L" CURB AND GUTTER	LF	285	$42.00	$11,970.00	$24.07	$6,859.95	$18.02	$5,135.70
613.04	CONCRETE SIDEWALK	SF	1423	$22.00	$31,306.00	$7.73	$10,999.79	$5.83	$8,296.09
613.05	CONCRETE VALLEY GUTTER	SF	503	$25.00	$12,575.00	$13.22	$6,649.66	$6.89	$3,465.67
613.06	TACK ON CONCRETE MEDIAN ISLAND - "ER" 127+36.43 TO "ER" 130+20.43	SF	1109	$80.00	$88,720.00	$8.32	$9,226.88	$5.30	$5,877.70
613.07	TYPE "L" CURB AND GUTTER - "ER" 127+24.80 TO "ER" 128+74.78	LF	150	$45.00	$6,750.00	$5.37	$805.50	$18.02	$2,703.00
613.08	CONCRETE SIDEWALK - "ER" 127+24.80 TO "ER" 127+55.70	SF	155	$22.00	$3,410.00	$5.37	$832.35	$6.89	$1,067.95
616.01	6-FOOT WROUGHT IRON FENCE	LF	77	$81.00	$6,237.00	$66.01	$5,082.77	$65.19	$5,019.63
616.02	REMOVE AND REPLACE 6-FOOT WROUGHT IRON FENCE	LF	50	$100.00	$5,000.00	$81.04	$4,052.00	$80.03	$4,001.50
616.03	12' X 6' WROUGHT IRON DOUBLE SWING GATE	EA	1	$2,700.00	$2,700.00	$3,220.22	$3,220.22	$3,180.00	$3,180.00
616.04	REMOVE AND REPLACE CHAIN LINK FENCE	LF	6	$175.00	$1,050.00	$101.97	$611.82	$100.70	$604.20
616.05	REMOVE AND REPLACE POST AND CABLE RAILING	LF	79	$22.00	$1,738.00	$36.23	$2,862.17	$35.78	$2,826.62
618.01	W-BEAM GUARDRAIL	LF	208	$24.00	$4,992.00	$25.23	$5,247.84	$24.91	$5,181.28
622.01	CONSTRUCTION SURVEYING	LS	1	$90,000.00	$90,000.00	$34,349.12	$34,349.12	$79,500.00	$79,500.00
623.01	NO. 7 PULLBOX	EA	1	$1,100.00	$1,100.00	$1,019.74	$1,019.74	$689.00	$689.00
623.02	3-INCH CONDUIT FOR FUTURE TRAFFIC SIGNAL WITH 1-#8 BARE TRACER WIRE AND PULLSTRING	LF	232	$43.00	$9,976.00	$35.42	$8,217.44	$31.80	$7,377.60
624.01	TRAFFIC CONTROL AND MAINTENANCE	LS	1	$1,385,000.00	$1,385,000.00	$636,284.89	$636,284.89	$95,294.00	$95,294.00
625.01	PORTABLE CHANGEABLE MESSAGE SIGN	DAY	60	$90.00	$5,400.00	$107.34	$6,440.40	$37.10	$2,226.00
625.02	ARROW DISPLAY	DAY	1200	$25.00	$30,000.00	$37.57	$45,084.00	$15.90	$19,080.00
627.01	PERMANENT SIGN PANEL (GROUND MOUNTED)	SF	89	$43.00	$3,827.00	$45.62	$4,060.18	$1.06	$94.34
627.02	REMOVE STOP SIGN W/ TRAFFIC DRUM AND SOLAR POWER FLASHER AND REINSTALL	EA	1	$150.00	$150.00	$161.01	$161.01	$159.00	$159.00
627.03	REMOVE STOP SIGN W/ TRAFFIC DRUM AND REINSTALL	EA	1	$125.00	$125.00	$134.18	$134.18	$132.50	$132.50
627.04	REMOVE AND REPLACE GROUND MOUNTED SIGN	EA	23	$95.00	$2,185.00	$101.97	$2,345.31	$100.70	$2,316.10
628.01	WHITE - TYPE II PAVEMENT MARKING FILM (CROSSWALKS, STOP BARS, CHEVRONS, DIAGONALS)	SF	7190	$3.05	$21,929.50	$3.27	$23,511.30	$3.23	$23,223.70
628.02	YELLOW - TYPE II PAVEMENT MARKING FILM (DIAGONALS)	SF	3000	$3.05	$9,150.00	$3.27	$9,810.00	$3.23	$9,690.00

ITEM NO.	DESCRIPTION	U O M	QTY	Granite Construction Company		M & H Enterprises Inc.		Capriati Construction Corp, Inc.	
				UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
628.03	6-INCH WHITE SOLID LINE (POLYUREA OR EPOXY)	LF	12062	$0.55	$6,634.10	$0.60	$7,237.20	$0.58	$6,995.96
628.04	6-INCH YELLOW SOLID LINE (POLYUREA OR EPOXY)	LF	1245	$0.55	$684.75	$0.59	$734.55	$0.58	$722.10
628.05	TYPE II PAVEMENT MARKING FILM FOR ARROWS	SF	1159	$7.00	$8,113.00	$7.51	$8,704.09	$7.42	$8,599.78
628.06	TYPE II PAVEMENT MARKING FILM FOR "ONLY"	EA	37	$110.00	$4,070.00	$118.08	$4,368.96	$116.60	$4,314.20
628.07	WHITE - TYPE II PAVEMENT MARKING FILM (CROSSWALKS, STOP BARS, CHEVRONS, DIAGONALS) - "ER" 127+25 TO "ER" 132+35	SF	604	$3.05	$1,842.20	$3.27	$1,975.08	$3.23	$1,950.92
628.08	6-INCH WHITE SOLID LINE (POLYUREA OR EPOXY) - "ER" 127+25 TO "ER" 132+35	LF	1101	$0.55	$605.55	$0.59	$649.59	$0.58	$638.58
628.09	TYPE II PAVEMENT MARKING FILM FOR ARROWS - "ER" 127+25 TO "ER" 132+35	SF	109	$7.00	$763.00	$7.51	$818.59	$7.42	$808.78
628.10	TYPE II PAVEMENT MARKING FILM FOR "ONLY" - "ER" 127+25 TO "ER" 132+35	EA	4	$110.00	$440.00	$118.08	$472.32	$116.60	$466.40
629.01	6-INCH WATERLINE AND APPURTENANCES AT "ER" 153+52.74 TO "ER" 153+52.01	LS	1	$7,500.00	$7,500.00	$10,487.22	$10,487.22	$11,289.00	$11,289.00
629.02	6-INCH WATERLINE AND APPURTENANCES AT "ER" 161+43.86 TO "ER" 161+42.88	LS	1	$8,000.00	$8,000.00	$10,455.02	$10,455.02	$11,289.00	$11,289.00
629.03	6-INCH WATERLINE AND APPURTENANCES AT "ER" 167+47.59 TO "ER" 167+47.30	LS	1	$8,300.00	$8,300.00	$10,476.49	$10,476.49	$11,289.00	$11,289.00
629.04	8-INCH WATERLINE AND APPURTENANCES AT "ER" 146+11.15 TO "ER" 146+13.87	LS	1	$9,000.00	$9,000.00	$14,598.38	$14,598.38	$14,469.00	$14,469.00
629.05	8-INCH WATERLINE AND APPURTENANCES AT "DL" 8+81.08 TO "DB" 75+20.26	LS	1	$15,000.00	$15,000.00	$22,745.57	$22,745.57	$17,649.00	$17,649.00
629.06	8-INCH WATERLINE AND APPURTENANCES AT "DSW" 8+03.98 TO "DSW" 9+20.45	LS	1	$20,000.00	$20,000.00	$30,034.02	$30,034.02	$19,769.00	$19,769.00
629.07	8-INCH WATERLINE AND APPURTENANCES AT "DB" 88+34.26 TO "DB" 88+85.36	LS	1	$8,500.00	$8,500.00	$11,914.86	$11,914.86	$14,469.00	$14,469.00
629.08	10-INCH WATERLINE AND APPURTENANCES AT "ER" 166+75.56 TO "ER" 166+77.36	LS	1	$12,000.00	$12,000.00	$14,276.36	$14,276.36	$17,649.00	$17,649.00
629.09	12-INCH WATERLINE AND APPURTENANCES AT "ER" 159+16.60 TO "ER" 159+16.26	LS	1	$22,000.00	$22,000.00	$29,228.97	$29,228.97	$24,009.00	$24,009.00
629.10	12-INCH WATERLINE AND APPURTENANCES AT "ER" 171+52.09 TO "ER" 173+60.47	LS	1	$50,000.00	$50,000.00	$60,486.69	$60,486.69	$68,900.00	$68,900.00
629.11	12-INCH WATERLINE AND APPURTENANCES AT "W1" 10+00.00 TO "W1" 16+97.37	LS	1	$100,000.00	$100,000.00	$69,256.44	$69,256.44	$71,550.00	$71,550.00
629.12	INSTALL 8-INCH GATE VALVE AT "EL" 52+67	LS	1	$3,500.00	$3,500.00	$1,502.77	$1,502.77	$3,710.00	$3,710.00
629.13	ADJUST WATER VALVE TO FINISHED GRADE	EA	5	$450.00	$2,250.00	$379.99	$1,899.95	$371.00	$1,855.00
629.14	ADJUST WATER BLOW-OFF TO FINISHED GRADE	EA	2	$350.00	$700.00	$416.49	$832.98	$689.00	$1,378.00
629.15	INSTALL 6-INCH FIRE HYDRANT LATERAL AT "ER" 171+70.83	LS	1	$8,500.00	$8,500.00	$5,538.00	$5,538.00	$11,660.00	$11,660.00
630.01	8-INCH PVC SANITARY SEWER PIPE	LF	2473	$155.00	$383,315.00	$72.99	$180,504.27	$143.10	$353,886.30
630.02	15-INCH PVC (SDR35) SANITARY SEWER PIPE	LF	52	$1,000.00	$52,000.00	$836.19	$43,481.88	$318.00	$16,536.00
630.03	16-INCH PVC (C905) SANITARY SEWER PIPE	LF	127	$700.00	$88,900.00	$513.09	$65,162.43	$344.50	$43,751.50
630.04	48-INCH TYPE 1 SANITARY SEWER MANHOLE	EA	10	$5,000.00	$50,000.00	$3,080.69	$30,806.90	$6,572.00	$65,720.00
630.05	ADJUST SANITARY SEWER MANHOLE TO FINISHED GRADE	EA	14	$400.00	$5,600.00	$450.83	$6,311.62	$742.00	$10,388.00
633.01	REFLECTIVE RAISED PAVEMENT MARKERS	EA	1656	$2.20	$3,643.20	$2.36	$3,908.16	$2.33	$3,858.48
633.02	NON-REFLECTIVE RAISED PAVEMENT MARKERS	EA	4184	$1.20	$5,020.80	$1.26	$5,271.84	$1.24	$5,188.16
633.03	REFLECTIVE RAISED PAVEMENT MARKERS - "ER" 127+25 TO "ER" 132+35	EA	87	$2.20	$191.40	$2.36	$205.32	$2.33	$202.71
633.04	NON-REFLECTIVE RAISED PAVEMENT MARKERS - "ER" 127+25 TO "ER" 132+35	EA	185	$1.20	$222.00	$1.26	$233.10	$1.24	$229.40
637.01	DUST CONTROL	LS	1	$5,000.00	$5,000.00	$243,309.98	$243,309.98	$129,718.56	$129,718.56
637.02	NPDES DISCHARGE PERMIT	LS	1	$500.00	$500.00	$3,569.09	$3,569.09	$17,172.00	$17,172.00
637.03	POST CONSTRUCTION DUST PALLIATIVE	ACRE	7	$2,800.00	$19,600.00	$2,871.37	$20,099.59	$260.00	$1,820.00
650.01	NV ENERGY TRANSMISSION POLE SUPPORT	EA	11	$80,000.00	$880,000.00	$223,135.22	$2,454,487.42	$26,500.00	$291,500.00
650.02	NV ENERGY FEES	FA	1	$60,000.00	$60,000.00		$60,000.00	$60,000.00	$60,000.00

				Granite Construction Company		M & H Enterprises Inc.		Capriati Construction Corp, Inc.	
ITEM NO.	DESCRIPTION	U O M	QTY	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
	Total Base Bid Amount				$30,444,342.00		$30,630,661.79		$33,738,439.57
					CORRECTED TOTAL		CORRECTED TOTAL		CORRECTED TOTAL
	Engineer's Estimate								
	Responsive Bidder								
	Responsible Bidder								

City of Las Vegas Agenda Item No.: **45.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of award of Amendment No. 2 to Agreement No. 050593-DD, Engineering Design Services for ITS Communications Infrastructure located on the Rancho Drive Corridor from Sahara Avenue to Rainbow Boulevard - Department of Public Works - Award recommended to: ORTH-RODGERS & ASSOCIATES, INC. ($115,225.41 - Traffic Improvements Capital Projects Fund) - Wards 1 and 2 (Tarkanian and Wolfson)

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☒ **Budget Funds Available**
Amount: $115,225.41
Funding Source: Traffic Improvements CPF
Dept./Division: Public Works

PURPOSE/BACKGROUND:
Agreement No. 050593-DD was approved by City Council on January 19, 2005 to provide for engineering design services for upgrade of the existing traffic signal interconnect communications infrastructure. This amendment provides for engineering services related to the design of the Rancho Drive Corridor including new digital messaging signs, radar count stations, traffic signal cabinet upgrades, utility certification assistance and other related services.

PCC: L.E. Davis
POC: Richard T. Romer - (702) 233-4060

RECOMMENDATION:
That City Council approve award of Amendment No. 2 to Agreement No. 050593-DD, Engineering Design Services for ITS Communications Infrastructure to Orth-Rodgers & Associates, Inc. in the amount of $115,225.41 bringing the total Agreement amount to $741,530.41. Authority to execute the Agreement is given to the Purchasing Manager per R-48-2006.

BACKUP DOCUMENTATION:
1. Amendment No. 2 to Agreement No. 050593-DD
2. Certificate - Disclosure of Ownership/Principals

SECOND AMENDMENT TO ENGINEERING DESIGN SERVICES AGREEMENT WITH ORTH-RODGERS FOR ITS COMMUNICATIONS INFRASTRUCTURE

THIS SECOND AMENDMENT made and entered into as of the _____ day of _____, 2010, by and between the CITY OF LAS VEGAS, a municipal corporation of the State of Nevada (herein the "CITY") and ORTH-RODGERS & ASSOCIATES, INC. (herein the "CONSULTANT")

WITNESSETH

WHEREAS, the CITY and the CONSULTANT have entered into an Engineering Design Services Agreement dated January 19, 2005 and Amended November 10, 2005 (herein the "AGREEMENT"), retaining the services of the CONSULTANT for the design of the ITS Communications Infrastructure Project (herein the "PROJECT"), and

WHEREAS, the CITY desires to modify the scope of that AGREEMENT to include additional engineering services related to the design of the Rancho Drive Corridor II - ITS Infrastructure including new digital messaging signs, radar count stations, traffic signal cabinet upgrades, video equipment, right-of-way and utility certification assistance required due to federal funding for construction, additional survey and utility potholing, coordination with utilities, Clark County, City of North Las Vegas and Nevada Department of Transportation (NDOT), preparation of additional NDOT encroachment permits (7), and other related services not included in the original or amended scope of the PROJECT.

NOW, THEREFORE, the parties hereto agree that the following changes shall be made to the AGREEMENT:

1. Section Seven, Compensation and Terms of Payment, Paragraph 7.01 of the AGREEMENT is hereby amended to change the amount set aside as referenced therein from $626,305 to $741,530.41.

2. Section Seven, Compensation and Terms of Payment, Paragraph 7.02 of the AGREEMENT is hereby amended to change the amount referenced therein for Basic Services of the CONSULTANT from $477,652 to $569,561.04. Paragraph 7.03 of the AGREEMENT is hereby amended to change the not to exceed amount referenced therein for Additional Services of the CONSULTANT from $148,653 to $171,969.37.

3. Insert new Exhibit A-02, Scope of Work; Exhibit C-02, Manpower Task Breakdown; Exhibit D-02, Cost Derivation; and Exhibit G, Disclosure of Principals; all as attached hereto.

IN WITNESS WHEREOF, the parties have caused this SECOND AMENDMENT to the original AGREEMENT for the ITS Communications Infrastructure project to be executed the day and year first above written.

CITY OF LAS VEGAS

By_____
KATHLEEN C. RAINEY
Manager, Purchasing and Contracts

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM:

John S. Ridilla 8/27/10
Deputy City Attorney Date

John S. Ridilla
Deputy City Attorney

ORTH-RODGERS & ASSOCIATES

By_____
RICHARD T. ROMER, P.E., P.T.O.E.
Principal
"CONSULTANT"

EXHIBIT 'A'
SCOPE OF ADDITONAL SERVICES

CITY OF LAS VEGAS INTELLIGENT TRANSPORTATION SYSTEMS INFRASTRUCTURE PROJECT
RANCHO DRIVE CORRIDOR

BACKGROUND

On January 19, 2005 Orth-Rodgers & Assoc., Inc. ORA) entered into an agreement with the City of Las Vegas to provide engineering design services, preparation of Contract Drawings, Special Provisions and Cost Estimates for the Rancho Drive Corridor from Sahara Avenue to Rainbow Boulevard. A detailed Scope of Services for the Project is included in the Engineering Design Services Agreement.

This Scope of Additional Services outlines additional work directed to be performed by the City that is necessary to successfully complete the project.

BASIC SERVICES

Engineering Services to be provided under the terms of the Agreement shall be performed in conformance with the following policies and design criteria: City of Las Vegas *Policy and Procedures for Design of Public Works Projects,* Clark County *Uniform Standard Specifications* and *Uniform Standard Drawings and Freeway and Arterial System of Transportation (FAST) standards.*

100 PRELIMINARY AND GENERAL ITEMS

110 Progress Meetings / Design Charette / Final Review: Consultant shall schedule and prepare an agenda for a final review meeting. The final review meeting will be held in the City's offices unless otherwise specified by the City. Consultant shall prepare and distribute minutes of this meeting to all attendees.

- Deliverable: Final review meeting minutes

115 Utility/Agency/Project Coordination and Utility Search: During the length of this contract, the Consultant shall coordinate with the various utilities to obtain updated as-built information, notify of conflicts and relocations and provide adequate notice of impacts on proposed facilities. Consultant will obtain updated as-built information from each affected subsurface utility owner. Consultant shall provide preliminary drawings to the utilities for their use in marking the locations of their facilities. Consultant shall also coordinate, provide and obtain information regarding current and proposed improvement projects adjacent to or within the project limits.

In addition, the Consultant will coordinate with Nevada Department of Transportation (NDOT), Regional Transportation Commission of Southern Nevada (RTC), regarding encroachment permit issues and bus operations, which will affect the working conditions and requirements. The Consultant will also coordinate with the City's Traffic Division and Fire Department for minimum through-lane requirements. Consultant will also coordinate with any other consultants and entities that may have or be working on other Intelligent Transportation System (ITS) projects that could impact this project.

Additional CADD and design effort needed to coordinate with utility agencies and add this information to the plans than originally estimated. One additional submittal to utilities with pre-final. Additional coordination efforts with the agencies are anticipated based on initial submittals.

Physical potholing of underground facilities is not included, unless provided for in Exhibit "B" "Additional Services".

- Deliverable: Consultant shall provide the City with copies of all correspondence related to these activities

120 Project Administration: The Consultant will prepare monthly invoices, along with a monthly status report describing the work accomplished and percentage of work completed for each task.

- Deliverable: Consultant shall provide monthly invoices for the prior month, along with the narrative progress report

125 Quality Assurance/Quality Control: Utilizing appropriately qualified senior staff, the Consultant will conduct quality control reviews and check each work product for consistency, clarity, bidability and constructability, as applicable, prior to submittal to the City for the pre-final and final design submittals.

200 PRELIMINARY DESIGN

205 Background Information Collection: The consultant shall obtain updated existing signal and signal interconnect plans for the Rancho Drive Corridor identified above. The Consultant will also obtain any plans for proposed signals within the project limits. It is anticipated that up to 23 signalized intersections exist or are proposed.

210 Right-of-Way Coordination: The Consultant shall coordinate with the City in determining the limits of the public right-of-way along the project alignments. The Consultant shall collect the latest existing right-of-way information from the City, County, and NDOT for use in evaluating the area available to place any missing signal coordination conduits and pull boxes. The Consultant shall update the right-of-way information with data obtained from the Clark County GIS Management Office. The scope does not include obtaining title reports or preparing legal descriptions when right-of-way is required, but may be provided in Exhibit "B" "Additional Services".

GISMO process was changed since this scope was submitted. This task required significant additional effort to incorporate GISMO information into the CAD environment than was required with the older GISMO process. Additional CAD and engineering effort required.

215 Engineering Field Reconnaissance: Utilizing the plans obtained in 205 above and plans prepared previously during this project and with the assistance of the City of Las Vegas Traffic Division and FAST, the consultant will physically "walk" the project alignments and make a cursory review of the existing interconnect infrastructure to determine what can be used or needs to be replaced to allow for an upgrade of the signal interconnect to a fiber optic backbone and to identify any changes that have taken place since the project was put on hold.

Since this scope was submitted, we anticipate additional field time will be required based on our experience with the 1A project and the time already spent in the field.

220 Aerial Mapping: The Consultant shall update the aerial .TIFF files and associated .TFW files provided by the City of Las Vegas to serve as the base map for the project. The City of Las Vegas shall also provide center lines, right-of-way lines, lot lines and easement lines in layered Arch Info format to include in the plans. The Consultant shall update the existing right-of-way lines, utilities, and traffic signal appurtenances, signal coordination conduit and pull boxes.

GISMO process was changed since this scope was submitted. This task required significant additional effort to incorporate aerial images and alignment information into the CAD environment than was required with the older GISMO process. Additional CAD and engineering effort required than originally estimated.

225 Design Criteria and Construction Requirements: The Consultant will coordinate with the City of Las Vegas, FAST, and RTC to update the design criteria for the replacement of existing unacceptable conduit and pull boxes due to size or condition.

300 PRE-FINAL DESIGN AND CONSTRUCTION DOCUMENTS

The consultant shall proceed, for the Rancho Drive Corridor, with design and preparation of the construction documents, observing City standards and the criteria set forth during preliminary design. The Consultant shall submit construction plans including, but not limited to, plan sheets showing location of right-of-way, utilities, existing traffic signal appurtenances, coordination conduits and pull boxes, locations requiring replacement of conduit or pull boxes, locations requiring the replacement of signal controller cabinets, and the locations of new devices (CCTV, dynamic message signs and radar permanent count stations), and construction details, all for City review and approval. The format, text, organization, structure, and style shall be as directed by the City. A sample set of Special Provisions will be provided to the Consultant. Separate plan sheets shall be prepared as noted in the task elements below. A plan set shall be developed for each corridor separately, and shall be done in the priority order as set forth by the City.

305 Cover Sheet, General Note Sheet: Consultant will update the Cover Sheet and General Note sheet. Both will be prepared in City format for each corridor.

310 Interconnect Plans: Plan sheets shall be updated to a near complete state for the purposes of defining the locations of construction work to be performed along the defined corridor Plan sheets will include left and right roadway alignments with match lines.

Additional effort will be required than originally estimated to revise previous design to current CLV standards of presentation and design. Additional effort was required to modify CDCA notes from the 1A project. The new controller cabinets required additional effort. Review and analysis of CLV provided conduit mapping against the current plans required more effort than anticipated.

320 Design Details: Design details, addressing conduit installation, pull box replacement, splice pull box installation/replacement, signal controller cabinet replacement, CCTV installation and communication connection, dynamic message signs and communication connection, radar permanent count station installation and communication connection, signal controller cabinet communication connection, and fiber splicing diagrams shall be updated to a near complete state. (Note: 8 CCTV, 3 Perm. Cnt. Station, 5 DMS, 28 Splices)

Additional effort will be required than originally estimated to revise previous design to current CLV standards of presentation and design. Additional effort will be required for future reviews and associated plan revisions by FAST.

325 Reproduce Pre-Final Plans and Walk-through: Consultant shall provide the City with ten (10) copies of 11" x 17" half size plans to be used for a field review for the Rancho Drive Corridor. The Consultant shall schedule a cursory walk-through of the project with the CLV Project Manager. An inventory of all items of work shown on the plans will be verified and compared to field conditions. The Consultant will note any changes or adjustments to the plans as needed to fit field conditions.

330 Quantity Tabulation Sheet: Show bid quantities on a single summary sheet for the Rancho Drive Corridor. Quantities for each sheet are not included unless provided for in Exhibit "B" "Additional Services".

335 Draft Specifications: Draft Specifications shall be updated consisting of the Special Provisions modifying the Clark County Area Standard Specifications published by the Regional Transportation Commission. The specifications shall address any bid item required for the construction of the improvements shown on

the plans for the Rancho Drive Corridor. The City of Las Vegas/FAST will provide to the consultant specifications for all new devices (CCTV, dynamic message signs, signal controller cabinets and radar permanent count stations) including specifications for any integration that be required.

340 Updated Cost Estimate: An updated cost estimate will be provided with the Pre-Final submittal for the defined corridor.

ORA performed an initial update to the cost estimate at the beginning of the project that needs to be added to this scope.

350 Pre-Final Plan Submittal

- Deliverable: Ten (10) copies of 11" x 17" half size plans, bound specifications, cost estimate, and quantity tabulation pages by plan sheet shall be submitted to the City for the Rancho Drive corridor. The Engineer's estimate will also be submitted as a Microsoft Excel Work Sheet electronic file. Copies of the plans shall be submitted to the utilities.

Additional effort will be required than originally estimated to complete utility coordination based on experience in 1A. More time will be needed just to physically get the signatures than originally estimated.

500 FINAL DESIGN AND CONSTRUCTION DOCUMENTS

505 Finalize Design and Construction Documents: Finalize plans, specifications, and bid documents by incorporating comments received from the Pre-Final submittal for the Rancho Drive Corridor. The Consultant shall coordinate and obtain all utility signatures required on the Cover Sheet and elsewhere in the plans as required, and submit copies of final plan sheets to utility companies as required by the Utility Companies to obtain final signatures. The Consultant shall provide utility certification support.

510 NDOT Encroachment Permit: The Consultant shall apply and obtain NDOT encroachment permits including extensions, as applicable for the Rancho Drive Corridor.

This task will require more effort than originally estimated based on further coordination with the CLV and based on previous NDOT encroachment permit efforts on C1A It is anticipated there will be 7 permit packages to submit. Current NDOT permit submittal requirements are asking for ten (10) copies of each package. Our original estimate was for 8 copies of each package.

Upon Agency approval, submit final mylars and documents to the City as noted:

- Deliverables: One (1) set of sealed original mylars, unbound sealed specifications and cost estimate to the City for the Rancho Drive Corridor. Electronic copies of both the plans (AutoCAD 2000 format) and specifications (Microsoft Word format) shall be provided to the City for the defined corridor. The Engineer's estimate will also be submitted as a Microsoft Excel Work Sheet electronic file. One copy of the plans shall be provided to each affected utility. Acquire utility signatures as required for the plan title sheet. Also, four (4) copies of full size blue-lines and special provisions, and one (1) set of half-size plans shall be submitted to the City. NDOT encroachment permit application and exhibits shall also be provided for the Rancho Drive Corridor.

600 BID SERVICES

615 The Consultant shall attend the pre-bid conference for the Rancho Drive Corridor project.

620 The Consultant shall attend the Pre-construction conference for the Rancho Drive Corridor project.

900 SUPPLEMENTAL SERVICES

905 Addenda - During the bid process, the Consultant shall assist the City with the preparation of contract addenda. The Consultant shall provide addenda at no cost to the City if it is the result of "errors", "omissions" or the plans or specifications requiring clarifications. Addenda items requested by the City due to design changes at no fault of the Consultant will be covered under Exhibit "B" "Additional Services". Services to be provided for the Rancho Drive Corridor.

As-Builts/Redlines - The Consultant shall provide the City with a marked up set of plans indicating the as-built locations of all conduit, pull boxes, and ITS devices (CCTV, dynamic message signs, permanent count stations, and system detectors).

910 Answer Bidder's Questions - As directed by the City, the Consultant shall answer bidder's questions. All answers shall be submitted directly to the City in writing for the Rancho Drive Corridor project. The Consultant shall not provide any response, either verbally or in writing, to any other interested party.

- Deliverables: One (1) set of sealed original mylars that have been redlined to reflect as built locations of the interconnect conduit, pull boxes, and ITS devices including the ITS devices for the Rancho Drive Corridor. An electronic copy of the plans (AutoCAD 2000 format) shall also be provided for the defined corridor.

930 Consultant will coordinate potholing and surveying efforts and provide graphics showing the locations of each required pothole location determined during the utility review.

It is estimated we will need ten (10) potholes for the Rancho Drive Corridor project. We are including survey to pick-up the pothole locations. The proposal has been adjusted for this change both in surveying and ORA's required services.

EXHIBIT 'B'
SUPPLEMENTAL SERVICES
Rancho Drive Corridor ITS Upgrade Project

The following services are to be performed only when authorized in writing by the City.

Task	Description of Supplemental Services
905	***Addenda and As-Builts/Redlines***
910	***Answer Bidder's Questions***
930	***Potholing:*** Obtaining utility pothole information for subsurface utilities. Cost basis $1,200 per hole. **Surveying:** Obtain survey information to pick-up the pothole locations. Cost basis $550 per pothole location.

Project Delay: If, through no fault of the Consultant, the project is delayed beyond the Final Submittal date in Exhibit "E", the billing rates provided in Exhibit "D" will be adjusted based on the Consumer Price Index published by the U.S. Government. The period of time used to adjust the billing rates will be the time from the revised Notice to Proceed to the Final Submittal date in Exhibit "E". The value used for the Consumer Price Index will be annual rates for each year and pro rated for partial years. If the project is delayed as a result of the Consultant's actions, the Final Submittal date shown in Exhibit 'E" will be extended the same amount of time as the Consultant caused delay.

TASK		DESCRIPTION	Principal / Project Manager	Assistant Project Manager	Senior Project Engineer	Assistant Project Engineer	Designer / CADD Operator	Clerical/ Traffic Tech	HOURS SUBTOTAL
100		PRELIMINARY AND GENERAL ITEMS							
	105	Kickoff Meeting							0
	110	Progress Meetings / Design Charette / Final Review	8		8	8		4	28
	115	Utility/Agency/Project Coordination and Utility Search	0		4	4	60		68
	120	Project Administration	8					8	16
	125	Quality Assurance/Quality Control	12			12			24
		Task Totals	28	0	12	24	60	12	136
200		PRELIMINARY DESIGN							
	205	Background Information Collection				4			4
	210	Right-of-Way Coordination	2			12	60		74
	215	Engineering Field Reconnaissance	2			32	32		66
	220	Aerial Mapping	2			16	60		78
	225	Design Criteria and Construction Requirements	1		4	4			9
	230	Draft Preliminary Design and Cost Estimate							0
	255	Final Preliminary Design and Cost Estimate							0
		Task Totals	7	0	4	68	152	0	231
300		PRE-FINAL DESIGN AND CONSTRUCTION DOCUMENTS							
CORRIDOR 2		Rancho Drive (Assumes 23 signals and 8.7 miles)							
	305	Cover Sheet, General Note Sheet				1	2		3
	310	Interconnect Plans	5			40	80		125
	320	Design Details (8 CCTV, 3 Perm. Cnt. Station, 5 DMS, 28 Splices)	2		4	16	32		54
	325	Reproduce Pre-Final Plan Sets and Conduct Walk-through	13			14	16		43
	330	Quantity Tabulation Sheet			8	4	36		48
	335	Draft Specifications	2		12	4	32		50
	340	Updated Cost Estimate	1		8	12	24		45
	350	Pre-Final Plan Submittal to CLV and Utilities	1			8	24	8	41
		Subtotals-Rancho Drive:	24	0	32	99	246	8	409
		Task Totals	24	0	32	99	246	8	409
500		FINAL DESIGN AND CONSTRUCTION DOCUMENTS							
COR 2	505	Finalize Design, Construction Documents, Certification Support	2		8	4	35	8	57
	510	NDOT Encroachment and Clark County Permits	7		16	48	120	24	215
		Subtotals-Rancho Drive:	9	0	24	52	155	32	272
		Task Totals	9	0	24	52	155	32	272
600		BID SERVICES							
COR 2	615	Attend Pre-bid Conference			1	1			2
	620	Attend Pre-construction Conference			1	1			2
		Subtotals-Rancho Drive:	0	0	2	2	0	0	4
		Task Totals	0	0	2	2	0	0	4
900		SUPPLEMENTAL SERVICES, IF NEEDED							
COR 2	905	Addenda	1			2	4		7
	910	Answer bidder's questions in writing - as directed	4			4			8
		Subtotals-Rancho Drive:	5	0	0	6	4	0	15
		Task Subtotals	5	0	0	6	4	0	15
COR 2	905	As Built Redlines	1			8	34		43
		Subtotals-Rancho Drive:	1	0	0	8	34	0	43
		Task Subtotals	1	0	0	8	34	0	43
	920	Right-of-Way Coordination (as-needed legal descriptions)							0
	925	Additional Design Services							0
	930	Potholing (10 @ $1,200 per pothole) (Assume 10 potholes)			2		4		6
	930	Surveying (10 @ $550 per pothole) (Assume 10 potholes)			1		4		5
	940	Construction Support							0
	950	Construction Visits							0
	955	Request for Information (RFI)							0
		Task Subtotals	0	0	3	0	8	0	11
		GRAND TOTALS	74	0	77	259	659	52	1121

TASK		DESCRIPTION	Principal / Project Manager	Assistant Project Manager	Senior Project Engineer	Assistant Project Engineer	Designer / CADD Operator	Clerical/ Traffic Tech	Person-hour Totals	Direct Expenses	Total Task Amounts
100		PRELIMINARY AND GENERAL ITEMS									
	105	Kickoff Meeting	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
	110	Progress Meetings / Design Charette / Final Review	$ 1,643.44	$ -	$ 1,291.28	$ 645.60	$ -	$ 189.36	$ 3,769.68	$ -	$ 3,769.68
	115	Utility/Agency/Project Coordination and Utility Search	$ -	$ -	$ 645.64	$ 322.80	$ 3,873.60	$ -	$ 4,842.04	$ -	$ 4,842.04
	120	Project Administration	$ 1,643.44	$ -	$ -	$ -	$ -	$ 378.72	$ 2,022.16	$ 20.00	$ 2,042.16
	125	Quality Assurance/Quality Control	$ 2,465.16	$ -	$ -	$ 968.40	$ -	$ -	$ 3,433.56	$ 177.00	$ 3,610.56
		Task Subtotals:	$ 5,752.04	$ -	$ 1,936.92	$ 1,936.80	$ 3,873.60	$ 568.08	$ 14,067.44	$ 197.00	$ 14,264.44
200		PRELIMINARY DESIGN									
	205	Background Information Collection	$ -	$ -	$ -	$ 322.80	$ -	$ -	$ 322.80	$ -	$ 322.80
	210	Right-of-Way Coordination	$ 410.86	$ -	$ -	$ 968.40	$ 3,873.60	$ -	$ 5,252.86	$ -	$ 5,252.86
	215	Engineering Field Reconnaissance	$ 410.86	$ -	$ -	$ 2,582.40	$ 2,065.92	$ -	$ 5,059.18	$ -	$ 5,059.18
	220	Aerial Mapping	$ 410.86	$ -	$ -	$ 1,291.20	$ 3,873.60	$ -	$ 5,575.66	$ -	$ 5,575.66
	225	Design Criteria and Construction Requirements	$ 205.43	$ -	$ 645.64	$ 322.80	$ -	$ -	$ 1,173.87	$ -	$ 1,173.87
	230	Draft Preliminary Design and Cost Estimate	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
	235	Final Preliminary Design and Cost Estimate	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
		Task Subtotals:	$ 1,436.01	$ -	$ 645.64	$ 5,487.60	$ 9,813.12	$ -	$ 17,384.37	$ -	$ 17,384.37
300		90% DESIGN AND CONSTRUCTION DOCUMENTS									
CORRIDOR 2		Rancho Drive (Assumes 22 signals and 8.7 miles)								$ -	$ -
	305	Cover Sheet, General Note Sheet	$ -	$ -	$ -	$ 80.70	$ 129.12	$ -	$ 209.82	$ -	$ 209.82
	310	Interconnect Plans	$ 1,027.15	$ -	$ -	$ 3,228.00	$ 5,164.80	$ -	$ 9,419.95	$ -	$ 9,419.95
	320	Design Details (8 CCTV, 4 System Det/Perm. Cnt. Station)	$ 410.86	$ -	$ 645.64	$ 1,291.20	$ 2,065.92	$ -	$ 4,413.62	$ -	$ 4,413.62
	325	Draft 90% Plans and Walk-through	$ 2,670.59	$ -	$ -	$ 1,129.80	$ 1,032.96	$ -	$ 4,833.35	$ 88.00	$ 4,921.35
	330	Quantity Tabulation Sheet	$ -	$ -	$ 1,291.28	$ 322.80	$ 2,324.16	$ -	$ 3,938.24	$ -	$ 3,938.24
	335	Draft Specifications	$ 410.86	$ -	$ 1,936.92	$ 322.80	$ 2,065.92	$ -	$ 4,736.50	$ -	$ 4,736.50
	340	Updated Cost Estimate	$ 205.43	$ -	$ 1,291.28	$ 968.40	$ 1,549.44	$ -	$ 4,014.55	$ -	$ 4,014.55
	350	90% Submittal	$ 205.43	$ -	$ -	$ 645.60	$ 1,649.44	$ 378.72	$ 2,779.19	$ 245.00	$ 3,024.19
		Subtotals-Rancho Drive:	$ 4,930.32	$ -	$ 5,165.12	$ 7,989.30	$ 15,881.76	$ 378.72	$ 34,345.22	$ 333.00	$ 34,678.22
		Task Subtotals:	$ 4,930.32	$ -	$ 5,165.12	$ 7,989.30	$ 15,881.76	$ 378.72	$ 34,345.22	$ 333.00	$ 34,678.22
500		FINAL DESIGN AND CONSTRUCTION DOCUMENTS									
COR 2	505	Finalize Design and Construction Documents	$ 410.86	$ -	$ 1,291.28	$ 322.80	$ 2,259.60	$ 378.72	$ 4,663.26	$ 324.00	$ 4,987.26
	510	NDOT Encroachment Permit	$ 1,438.01	$ -	$ 2,582.56	$ 3,873.60	$ 7,747.20	$ 1,136.16	$ 16,777.53	$ 3,333.00	$ 20,110.53
		Subtotals-Rancho Drive:	$ 1,848.87	$ -	$ 3,873.84	$ 4,196.40	$ 10,006.80	$ 1,514.88	$ 21,440.79	$ 3,657.00	$ 25,097.79
		Task Subtotals:	$ 1,848.87	$ -	$ 3,873.84	$ 4,196.40	$ 10,006.80	$ 1,514.88	$ 21,440.79	$ 3,657.00	$ 25,097.79
600		BID SERVICES									
COR 2	615	Attend Pre-bid Conference	$ -	$ -	$ 161.41	$ 80.70	$ -	$ -	$ 242.11	$ -	$ 242.11
	620	Attend Pre-construction Conference	$ -	$ -	$ 161.41	$ 80.70	$ -	$ -	$ 242.11	$ -	$ 242.11
		Subtotals-Rancho Drive:	$ -	$ -	$ 322.82	$ 161.40	$ -	$ -	$ 484.22	$ -	$ 484.22
		Task Subtotals:	$ -	$ -	$ 322.82	$ 161.40	$ -	$ -	$ 484.22	$ -	$ 484.22
900		SUPPLEMENTAL SERVICES, IF NEEDED									
COR 2	905	Addenda	$ 205.43	$ -	$ -	$ 161.40	$ 258.24	$ -	$ 625.07	$ -	$ 625.07
	910	Answer bidder's questions in writing - as directed	$ 821.72	$ -	$ -	$ 322.80	$ -	$ -	$ 1,144.52	$ -	$ 1,144.52
		Subtotals-Rancho Drive:	$ 1,027.15	$ -	$ -	$ 484.20	$ 258.24	$ -	$ 1,769.59	$ -	$ 1,769.59
		Task Subtotals:	$ 1,027.15	$ -	$ -	$ 484.20	$ 258.24	$ -	$ 1,769.59	$ -	$ 1,769.59
COR 2	905	As Built Redlines	$ 205.43	$ -	$ -	$ 645.60	$ 2,195.04	$ -	$ 3,046.07	$ -	$ 3,046.07
		Subtotals-Rancho Drive:	$ 205.43	$ -	$ -	$ 645.60	$ 2,195.04	$ -	$ 3,046.07	$ -	$ 3,046.07
		Task Subtotals:	$ 205.43	$ -	$ -	$ 645.60	$ 2,195.04	$ -	$ 3,046.07	$ -	$ 3,046.07
	920	Right-of-Way Coordination (as-needed legal descriptions)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
	925	Additional Design Services	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
	930	Potholing (10 @ $1200 each)	$ -	$ -	$ 322.82	$ -	$ 258.24	$ -	$ 581.06	$ 12,000.00	$ 12,581.06
	930	Surveying (10 @ $550 each)	$ -	$ -	$ 161.41	$ -	$ 258.24	$ -	$ 419.65	$ 5,500.00	$ 5,919.65
	940	Construction Support	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
	950	Construction Visits	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
	955	Request for Information (RFI)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
		Task Subtotals:	$ -	$ -	$ 484.23	$ -	$ 516.48	$ -	$ 1,000.71	$ 17,500.00	$ 18,500.71
		TOTAL ADDITIONAL SERVICES:	$ 1,232.58	$ -	$ 484.23	$ 1,129.80	$ 2,969.76	$ -	$ 5,816.37	$ 17,500.00	$ 23,316.37

BASIC SERVICES TOTAL	$ 91,909.04
ADDITIONAL SERVICES TOTAL	$ 23,316.37
GRAND TOTAL	$ 115,225.41

CLV FORM G

CERTIFICATE
DISCLOSURE OF OWNERSHIP/PRINCIPALS

1. Definitions

"City" means the City of Las Vegas.

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

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

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

2. Policy

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

3. Instructions

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

4. Incorporation

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

Block 1 Contracting Entity

Name	**Orth-Rodgers & Associates, Inc.**
Address	**3130 S. Durango Dr., Suite 404, Las Vegas, NV 89117**
Telephone	**702-233-4060**
EIN or DUNS	**23-2077102**

Block 2 Description

Subject Matter of Contract/Agreement:

Rancho Drive ITS Infrastructure Design Services

RFP #:

Block 3 Type of Business

☐ Individual ☐ Partnership ☐ Limited Liability Company ☒ Corporation

CERTIFICATE – DISCLOSURE OF OWNERSHIP/PRINCIPALS (CONTINUED)

Block 4 **Disclosure of Ownership and Principals**

In the space below, the Contracting Entity must disclose all principals (including partners) of the Contracting Entity, as well as persons or entities holding more than one-percent (1%) ownership interest in the Contracting Entity.

	FULL NAME/TITLE	BUSINESS ADDRESS	BUSINESS PHONE
1.	Robert M. Rodgers, PE - Principal	4929 West Chester Pike, Newtown Square, PA 19073	(800) 803-1386
2.	Steve Bolt, PE, PTOE - Principal	301 Lindenwood Drive, Malvern, PA 19355	(610) 407-9700
3.	Michael J. Rodgers - Principal	4729 West Chester Pike, Newtown Square, PA 19073	(800) 903-1386
4.	Richard T. Romer, PE, PTOE - Principal	3130 S. Durango Dr., Ste 404, Las Vegas, NV 89117	(702) 233-4060
5.			
6.			
7.			
8.			
9.			
10.			

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

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

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

Name of Attached Document: _____

Date of Attached Document: _____ Number of Pages: _____

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

Richard T. Romer
Name

7/2/10
Date

Subscribed and sworn to before me this 2 day of July, 2010.

Dolores K. Herman
Notary Public

STATE of NEVADA
County of CLARK

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
DOLORES K. HERMAN
No 99-55348-1
My Appointment Expires May 13, 2011

City of Las Vegas Agenda Item No.: **46.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of award of Bid No. 07.1730.04-LED, Bonanza Trail Phase 2 located west of Rainbow Boulevard along Westcliff Drive to Lorenzi Street and east of Jones Boulevard and north of US 95 to Decatur Boulevard and the construction conflicts and contingency reserve set by Finance and Business Services - Department of Public Works - Award recommended to: WELLS CARGO, INC. ($4,889,440.75 - Parks and Leisure Activities Capital Projects Fund) - Wards 1 and 5 (Tarkanian and Barlow)

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☒ **Budget Funds Available**
Amount: $4,889,440.75
Funding Source: Parks and Leisure Activities CPF
Dept./Division: Public Works

PURPOSE/BACKGROUND:
This project includes the construction of a trail, lighting, striping, signing, one pedestrian bridge, one pedestrian under crossing and associated appurtenances. Funding for this project is being provided by the Southern Nevada Public Land Management Act (SNPLMA).

PCC: L.E. Davis
POC: Guy Wells - (702) 876-5090

RECOMMENDATION:
That City Council approve award of Bid No. 07.1730.04-LED, Bonanza Trail Phase 2 to Wells Cargo, Inc. in the amount of $4,889,440.75 and approve the construction conflicts and contingency reserve of $488,944. Authority to execute the Contract is given to the Purchasing Manager per R-48-2006.

BACKUP DOCUMENTATION:
Bid Abstract

BID ABSTRACT

07.1730.04-LED
Bonanza Trail – Phase 2

				Wells Cargo, Inc.		Frehner Construction Co., Inc.		Peek Construction Company	
ITEM NO.	DESCRIPTION	U O M	QTY	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
109.01	Owner Caused Delay Allowance	DAY	15	500.00	7,500.00	500.00	7,500.00	500.00	7,500.00
109.02	Owner Caused Delay Amount in Addition to Allowance	DAY	15	540.00	8,100.00	936.00	14,040.00	500.00	7,500.00
200.01	Mobilization and Demobilization	LS	1	305,000.00	305,000.00	305,000.00	305,000.00	305,000.00	305,000.00
202.01	Remove Concrete Barrier	LF	25	4.50	112.50	35.00	875.00	195.00	4,875.00
202.02	Remove 18" CMP Storm Drain and End Section	LF	230	14.80	3,404.00	20.00	4,600.00	20.00	4,600.00
202.03	Remove and Replace Chain Link Fence	LF	1,640	1.10	1,804.00	4.50	7,380.00	15.00	24,600.00
202.04	Remove and Salvage Street Light Assembly	EA	4	450.00	1,800.00	405.00	1,620.00	455.00	1,820.00
203.01	Selected Borrow	CY	9,140	12.20	111,508.00	9.00	82,260.00	13.00	118,820.00
203.02	Quality Control Testing	LS	1	53,300.00	53,300.00	2,050.00	2,050.00	30,000.00	30,000.00
212.01	Decorative Boulder (Type A)	EA	6	36.00	216.00	91.00	546.00	63.00	378.00
212.02	Decorative Boulder (Type C)	EA	10	120.00	1,200.00	135.00	1,350.00	110.00	1,100.00
212.03	Decorative Boulder (Type D)	EA	8	270.00	2,160.00	193.00	1,544.00	182.00	1,456.00
212.04	Decomposed Granite	SF	43,050	0.50	21,525.00	0.57	24,538.50	0.50	21,525.00
212.05	Decorative Rock (Type C)	SF	1,770	0.80	1,416.00	1.60	2,832.00	1.20	2,124.00
212.06	Remove and Replace Landscaping at Bank of America	LS	1	10,300.00	10,300.00	15,500.00	15,500.00	13,000.00	13,000.00
213.01	4-Inch Irrigation Sleeve	LF	305	4.20	1,281.00	12.00	3,660.00	7.00	2,135.00
213.02	Irrigation Box	EA	12	260.00	3,120.00	160.00	1,920.00	250.00	3,000.00
302.01	Type I Class B Aggregate Base	CY	2,470	21.50	53,105.00	15.00	37,050.00	29.00	71,630.00
402.01	6" Plantmix Bituminous Surface	SY	5,780	19.85	114,733.00	36.00	208,080.00	39.00	225,420.00
403.01	3/4-Inch Plantmix Bituminous Open-Graded Surface	SY	5,780	1.25	7,225.00	6.50	37,570.00	9.00	52,020.00
409.01	Portland Cement Concrete Path Pavement (6-Inch)	SY	6,200	66.50	412,300.00	57.65	357,430.00	51.00	316,200.00
409.02	Reinforcement	SY	1,280	59.50	76,160.00	67.50	86,400.00	62.00	79,360.00
409.03	Portland Cement Concrete Bus Turn-Out Pavement	SY	210	98.00	20,580.00	77.00	16,170.00	95.00	19,950.00
502.01	Retaining Wall (Type I)	SF	5,460	99.75	544,635.00	97.50	532,350.00	44.00	240,240.00
502.02	Retaining Wall (Type II)	SF	5,350	44.00	235,400.00	55.00	294,250.00	39.00	208,650.00
502.03	Retaining Wall (Type III)	SF	2,970	53.00	157,410.00	66.00	196,020.00	44.00	130,680.00
502.04	Retaining Wall (Precast)	SF	820	59.30	48,626.00	116.00	95,120.00	129.00	105,780.00
502.05	Precast Concrete Under Crossing at Rainbow	LS	1	673,000.00	673,000.00	1,005,100.00	1,005,100.00	850,000.00	850,000.00
502.06	Type "A" Concrete Barrier Rail	LF	230	105.00	24,150.00	51.50	11,845.00	95.00	21,850.00
502.07	Headwall - 12-Inch PVC Pipe	EA	4	1,500.00	6,000.00	2,185.00	8,740.00	4,100.00	16,400.00
502.08	Headwall - 18-Inch RCP	EA	1	1,500.00	1,500.00	3,245.00	3,245.00	5,020.00	5,020.00
502.09	End Section - 18-Inch RCP	EA	3	1,300.00	3,900.00	950.00	2,850.00	1,300.00	3,900.00
502.10	10' Wide Concrete U-Channel	SF	1,628	11.40	18,559.20	11.00	17,908.00	18.00	29,304.00

				Wells Cargo, Inc.		Frehner Construction Co., Inc.		Peek Construction Company	
ITEM NO.	DESCRIPTION	U O M	QTY	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
503.01	Prestressed Main Spans and Substructures at Decatur	LS	1	383,200.00	383,200.00	307,000.00	307,000.00	605,556.00	605,556.00
503.02	Substructures at Decatur	LS	1	521,000.00	521,000.00	429,500.00	429,500.00	800,000.00	800,000.00
603.01	18-Inch Reinforced Concrete Pipe (Class III)	LF	132	108.00	14,256.00	110.00	14,520.00	105.00	13,860.00
603.02	18-Inch Flap Gate	EA	1	2,700.00	2,700.00	650.00	650.00	9,600.00	9,600.00
605.01	12-Inch C-900 Thermoplastic Pipe	LF	100	101.00	10,100.00	65.00	6,500.00	95.00	9,500.00
609.01	NDOT Type 1 Storm Drain Manhole	EA	2	3,200.00	6,400.00	4,250.00	8,500.00	3,700.00	7,400.00
609.02	Type 2 Drop Inlet with Concrete Collar	EA	1	4,000.00	4,000.00	4,195.00	4,195.00	2,200.00	2,200.00
609.03	Retrofit Drain Grate	EA	4	325.00	1,300.00	310.00	1,240.00	2,200.00	8,800.00
609.04	Sidewalk Underdrain	EA	1	4,200.00	4,200.00	3,900.00	3,900.00	2,800.00	2,800.00
609.05	6" Trench Drain	LF	140	76.00	10,640.00	81.50	11,410.00	160.00	22,400.00
610.01	Rock Slope Protection (Rip-Rap)	CY	30	51.00	1,530.00	150.00	4,500.00	66.00	1,980.00
611.01	Concrete Slope Paving	SY	5	320.00	1,600.00	375.00	1,875.00	106.00	530.00
613.01	Concrete Sidewalk (4-Inch)	SF	1,190	8.50	10,115.00	7.00	8,330.00	4.00	4,760.00
613.02	Tack on Median Island	SF	110	13.00	1,430.00	12.50	1,375.00	18.00	1,980.00
613.03	Sidewalk Ramp	EA	19	2,030.00	38,570.00	1,740.00	33,060.00	1,200.00	22,800.00
613.04	Type L Curb and Gutter	LF	430	29.00	12,470.00	28.50	12,255.00	12.00	5,160.00
613.05	Commercial Driveway	EA	1	6,200.00	6,200.00	6,150.00	6,150.00	4,000.00	4,000.00
613.06	Truncated Domes on Existing Ramp	EA	2	560.00	1,120.00	530.00	1,060.00	480.00	960.00
616.01	72-Inch Chain Link Fence	LF	1,560	17.50	27,300.00	16.50	25,740.00	18.00	28,080.00
616.02	10-Foot Chain Link Fence	LF	30	118.00	3,540.00	110.00	3,300.00	120.00	3,600.00
616.03	6-Foot Chain Link Fence with Black Vinyl Coating	LF	760	23.50	17,860.00	22.00	16,720.00	24.00	18,240.00
616.04	Fabric	LF	360	136.00	48,960.00	75.00	27,000.00	141.00	50,760.00
616.05	Fabric	LF	880	143.00	125,840.00	41.50	36,520.00	147.00	129,360.00
616.06	3.5-Foot Metal Railing	LF	1,270	89.40	113,538.00	61.50	78,105.00	93.00	118,110.00
616.07	6-Foot Metal Picket Fence	LF	780	76.70	59,826.00	98.50	76,830.00	78.00	60,840.00
616.08	14-Foot Metal Swing Gate	EA	1	3,200.00	3,200.00	2,295.00	2,295.00	3,000.00	3,000.00
616.09	12-Foot Double Swing Gate	EA	1	1,200.00	1,200.00	1,965.00	1,965.00	1,300.00	1,300.00
616.10	20-Foot Double Swing Gate	EA	4	1,350.00	5,400.00	3,275.00	13,100.00	1,400.00	5,600.00
618.01	Crash Attenuator	EA	2	31,300.00	62,600.00	20,000.00	40,000.00	30,000.00	60,000.00
622.01	Construction Surveying	LS	1	15,500.00	15,500.00	44,600.00	44,600.00	20,150.00	20,150.00
623.01	New Foundation	EA	1	2,900.00	2,900.00	2,700.00	2,700.00	3,050.00	3,050.00
623.02	Relocate Street Light Assembly on New Foundation	EA	2	2,550.00	5,100.00	2,375.00	4,750.00	2,675.00	5,350.00
623.03	Foundation	EA	4	3,820.00	15,280.00	3,550.00	14,200.00	4,000.00	16,000.00
624.01	Traffic Control and Maintenance	LS	1	41,500.00	41,500.00	83,500.00	83,500.00	137,000.00	137,000.00
625.01	Portable Changeable Message Sign	DAY	120	54.00	6,480.00	68.00	8,160.00	40.00	4,800.00
625.02	Arrow Display	DAY	50	14.50	725.00	34.00	1,700.00	17.00	850.00
627.01	Permanent Sign (Pole Mounted)	EA	142	97.50	13,845.00	44.00	6,248.00	125.00	17,750.00

				Wells Cargo, Inc.		Frehner Construction Co., Inc.		Peek Construction Company	
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627.02	Permanent Sign (Post Installed)	EA	81	152.00	12,312.00	154.00	12,474.00	170.00	13,770.00
627.03	Relocate Existing Sign and Post	EA	4	32.50	130.00	77.00	308.00	57.00	228.00
627.04	Remove and Salvage Existing Sign	EA	3	38.00	114.00	51.00	153.00	46.00	138.00
628.01	White Type II Pavement Marking Film Bicycle Legend	EA	13	200.00	2,600.00	92.00	1,196.00	46.00	598.00
628.02	Bars	SF	3,850	4.30	16,555.00	3.00	11,550.00	3.50	13,475.00
628.03	Type II Pavement Marking Film White 6" Marking	LF	17,510	2.15	37,646.50	1.30	22,763.00	2.00	35,020.00
628.04	Type II Pavement Marking Film Yellow 4" Marking	LF	2,730	1.45	3,958.50	1.20	3,276.00	2.00	5,460.00
628.05	Red Curb Paint	LF	1,200	0.50	600.00	0.32	384.00	1.00	1,200.00
628.06	Grey Curb Paint	LF	2,420	0.50	1,210.00	0.45	1,089.00	1.00	2,420.00
628.07	Type I Pavement Marking Film White 8" Marking	LF	100	3.00	300.00	1.90	190.00	2.20	220.00
628.08	White Type II Pavement Marking Film Arrow/Only Legend	EA	3	400.00	1,200.00	159.00	477.00	150.00	450.00
629.01	Vertical Adjust Water Valve Cover to Grade	EA	5	700.00	3,500.00	575.00	2,875.00	930.00	4,650.00
629.02	Vertical Adjust Water Air Relase Valve to Grade	EA	1	700.00	700.00	750.00	750.00	1,720.00	1,720.00
629.03	Vertical Adjust Storm Drain Manhole to Grade	EA	1	1,200.00	1,200.00	550.00	550.00	925.00	925.00
630.01	Replace Sanitary Sewer Manhole Cover	EA	1	1,000.00	1,000.00	355.00	355.00	925.00	925.00
637.01	Dust Control	LS	1	17,300.00	17,300.00	55,000.00	55,000.00	47,000.00	47,000.00
637.02	NPDES Discharge Permit	LS	1	2,900.00	2,900.00	3,000.00	3,000.00	12,000.00	12,000.00
637.03	Post Construction Dust Palliative	LS	1	4,300.00	4,300.00	2,300.00	2,300.00	4,550.00	4,550.00
670.01	Adjust Pull Box to Grade	EA	3	325.00	975.00	305.00	915.00	340.00	1,020.00
670.02	Adjust Manhole or Vault to Grade	EA	3	870.00	2,610.00	810.00	2,430.00	340.00	1,020.00
670.03	Abandon FAST Cabinet Foundation	EA	1	950.00	950.00	915.00	915.00	1,020.00	1,020.00
670.04	Relocate RFCD Pull Box	EA	1	2,200.00	2,200.00	2,030.00	2,030.00	2,275.00	2,275.00
672.01	150 Watt - 20' Pathway Light Assembly	EA	4	2,200.00	8,800.00	2,110.00	8,440.00	2,400.00	9,600.00
672.02	150 Watt - 14.5' Pathway Light Assembly	EA	50	1,970.00	98,500.00	1,845.00	92,250.00	2,100.00	105,000.00
672.03	150 Watt - 7' Pathway Light Assembly	EA	2	2,300.00	4,600.00	2,075.00	4,150.00	2,300.00	4,600.00
672.04	150 Watt Dual Pathway Lighting Fixture	EA	1	2,900.00	2,900.00	2,720.00	2,720.00	3,050.00	3,050.00
672.05	Tunnel Lighting Fixture with Cage	EA	10	1,150.00	11,500.00	1,075.00	10,750.00	1,200.00	12,000.00
672.06	Wall Pack Light Fixture	EA	1	860.00	860.00	805.00	805.00	900.00	900.00
672.07	6" x 6" x 4" Junction Box	EA	7	90.00	630.00	84.00	588.00	95.00	665.00
672.08	No. 3-1/2 Pull Box	EA	21	240.00	5,040.00	225.00	4,725.00	250.00	5,250.00
672.09	No. 5 Pull Box	EA	1	290.00	290.00	270.00	270.00	300.00	300.00
672.10	Modify Existing Service Pedestal to 200 AMP	EA	1	830.00	830.00	770.00	770.00	864.00	864.00
672.11	200 AMP Service Pedestal	EA	2	3,000.00	6,000.00	2,855.00	5,710.00	3,200.00	6,400.00
672.12	NV Energy Pull Box (RS-1)	EA	1	360.00	360.00	340.00	340.00	380.00	380.00
672.13	1/c #4 THW, Copper conductor	LF	6,625	1.15	7,618.75	1.10	7,287.50	1.20	7,950.00
672.14	1/c #6 THW, Copper conductor	LF	5,705	0.90	5,134.50	0.85	4,849.25	1.00	5,705.00
672.15	1/c #8 THW, Copper conductor	LF	6,767	0.70	4,736.90	0.75	5,075.25	1.00	6,767.00

				Wells Cargo, Inc.		Frehner Construction Co., Inc.		Peek Construction Company	
ITEM NO.	DESCRIPTION	U O M	QTY	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
672.16	3/4-Inch PVC Conduit	LF	16	3.15	50.40	3.00	48.00	3.50	56.00
672.17	2-Inch PVC Conduit	LF	6,450	10.75	69,337.50	10.00	64,500.00	11.00	70,950.00
672.18	2-Inch Rigid Galvanized Steel Conduit	LF	190	14.30	2,717.00	13.50	2,565.00	15.00	2,850.00
672.19	4-Inch PVC Conduit	LF	210	18.00	3,780.00	16.50	3,465.00	18.00	3,780.00
699.01	Removable Locking Bollard	EA	18	380.00	6,840.00	365.00	6,570.00	690.00	12,420.00
699.02	48" Round Acrylic Convex Mirror	EA	2	1,100.00	2,200.00	765.00	1,530.00	1,500.00	3,000.00
	Total Base Bid Amount				**$4,889,440.75**		**$5,083,184.50**		**$5,546,534.00**
	Engineer's Estimate $6,101,607.00								
	Responsive Bidder			YES					
	Responsible Bidder			YES					

TO: Cheri Edelman Please review and approve recommended award to

Wells Cargo, Inc. in the amount of $ 4,889,440.75

Purchasing & Contracts Representative — Date 8/26/10

Using Department Authorized Rep Signature — Date 8/26/10

BID ABSTRACT

07.1730.04-LED
Bonanza Trail – Phase 2

				Las Vegas Paving Corporation		Meadow Valley Contractors, Inc.		Richardson Construction, Inc.	
ITEM NO.	DESCRIPTION	U O M	QTY	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
109.01	Owner Caused Delay Allowance	DAY	15	500.00	7,500.00	500.00	7,500.00	500.00	7,500.00
109.02	Owner Caused Delay Amount in Addition to Allowance	DAY	15	1.00	15.00	500.00	7,500.00	**1,080.00**	16,200.00
200.01	Mobilization and Demobilization	LS	1	305,000.00	305,000.00	305,000.00	305,000.00	305,000.00	305,000.00
202.01	Remove Concrete Barrier	LF	25	110.00	2,750.00	30.00	750.00	129.60	3,240.00
202.02	Remove 18" CMP Storm Drain and End Section	LF	230	29.60	6,808.00	20.00	4,600.00	28.08	6,458.40
202.03	Remove and Replace Chain Link Fence	LF	1,640	17.95	29,438.00	2.00	3,280.00	18.36	30,110.40
202.04	Remove and Salvage Street Light Assembly	EA	4	430.00	1,720.00	500.00	2,000.00	432.00	1,728.00
203.01	Selected Borrow	CY	9,140	17.50	159,950.00	20.00	182,800.00	56.16	513,302.40
203.02	Quality Control Testing	LS	1	28,500.00	28,500.00	50,000.00	50,000.00	60,609.60	60,609.60
212.01	Decorative Boulder (Type A)	EA	6	46.50	279.00	50.00	300.00	36.72	220.32
212.02	Decorative Boulder (Type C)	EA	10	82.50	825.00	87.00	870.00	118.80	1,188.00
212.03	Decorative Boulder (Type D)	EA	8	204.00	1,632.00	215.00	1,720.00	270.00	2,160.00
212.04	Decomposed Granite	SF	43,050	0.33	14,206.50	0.50	21,525.00	0.49	21,094.50
212.05	Decorative Rock (Type C)	SF	1,770	0.72	1,274.40	0.85	1,504.50	0.81	1,433.70
212.06	Remove and Replace Landscaping at Bank of America	LS	1	1,050.00	1,050.00	25,000.00	25,000.00	9,720.00	9,720.00
213.01	4-Inch Irrigation Sleeve	LF	305	3.60	1,098.00	4.00	1,220.00	4.32	1,317.60
213.02	Irrigation Box	EA	12	62.00	744.00	65.00	780.00	259.20	3,110.40
302.01	Type I Class B Aggregate Base	CY	2,470	45.00	111,150.00	30.00	74,100.00	56.16	138,715.20
402.01	6" Plantmix Bituminous Surface	SY	5,780	27.50	158,950.00	42.00	242,760.00	45.36	262,180.80
403.01	3/4-Inch Plantmix Bituminous Open-Graded Surface	SY	5,780	6.50	37,570.00	10.00	57,800.00	25.92	149,817.60
409.01	Portland Cement Concrete Path Pavement (6-Inch)	SY	6,200	62.35	386,570.00	60.00	372,000.00	79.77	494,574.00
409.02	Reinforcement	SY	1,280	79.00	101,120.00	70.00	89,600.00	81.91	104,844.80
409.03	Portland Cement Concrete Bus Turn-Out Pavement	SY	210	103.00	21,630.00	85.00	17,850.00	122.48	25,720.80
502.01	Retaining Wall (Type I)	SF	5,460	81.50	444,990.00	80.00	436,800.00	74.52	406,879.20
502.02	Retaining Wall (Type II)	SF	5,350	68.80	368,080.00	62.00	331,700.00	60.48	323,568.00
502.03	Retaining Wall (Type III)	SF	2,970	92.80	275,616.00	80.00	237,600.00	70.20	208,494.00
502.04	Retaining Wall (Precast)	SF	820	66.60	54,612.00	130.00	106,600.00	308.88	253,281.60
502.05	Precast Concrete Under Crossing at Rainbow	LS	1	1,071,007.00	1,071,007.00	1,000,000.00	1,000,000.00	827,378.28	827,378.28
502.06	Type "A" Concrete Barrier Rail	LF	230	99.75	22,942.50	54.00	12,420.00	102.42	23,556.60
502.07	Headwall - 12-Inch PVC Pipe	EA	4	940.00	3,760.00	1,500.00	6,000.00	2,365.20	9,460.80
502.08	Headwall - 18-Inch RCP	EA	1	1,710.00	1,710.00	1,600.00	1,600.00	2,414.88	2,414.88
502.09	End Section - 18-Inch RCP	EA	3	1,060.00	3,180.00	1,700.00	5,100.00	2,592.00	7,776.00
502.10	10' Wide Concrete U-Channel	SF	1,628	15.50	25,234.00	10.00	16,280.00	12.46	20,284.88

				Las Vegas Paving Corporation		Meadow Valley Contractors, Inc.		Richardson Construction, Inc.	
ITEM NO.	DESCRIPTION	U O M	QTY	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
503.01	Prestressed Main Spans and Substructures at Decatur	LS	1	394,278.00	394,278.00	500,000.00	500,000.00	412,650.72	412,650.72
503.02	Substructures at Decatur	LS	1	548,970.81	548,970.81	690,000.00	690,000.00	662,232.24	662,232.24
603.01	18-Inch Reinforced Concrete Pipe (Class III)	LF	132	80.32	10,602.24	185.00	24,420.00	181.44	23,950.08
603.02	18-Inch Flap Gate	EA	1	2,540.00	2,540.00	9,000.00	9,000.00	1,071.79	1,071.79
605.01	12-Inch C-900 Thermoplastic Pipe	LF	100	59.20	5,920.00	120.00	12,000.00	32.40	3,240.00
609.01	NDOT Type 1 Storm Drain Manhole	EA	2	3,250.00	6,500.00	1,600.00	3,200.00	7,020.00	14,040.00
609.02	Type 2 Drop Inlet with Concrete Collar	EA	1	3,525.00	3,525.00	2,400.00	2,400.00	9,180.00	9,180.00
609.03	Retrofit Drain Grate	EA	4	2,500.00	10,000.00	600.00	2,400.00	340.20	1,360.80
609.04	Sidewalk Underdrain	EA	1	1,610.00	1,610.00	5,000.00	5,000.00	4,388.58	4,388.58
609.05	6" Trench Drain	LF	140	58.91	8,247.40	125.00	17,500.00	86.29	12,080.60
610.01	Rock Slope Protection (Rip-Rap)	CY	30	350.00	10,500.00	55.00	1,650.00	27.00	810.00
611.01	Concrete Slope Paving	SY	5	538.00	2,690.00	130.00	650.00	334.99	1,674.95
613.01	Concrete Sidewalk (4-Inch)	SF	1,190	6.65	7,913.50	4.00	4,760.00	7.58	9,020.20
613.02	Tack on Median Island	SF	110	10.81	1,189.10	8.00	880.00	13.92	1,531.20
613.03	Sidewalk Ramp	EA	19	2,103.00	39,957.00	820.00	15,580.00	1,868.16	35,495.04
613.04	Type L Curb and Gutter	LF	430	35.64	15,325.20	15.00	6,450.00	30.48	13,106.40
613.05	Commercial Driveway	EA	1	9,380.00	9,380.00	6,000.00	6,000.00	6,383.86	6,383.86
613.06	Truncated Domes on Existing Ramp	EA	2	716.00	1,432.00	400.00	800.00	586.51	1,173.02
616.01	72-Inch Chain Link Fence	LF	1,560	17.95	28,002.00	20.00	31,200.00	17.48	27,268.80
616.02	10-Foot Chain Link Fence	LF	30	92.90	2,787.00	125.00	3,750.00	97.20	2,916.00
616.03	6-Foot Chain Link Fence with Black Vinyl Coating	LF	760	23.75	18,050.00	25.00	19,000.00	23.44	17,814.40
616.04	Fabric	LF	360	100.00	36,000.00	135.00	48,600.00	109.62	39,463.20
616.05	Fabric	LF	880	126.75	111,540.00	140.00	123,200.00	143.05	125,884.00
616.06	3.5-Foot Metal Railing	LF	1,270	84.50	107,315.00	92.00	116,840.00	89.05	113,093.50
616.07	6-Foot Metal Picket Fence	LF	780	64.50	50,310.00	80.00	62,400.00	64.80	50,544.00
616.08	14-Foot Metal Swing Gate	EA	1	1,805.00	1,805.00	3,300.00	3,300.00	1,846.80	1,846.80
616.09	12-Foot Double Swing Gate	EA	1	845.00	845.00	1,300.00	1,300.00	1,198.80	1,198.80
616.10	20-Foot Double Swing Gate	EA	4	1,080.00	4,320.00	1,500.00	6,000.00	1,080.00	4,320.00
618.01	Crash Attenuator	EA	2	15,000.00	30,000.00	25,000.00	50,000.00	16,200.00	32,400.00
622.01	Construction Surveying	LS	1	55,000.00	55,000.00	58,000.00	58,000.00	21,600.00	21,600.00
623.01	New Foundation	EA	1	2,832.00	2,832.00	3,000.00	3,000.00	2,894.40	2,894.40
623.02	Relocate Street Light Assembly on New Foundation	EA	2	2,483.00	4,966.00	2,700.00	5,400.00	2,538.00	5,076.00
623.03	Foundation	EA	4	3,716.00	14,864.00	4,000.00	16,000.00	3,801.60	15,206.40
624.01	Traffic Control and Maintenance	LS	1	106,000.00	106,000.00	75,000.00	75,000.00	170,640.00	170,640.00
625.01	Portable Changeable Message Sign	DAY	120	35.00	4,200.00	40.00	4,800.00	37.80	4,536.00
625.02	Arrow Display	DAY	50	15.00	750.00	20.00	1,000.00	16.20	810.00
627.01	Permanent Sign (Pole Mounted)	EA	142	98.00	13,916.00	185.00	26,270.00	46.44	6,594.48

				Las Vegas Paving Corporation		Meadow Valley Contractors, Inc.		Richardson Construction, Inc.	
ITEM NO.	DESCRIPTION	U O M	QTY	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
672.16	3/4-Inch PVC Conduit	LF	16	3.06	48.96	3.50	56.00	3.14	50.24
672.17	2-Inch PVC Conduit	LF	6,450	10.50	67,725.00	11.00	70,950.00	10.70	69,015.00
672.18	2-Inch Rigid Galvanized Steel Conduit	LF	190	14.00	2,660.00	15.00	2,850.00	14.26	2,709.40
672.19	4-Inch PVC Conduit	LF	210	17.20	3,612.00	18.00	3,780.00	17.50	3,675.00
699.01	Removable Locking Bollard	EA	18	375.00	6,750.00	400.00	7,200.00	383.40	6,901.20
699.02	48" Round Acrylic Convex Mirror	EA	2	317.00	634.00	2,000.00	4,000.00	1,026.00	2,052.00
	Total Base Bid Amount				**$5,743,502.00**		**$5,990,426.00**		**$6,616,015.96**
	Engineer's Estimate $6,101,607.00								
	Responsive Bidder								
	Responsible Bidder								

				Las Vegas Paving Corporation		Meadow Valley Contractors, Inc.		Richardson Construction, Inc.	
ITEM NO.	DESCRIPTION	U O M	QTY	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
627.02	Permanent Sign (Post Installed)	EA	81	125.00	10,125.00	220.00	17,820.00	162.00	13,122.00
627.03	Relocate Existing Sign and Post	EA	4	30.00	120.00	140.00	560.00	81.00	324.00
627.04	Remove and Salvage Existing Sign	EA	3	30.00	90.00	50.00	150.00	54.00	162.00
628.01	White Type II Pavement Marking Film Bicycle Legend	EA	13	95.12	1,236.56	72.00	936.00	540.00	7,020.00
628.02	Bars	SF	3,850	3.12	12,012.00	4.00	15,400.00	3.19	12,281.50
628.03	Type II Pavement Marking Film White 6" Marking	LF	17,510	1.85	32,393.50	1.50	26,265.00	1.35	23,638.50
628.04	Type II Pavement Marking Film Yellow 4" Marking	LF	2,730	1.50	4,095.00	1.50	4,095.00	1.25	3,412.50
628.05	Red Curb Paint	LF	1,200	0.50	600.00	1.00	1,200.00	0.34	408.00
628.06	Grey Curb Paint	LF	2,420	0.50	1,210.00	1.00	2,420.00	0.44	1,064.80
628.07	Type I Pavement Marking Film White 8" Marking	LF	100	1.96	196.00	3.00	300.00	3.24	324.00
628.08	White Type II Pavement Marking Film Arrow/Only Legend	EA	3	119.00	357.00	220.00	660.00	351.00	1,053.00
629.01	Vertical Adjust Water Valve Cover to Grade	EA	5	762.20	3,811.00	450.00	2,250.00	2,700.00	13,500.00
629.02	Vertical Adjust Water Air Relase Valve to Grade	EA	1	3,692.00	3,692.00	2,000.00	2,000.00	2,700.00	2,700.00
629.03	Vertical Adjust Storm Drain Manhole to Grade	EA	1	1,252.00	1,252.00	900.00	900.00	2,700.00	2,700.00
630.01	Replace Sanitary Sewer Manhole Cover	EA	1	440.00	440.00	450.00	450.00	3,348.00	3,348.00
637.01	Dust Control	LS	1	100,595.00	100,595.00	50,000.00	50,000.00	86,400.00	86,400.00
637.02	NPDES Discharge Permit	LS	1	250.00	250.00	10,000.00	10,000.00	41,040.00	41,040.00
637.03	Post Construction Dust Palliative	LS	1	4,025.00	4,025.00	5,000.00	5,000.00	4,320.00	4,320.00
670.01	Adjust Pull Box to Grade	EA	3	317.00	951.00	500.00	1,500.00	324.00	972.00
670.02	Adjust Manhole or Vault to Grade	EA	3	845.00	2,535.00	900.00	2,700.00	864.00	2,592.00
670.03	Abandon FAST Cabinet Foundation	EA	1	951.00	951.00	1,000.00	1,000.00	972.00	972.00
670.04	Relocate RFCD Pull Box	EA	1	2,113.00	2,113.00	2,300.00	2,300.00	2,160.00	2,160.00
672.01	150 Watt - 20' Pathway Light Assembly	EA	4	2,198.00	8,792.00	2,400.00	9,600.00	3,240.00	12,960.00
672.02	150 Watt - 14.5' Pathway Light Assembly	EA	50	1,923.00	96,150.00	2,100.00	105,000.00	2,829.60	141,480.00
672.03	150 Watt - 7' Pathway Light Assembly	EA	2	2,166.00	4,332.00	2,300.00	4,600.00	3,078.00	6,156.00
672.04	150 Watt Dual Pathway Lighting Fixture	EA	1	2,832.00	2,832.00	3,000.00	3,000.00	3,758.40	3,758.40
672.05	Tunnel Lighting Fixture with Cage	EA	10	1,120.00	11,200.00	1,200.00	12,000.00	1,144.80	11,448.00
672.06	Wall Pack Light Fixture	EA	1	840.00	840.00	900.00	900.00	858.60	858.60
672.07	6" x 6" x 4" Junction Box	EA	7	88.00	616.00	95.00	665.00	89.64	627.48
672.08	No. 3-1/2 Pull Box	EA	21	233.00	4,893.00	250.00	5,250.00	237.60	4,989.60
672.09	No. 5 Pull Box	EA	1	280.00	280.00	300.00	300.00	286.20	286.20
672.10	Modify Existing Service Pedestal to 200 AMP	EA	1	803.00	803.00	850.00	850.00	820.80	820.80
672.11	200 AMP Service Pedestal	EA	2	2,975.00	5,950.00	3,200.00	6,400.00	3,040.20	6,080.40
672.12	NV Energy Pull Box (RS-1)	EA	1	354.00	354.00	400.00	400.00	361.80	361.80
672.13	1/c #4 THW, Copper conductor	LF	6,625	1.11	7,353.75	1.50	9,937.50	1.14	7,552.50
672.14	1/c #6 THW, Copper conductor	LF	5,705	0.87	4,963.35	1.00	5,705.00	0.89	5,077.45
672.15	1/c #8 THW, Copper conductor	LF	6,767	0.69	4,669.23	1.00	6,767.00	0.71	4,804.57

City of Las Vegas Agenda Item No.: **47.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:

ABEYANCE ITEM - Approval of Contract No. 110013-JL, Legal Consulting Services for Symphony Park located at 100 South Grand Central Parkway - APNs 139-34-110-002 and 104 - City Parkway V, Inc. - Award recommended to: SANTORO, DRIGGS, WALCH, KEARNEY & THOMPSON, LTD (not-to-exceed $270,000 - City Parkway V Operating Fund) - Ward 5 (Barlow)

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☒ **Budget Funds Available**
Amount: $270,000
Funding Source: City Parkway V Operating Fund
Dept./Division: City Parkway V, Inc.

PURPOSE/BACKGROUND:

City Parkway V has previously retained the legal services of Santoro, Driggs, Walch, Kearney &Thompson, LTD in regard to environmental issues on the former Union Pacific 61-acre parcel known as Symphony Park. This contract allows continuation of those services. This item is exempt from the competitive bidding process pursuant to NRS 332.115.1(b), Professional Services.

PCC: D. Dixon
POC: Gregory J. Walch - (702) 791-0308

RECOMMENDATION:

That City Council approve award of Contract No. 110013-JL, Legal Consulting Services for Symphony Park to Santoro, Driggs, Walch, Kearney & Thompson, LTD in the annual not-to-exceed amount of $270,000 from date of award through August 17, 2011 with five one-year options to renew. Authority to execute the Contract is given to the President of City Parkway V, Inc.

BACKUP DOCUMENTATION:

1. Contract No. 110013-JL
2. Certificate - Disclosure of Ownership/Principals
3. Letter from Charleston Neighborhood Preservation

CONTRACT
Legal Consulting Services for Symphony Park

THIS CONTRACT is being entered into this _____ day of _____, 2010, by and between the CITY PARKWAY V, INC., (hereinafter "CP V") a non-profit corporation within the State of Nevada having its principal office at 400 Stewart Avenue, Las Vegas, Nevada 89101, and Santoro, Driggs, Walch, Kearney, Holly & Thompson (hereinafter the "Firm"), LTD, located at 400 South Fourth Street, Las Vegas, Nevada 89101.

SECTION A – Contract Form

The subject matter of this Contract is the performance of legal services in matters relating to City Parkway V, City Parkway IV A and other parties as outlined in Attachment 1 to this contract.

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 CP V.

(b) *"City"* means the City of Las Vegas.

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

(d) *"Contract"* means this document, consisting of Sections A through F, which is binding and effective only upon execution by CP V and the Firm.

(e) *"Firm"* means the individual, partnership, or corporation responsible for the performance of services under this Contract.

(f) *"Firm Representative"* means the individual authorized to act on behalf of the Firm regarding routine matters arising under or relating to this Contract.

(g) *"Non-exclusive Contract"* means a Contract under which CP V agrees to obtain some, but not necessarily all, of the City's requirements for a particular service.

(h) *"Not-To-Exceed Amount"* means the dollar expenditure limit placed on performance which will include all labor, reimbursable expenses, overhead and fee.

(i) *"Reimbursable Expenses"* means expenses associated with activities and duties required to provide services such reproduction, reports, telephone, facsimile and other materials approved by the Project Manager.

B-2 Contract Type

This Contract provides for legal counsel services. The contract type is Labor Hour with allowable payment for ancillary costs related to the labor incurred. This is a Non-exclusive Contract.

B-3 Contract Value

The amount of the Contract shall not exceed Two Hundred and Seventy Thousand Dollars ($270,000) per year.

B-4 Compensation

(a) The Company will be compensated in accordance with the fee schedule set forth in Paragraph B-4 (c), below.

(b) **Not-To-Exceed (NTE) Amount.** CP V will pay the Firm for services performed at fixed labor rates and for the payment of expenses limited to a NTE amount of Two Hundred and Seventy Thousand Dollars ($270,000) per year. The Firm shall provide written notification to CP V when it has reached 85 percent (85%) of the NTE amount. If the Firm believes the work cannot be completed within the NTE amount, it shall provide an

estimate by labor category of the additional budget needed. A modification to increase the NTE may be negotiated, or CP V may elect to terminate the contract. The Firm shall in no event exceed the NTE amount without prior written authorization.

(c) **Attorney Fees.** CP V will pay the Firm fixed hourly labor rates to be pro-rated for actual time incurred.

Name	Hourly Billing Rate
Gregory J. Walch	$400.00
Stacy Harrop	$275.00
Natasha Dalton	$150.00

Other attorneys may be utilized from time to time, and Labor rates remain in effect until August 16, 2010 at which time the Firm may submit a request for price adjustment to the City. Price adjustments are subject to negotiation. There may only be one price adjustment per subsequent twelve (12) month periods.

(d) **Reimbursable Expenses.** CP V will reimburse the Firm for Reimbursable Expenses incurred in the performance of services up to the NTE amount. The Firm will invoice such expenses at actual cost without an additional mark-up fee. No reimbursable cost in excess of Ten Thousand Dollars ($10,000) shall be incurred without prior approval of CP V. The Firm will not charge for Reimbursable Expenses consisting of travel or express deliveries to any Nevada location, or for long distance telephone calls within the United States.

B-5 Contract Term/Delivery Schedule

(a) The contract term is from date of award for a period of twelve (12) months. CP V reserves the right to exercise five (5) one-year options to extend the Contract period. CP V will provide a written notice of its intent to exercise an option to the Firm within thirty (30) days of the Contract expiration date. If the Contract is extended, the Firm will honor the current fixed price labor rates stated in B-3(4) unless otherwise modified through negotiation. The Firm is not obligated to incur expenses and CPV is not obligated to pay claims for these options unless CP V exercises them in writing. This last sentence is confusing. Perhaps change to: The Firm may not assume the Contract has been renewed absent written notification from CP V.

B-6 Payment/Invoices

Firm shall submit monthly invoices to CP V for the previous month's charges for services provided to CP V. All invoices should identify the following:

(i) Performance dates covered.
(ii) Date of the invoice.
(III) Associated purchase order number.
(iv) Percentage of the Not-to-Exceed amount expended; and
(v) Any reasonable supporting information requested by CP V.

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

WITH COPY TO:
Department of Business Development
ATTN: Scott Adams, Director
City Hall/2nd Floor
400 Stewart Ave.
Las Vegas, NV 89101

AND:
Department of Finance and Business Services
ATTN: Mark Vincent, Director
City of Las Vegas
400 Stewart Ave.
Las Vegas, NV 89101 – 2986

(c) A representative of the Firm shall review the invoice in a manner to reasonably cause the invoice to be just and correct and that reimbursement for such expenses listed on this invoice has not been previously received from CP V, The City, or any other source.

SECTION C – Statement of Work

C-1 General Scope of Services

(a) The Firm shall provide the services listed in the Engagement Letter, dated July 7, 2010, Attachment 1 attached hereto and incorporated as a part of this Agreement.

(b) CP V empowers the Firm to take such legal action as may be advisable in the judgment of the Firm in disputed matters, provided that the Firm will not effect a final compromise without the prior approval of CP V or its designated representative. The Firm has no authority to bind CP V to any agreement or payment to a third party under this Contract.

(c) Services provided by the Firm are limited to those contracted explicitly herein. Additional services may, however, be provided by the Firm under this Contract if so requested by CP V and mutually agreed to by both parties. Additional services will only be performed pursuant to a written contract modification, executed by both parties.

(d) The Firm will provide CP V with status reports as the City may reasonably request.

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 FIRM:
Gregory J. Walch
Santoro, Driggs, Walch, Kearney, Holley & Thompson
400 S. Fourth Street, Third Floor
Las Vegas NV 89101
Fax: (702) 791-1912

(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 Firm Representative, as appropriate.

D-2 Personnel

The Firm's work on City Parkway V will be done primarily by attorneys in the Firm's municipal finance department located in its Las Vegas, Nevada offices. Gregory J. Walch, who is a licensed Nevada attorney and resident of Nevada, will be the principal lawyer involved in performing legal services for CP V pursuant to this Contract. In addition, the Firm may be assisted in performing these legal services by lawyers who are not licensed to practice law in Nevada. Generally, these lawyers assist in matters of federal law, but sometimes are consulted in attempting to resolve other questions, and these lawyers also sometimes assist the Firm in legal research and document drafting. In any event, the Firm's Nevada lawyers will be responsible for all legal services and legal work rendered to CP V pursuant to this contract, and all formal legal opinions will be rendered and executed by Nevada lawyers, Santoro, Driggs, Walch, Kearney, Holley & Thompson, LTD, which is the name under which the Firm's Nevada office does business.

D-3 Experts

The Firm may employ experts to assist with matters regarding work under this Contract. Advance authorization must be obtained by the Firm from CP V. Expert fees will be paid by CP V at cost.

D-4 Project Manager/Company Representative [CAO-7/24/08]

(a) CP V designates Scott Carter as the Project Manager for this Contract. CP V will provide written notice to the Firm should there be a subsequent Project Manager change. The Project Manager will be the Firm's principal point of contact at CP V regarding any matters relating to this Contract, will provide all general direction to the Firm regarding Contract performance, and will provide guidance regarding CP V'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 Firm designates Gregory J. Walch as the Firm Representative for this Contract. The Firm will provide written notice to CP V should there be a subsequent Firm Representative change. CP V has the right to assume that the Firm Representative has full authority to act for the Firm on all matters arising under or relating to this Contract.

D-5 Warranty – Services [CAO-7/24/08]

The Firm warrants that 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 Firm to perform the services in accordance with this Contract, the Firm shall, at no cost to CP V, re-perform or perform the services so that the services conform to the warranty

D-6 Licenses/Registrations

During the entire performance period of this Contract, the Firm shall maintain all federal, state, and local licenses and registrations applicable to the work performed under this Contract.

D-7 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 CP V are exclusively the property of CP V.

D-8 Attorney/Client Relationship

In the performance of services under this Contract, City Parkway V will be the Firm's client and an attorney-client relationship will exist between City Parkway V and the Firm. The Firm represents CP V rather than City Council, individual Council elected officials or City officers and employees.

D-9 Exclusive Benefit of the Parties

This contract is not intended to create any rights, powers or interests in any third party, and this Contract is entered into for the exclusive benefit of CP V and the Firm.

D-10 Conflict of Interest - Firm

The Firm shall abide by and perform its duties in accordance with the ethics of the legal profession and all federal and state laws and regulations regulating the practice of law.

D-11 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, 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, CP V 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 Firm, the Firm shall notify CP V of its intent to proceed further with the claim or dispute and, in response thereto, CP V shall notify the Firm as to its selected forum for resolution. For any and all claims or disputes asserted by CP V, CP V shall notify the Firm of its intent to proceed with further resolution and, in the same notice, 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 CP V 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 CP V provided personnel, data, or equipment, the Firm immediately shall notify CP V in writing of the facts and circumstances that are contributing to such delay. Upon receipt of this notification, CP V will advise the Firm in writing of the action which will be taken to remedy the situation.

(b) The Firm shall advise CP V in writing of an impending failure to meet established milestones or delivery dates based on the Firm's failure to perform. Notice shall be provided as soon as the Firm is aware of the situation; however, such notice shall not relieve the Firm from any existing obligations regarding performance or delivery.

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

CP V 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 CP V to the Firm specifying the extent and effective date of the termination. On the effective date of the termination, the Firm shall terminate all work and take all reasonable actions to mitigate expenses. The Firm shall submit a written request for incurred costs for services performed through the date of termination, and shall provide any substantiating documentation requested by CP V. In the event of such termination, CP V agrees to pay the Firm within 30 days after receipt of a correct, adequately documented written request. CP V's sole liability under this Paragraph is for payment of the costs for the services requested by CP V and actually performed by the Firm.

E-4 Insurance R

The Firm shall procure, at its own expense, and maintain during the term of this Contract, Professional Liability Insurance (Errors and Omissions) in a policy limit of not less than $ 10,000,000, with $500,000 retention.

E-5 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-6 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 CP V 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 CP V to thereafter enforce each and every provision of this Contract.

E-7 Audit of Records [CAO-8/5/08]

(a) The Firm 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 Firm goes out of business, the Firm shall forward the books and records to CP V to be retained by CP V for the period of time required herein.

(b) CP V, 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 Firm pertaining to the performance of this Contract during normal business hours. CP V will provide prior written notice to the Firm of the audit and inspection. If the books and records are not located within Clark County, the Firm agrees to deliver them to CP V, or to an address designated by CP V within Clark County. In lieu of such delivery, the Company may elect to reimburse CP V for the cost of travel (including transportation, lodging, meals and other related expenses) to inspect and audit the books and records at the Firm's office. If the books and records provided to CP V are incomplete, the Firm agrees to remedy the deficiency after written notice thereof from CP V, and to reimburse CP V for any additional costs associated therewith including, without limitation, having to revisit the Firm's office. The Firm's failure to remedy the deficiency shall constitute a material breach of this Agreement. CP V 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, CP V or CP V's designated representative(s) find the dollar liability is less than payments made by CP V to the Firm, the Firm agrees that the difference shall be either: (a) repaid immediately by the Firm to CP V or (b) at CP V's option, credited against any future billings due the Firm.

E-8 Independent Contractor [CAO-7/24/08]

In the performance of services under this Contract, the Firm and any other person employed by it shall be deemed to be an independent contractor and not an agent or employee of CP V. The Firm shall be liable for the actions of any person, organization or corporations with which it subcontracts to fulfill this Contract. CP V shall hold the Firm as the sole responsible party for the performance of this Contract. The Firm 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 CP V. Neither party shall have the right to obligate or bind the other party in any manner to any third party.

E-9 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-10 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-11 Conflict of Interest (City Officials) [CAO-7/24/08]

(a) An official of CP V, who is authorized in such capacity and on behalf of CP V 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 CP V, who is authorized in such capacity and on behalf of CP V 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 CP V relating to this Contract. Notwithstanding any other provision of this Contract, if such interest becomes known, CP V may immediately terminate this Contract for convenience.

E-12 Public Records [CAO-7/24/08]

CP V 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). CP V'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-13 Confidentiality [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 Firm is confidential and privileged. The Firm shall not disclose this information, nor allow it to it be disclosed to any person or entity without the express prior written consent of CP V. The Firm 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 CP V is obtained. Upon request by CP V, The Firm shall promptly return to CP V all confidential information supplied by CP V, together with all copies and extracts.

(b) The confidentiality requirements shall not apply where (i) the information is, at the time of disclosure by CP V, then in the public domain; (ii) the information is known to the Firm prior to obtaining the same from CP V; (iii) the information is obtained by the Firm from a third party who did not receive the same directly or indirectly from CP V; or (iv) the information is subpoenaed by court order or other legal process, but in such event, the Firm shall notify CP V and CP V, in its sole discretion, may seek to quash such demand.

(c) The obligations of confidentiality shall survive the termination of this Contract.

E-14 Entire Agreement, Section and Paragraph Headings [CAO-7/24/08]

(a) This Contract represents the entire and integrated agreement between CP V and the Firm. 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-15 Limitation of Funding [CAO-7/24/08]

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

E-16 Marketing Restrictions [CAO-7/24/08]

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

E-17 Indemnification R

(a) In addition to the insurance requirements set forth in Paragraph 6-5 (Insurance), the Firm shall protect, indemnify and hold harmless CP V, the City of Las Vegas, their officers, employess, agents, and consultants (collectively herein "CP V") 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 or sought against CP V, as a result of, by reason of, or as a consequence of, any act or omission, negligent or otherwise, on the part of the Firm, its officers, employs, or agents in the performance of the terms, conditions and covenants of the Contract, except where such Liabilities are caused by CP V.

(b) If a third party claim against CP V for negligent performance by the Firm is within the limits of its liability insurance and the insurance company has accepted CP V's tender of defense, then CP V will pay the Firm 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, CP V, for its protection, may retain any money due and owing the Firm under this Contract until the claim has been resolved. In the event no money is due and owing, the surety, if required, of the Firm, may be held until all of the Liabilities have been settled and suitable evidence to that effect furnished to CP V.

(c) It is expressly agreed that the Firm shall defend CP V against the Liabilities and, in the event that the Firm fails to do so, CP V 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 Firm.

E -18 Counterpart Signatures [CAO-9/24/08]

This Contract may be executed in counterparts. All such counterparts will constitute the same contract, and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by facsimile or e-mail and upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter

SECTION F – List of Attachments/Exhibits

The following attachments are hereby incorporated into this contract:

Identifier	Title/Text Reference	Date	Pages
Attachment 1	Engagement Letter	July 7, 2010	6
Attachment 2	Certificate – Disclosure of Ownership/Principals [Paragraph E-16(c)]		4

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

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

CITY PARKWAY V, INC.

ELIZABETH FRETWELL, President
"CP V"

ATTEST:

Scott D. Adams, Secretary

APPROVED AS TO FORM:

8/24/10
Date

SANTORO, DRIGGS, WALCH,
KEARNEY,HOLLEY, & THOMPSON, LTD

GREGORY J. WALCH
"Firm"

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

400 SOUTH FOURTH STREET, THIRD FLOOR · LAS VEGAS, NEVADA 89101 · 702.791.0308 · FAX 702.791.1912
800 SOUTH MEADOWS PARKWAY - SUITE 800 · RENO - NEVADA - 89521 - (775) 851 8700 - FAX (775) 851 7681

From the desk of: Gregory J. Walch
e-mail: gwalch@nevadafirm.com

July 7, 2010

Via email and U.S. Mail

Scott Carter
Redevelopment Officer
City of Las Vegas
Office of Business Development
400 Stewart Ave., 2nd Floor
Las Vegas, Nevada 89101

RE: Engagement of Santoro, Driggs, Walch, Kearney, Holley & Thompson (the "Firm")

Dear Mr. Carter:

This letter updates the Firm's previous engagement to perform services relating to Lot 5 at Symphony Park. In particular, the Firm will continue to advise the City of Las Vegas, the City's Office of Business Development, and the owners of Lot 5 regarding environmental matters, as well as to litigate the case styled CITY PARKWAY V, INC., a Nevada not-for-profit corporation; CITY PARKWAY IV A, INC., a Nevada not-for-profit corporation; OFFICE DISTRICT PARKING I, INC., a Nevada not-for-profit corporation, Plaintiffs, v. UNION PACIFIC RAILROAD COMPANY, a foreign corporation; DOE DEFENDANTS, 1 through 10 inclusive; and ROE CORPORATIONS, I through X, inclusive, Defendants, which is now in the Federal District Court for the State of Nevada and designated Case No. 2:09-cv-01299-PMP-GWF. We will perform and bill for services in accordance with the attached statement of Policies Relating to Professional Fees and Services ("Policies"). My current billing rate is $400 per hour and Stacy Harrop, who assists me in environmental matters, bills as a rate of $275 per hour. We use paralegals from time to time when in our opinion a task can be done just as effectively at a lesser cost than that which would be charged by attorneys. Our paralegal, Natasha Dalton, bills at a rate of $150 per hour.

Please indicate your consent to the terms of this Engagement Letter, together with the accompanying Policies, by executing the letter in the space provided below. We look forward to continuing our work on behalf of the City.

As always, if you have any questions, please feel free to call.

Sincerely,

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

Gregory J. Walch

CITY PARKWAY V, INC.

BETSY FRETWELL, President

ATTEST:

BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM:

Date

Its: _____

GJW:gjw
Enclosure

02913-17/616884.doc

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

Policies Relating to Professional Fees and Services

This statement of Policies Relating to Professional Fees and Services ("Policies") describes how Santoro, Driggs, Walch, Kearney, Holley & Thompson bills for legal services rendered and expenses incurred in connection with client matters. We believe that we can serve our clients better if they know about our billing policies at the beginning of our representation.

In order to help us determine the value of services that we render on behalf of our clients, our attorneys and paralegals maintain written records of the actual time they spend working for each client in 1/10 hour increments. Billed time includes all time spent on the case and encompasses activities such as conferences, telephone calls, pretrial discovery of data, trial preparation, drafting of documents, correspondence and pleadings, negotiations, legal research, court time, and travel time. Those rendering services are assigned an hourly rate based upon the type of work that they perform and their level of experience and skill. We periodically review our rates and make adjustments as necessary. Although our hourly rates are the most common component of our fees, they are not the only factor that we take into account in determining the value of our services. For example, consideration will be given to the type of services that we have been asked to perform, any special level of skill or expertise required, the size and scope of the matter, any special time constraints imposed, expedited matters, and the results of our efforts.

In addition to our fees for services, our clients are responsible for all out-of-pocket costs that we incur on their behalf. For example, charges for court reporting services, expenses associated with travel, long-distance telephone calls, computerized research services, courier services, fax and other forms of communication, and any other out-of-pocket expenses will be billed to the client. While we may sometimes advance our funds to cover out-of-pocket expenses incurred on behalf of a client, we reserve the right to pass any such expenses on to our clients for payment directly to the person who provided the services. We will make every effort to include the out-of-pocket disbursements that we make on our clients' behalf in their next monthly statement. However, some disbursements, such as telephone charges, are not immediately available to us and, as a result, may not appear on a statement until sometime after the charges were actually incurred.

Our statements for services rendered and costs incurred are sent to our clients on a monthly basis unless other arrangements have been made. All statements are due and payable upon receipt. Any statements not paid in full within thirty (30) days of the statement date will be assessed a late charge on the unpaid balance at the rate of one and one-half percent (1-1/2%) per month; late charges are due on the first day of each subsequent thirty-day period. Whether or not the client calls with an inquiry, any dispute as to the accuracy or validity of any billed charges, or requests for adjustment of any costs, expenses, or fees for legal services billed to the client, must be made in writing to our Firm Administrator within thirty (30) days of the date of the statement containing that cost, expense, or fee for legal services. If the client does not do so within thirty (30) days of a billing statement, the statement will be conclusively presumed to be correct. In other words, if the client does not contact us in writing within thirty (30) days of a billing statement, the client will have irrevocably agreed that the statement is accurate and correct. We

reserve the right to withdraw from representation in the matter if timely payment is not received. The client will pay any fees and costs that are incurred by us to collect fees, costs, or expenses from the client, including reasonable attorney's fees.

We also have the right at our discretion to withdraw from a client's case if the client misrepresents or fails to disclose material facts to us, fails to follow our advice, fails to cooperate in the preparation of the case, or in the event we determine it is not in our mutual interests to continue the representation. A client may discharge us at any time for any reason. The client will be responsible for any fees and costs incurred prior to our withdrawal or discharge, and time and costs expended to turn over the files and other information to the client or to substitute counsel.

We expect a client to be truthful in all communications to us and to keep us informed of developments as they occur during the pendency of the case. In addition, we expect to be accurately informed of a client's address, telephone number, and whereabouts at all times throughout the case. A client is also to provide us, at the beginning of our representation, all information regarding all of the client's insurance policies, whether the client believes them to be applicable or not. A client's failure to do so may result in the loss of important rights, and we will not be able to advise the client with respect to the possibility of insurance coverage without having this information at the outset of the representation.

The firm normally requires a refundable retainer fee before commencing work. At our discretion, this retainer will be credited against the time expended by us and against the costs incurred on the client's behalf. Alternatively, we may require, again at our discretion, a client to pay on a monthly basis for time expended by us on the client's representation and costs incurred on the client's behalf without using the retainer funds for that purpose, permitting us to maintain the retainer fee as security for future fee payments. In addition to any monthly replenishment of the initial retainer fee deposit, we may from time to time require additional deposits of retainer funds in anticipation of an evidentiary hearing, lengthy deposition, trial, or other large cost whenever we believe that the retainer deposit is insufficient to cover the expected co[illegible] expenses, and fees for legal services likely to be incurred through the next billing cycle. A client's failure to deposit an additional requested retainer deposit by the specified date will be cause for us to withdraw from the representation. If the retainer is exhausted, we may require the client, at our discretion, to pay an additional retainer or provide other security for our fee. Any retainer deposit not used for costs, expenses, and fees for legal services will be refunded to the client at the conclusion of the representation. However, in the event we quote a "flat-fee" for services to be rendered to the client, no portion of that payment will be refunded, even if the accrued costs and fees are less than the amount of the quoted fee.

We are sometimes asked to estimate the legal fees and other costs that will be incurred in connection with a particular matter. While we are happy to do that when possible, but it should be understood that any such estimate necessarily incorporates a number of assumptions. There are almost always uncertainties involved in the handling of any legal matter, particularly when other parties are involved whose actions may significantly impact the work required to protect our client's interest. Accordingly, no such estimate is to be interpreted as a guarantee or maximum unless expressly so stated. The actual fees and costs may be more or less than any estimate, and the client will be charged on the basis described above without regard to that

estimate. The fees and costs incurred in connection with our representation of a client are not contingent upon the successful completion of any project.

We will, in our discretion, use associate counsel, legal assistants, or paralegals for work on a particular matter as we might deem appropriate. Such persons shall be billed at their regular billing rate. We will endeavor to apportion work to such persons so as to minimize costs and maximize effectiveness. Under certain circumstances, more than one member of our staff may work on a matter for the client simultaneously, in which case both members of our staff should be expected to bill for the time spent. An example would include a trial or contested evidentiary hearing during which, in our discretion, the full participation of more than one person is necessary to properly attend to the client's case. Another typical example is when an attorney may need another attorney or a paralegal present to keep track of the file, take notes, or otherwise assist at a hearing or trial.

If a court awards attorney's fees to our client (or to us on our client's behalf), and such sums are actually collected, they shall be applied against any outstanding charges on the client's bill. The client, however, remains responsible for payment of our services. A court order awarding attorney's fees from the opposing party does not relieve Client of the primary responsibility for paying our invoice for fees and advanced costs, or make any work done to collect the attorney's fees awarded any different from any other work performed by us. All attorney's fees awarded and actually collected that are not needed to pay the client's invoice from us (or replenish the retainer fee deposit) shall be paid to the client. Likewise, a court could order our client to pay fees or costs to the opposing party under certain circumstances.

It may become necessary in the preparation of the client's case for us to hire expert witnesses, consultants, or investigators. We will not hire such persons unless the client agrees to pay their fees and charges, but we will select which persons should be hired. The client's refusal to authorize hiring of such persons when we consider them necessary could greatly injure the client's case, and if the absence of such persons makes it impossible, in our discretion, to continue with the case, we may withdraw from the representation.

The client will grant us a lien on any and all claims or causes of action that are related to the subject of our representation. The attorney's lien will be for any sums due and owing to us at the conclusion of our services. The lien will attach to any recovery the client may obtain, whether by arbitration award, judgment, settlement, or otherwise. Any amounts received by us on the client's behalf may be used to pay the client's account.

We will retain possession of the client's file and all information therein until full payment of all costs, expenses, and fees for legal services, subject to turnover or destruction of the file as set forth below. After payment of all sums due and upon the client's request, we will deliver the client's file (other than our personal notes, briefs, and work product that we elect to retain) to the client, along with any of the client funds or property in our possession. If we are not instructed otherwise, the client's file will be kept in our office for a limited time after completion of the case and then sent to off-site storage, where it will be held for a period not to exceed seven years. Files are destroyed seven years after the closure of the case file without any further notice.

The client may discharge us at any time, although court rules might still require us to file a motion to withdraw. We may withdraw from our representation of any client at any time at our discretion. In either such circumstance, the client shall sign any documents necessary to permit us to withdraw. If the client shall desire to retain other counsel, then we shall be paid the amount then due and owing for work performed for the client.

Nothing in our statements to the client will be construed as a promise or guarantee about the outcome of the client's matter. We make no such promises or guarantees. Our comments about the outcome of the client's matter, if any, are expressions of opinion only. It is impossible to predict how long a case will take, how much it will cost, or what the resulting outcome may be. Similarly, we do not make any guarantees to the client about the expense of the client's case. It is quite typical that the costs, expenses, and fees for legal services incurred in the client's case will substantially exceed the initial retainer fee deposit.

The Firm's scope of work on any water related project for which we have been engaged (e.g., a water rights transaction, due diligence investigation, litigation, or other representation in administrative proceedings or court), does **NOT** include the preparation or filing of any extensions of time to protect your water rights unless specifically agreed to in writing by the firm in our engagement letter. When such an engagement is undertaken by the firm, any filing pursuant thereto is made on a one-time basis and the firm will not make subsequent filings (e.g., at the conclusion of any extended filing period) absent a separate engagement in writing to do so. Accordingly, it is up to you to be aware of and comply with the terms of your permits and certificates and to either make appropriate filings when necessary, or to separately engage us in writing to undertake the work. The Division of Water Resources website (http://water.nv.gov/) contains a Water Rights Database in which you may find various deadlines for Nevada water rights.

We encourage our clients to contact the attorneys responsible for their matters if they have questions about our billings, policies, or procedures.

ATTACHMENT 2
CERTIFICATE
DISCLOSURE OF OWNERSHIP/PRINCIPALS

1. Definitions

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

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

"CP V" means City Parkway V, Inc.

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

2. Policy

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

3. Instructions

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

4. Incorporation

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

Block 1 Contracting Entity	**Block 2 Description**
Name Santoro Driggs Walch et al.	**Legal Services**
Address 400 South 4th St. 3rd Floor LV	
Telephone (702) 791-0308	
EIN or DUNS 880356668	**Contract No.**

Block 3	**Type of Business**
☐ Individual ☐ Partnership ☒ Limited Liability Firm ☐ Corporation ☐ Trust ☐ Other:	

CERTIFICATE – DISCLOSURE OF OWNERSHIP/PRINCIPALS (CONTINUED)

Block 4 Disclosure of Ownership and Principals
In the space below, the Contracting Entity must disclose all principals (including partners) of the Contracting Entity, as well as persons or entities holding more than one-percent (1%) ownership interest in the Contracting Entity.

	FULL NAME/TITLE	BUSINESS ADDRESS	BUSINESS PHONE
1.	Gregory Walch/Member	400 S. 4th St., 3rd Flr., LV, NV 89101	(702) 791-0308
2.	Dennis Haney/Member	" "	" "
3.	Kenneth Woloson/Member	" "	" "
4.	Nicholas Santoro/Member	" "	" "
5.	Michael Kearney/Member	" "	" "
6.	J. Douglas Driggs, Jr./Member	" "	" "
7.	Richard Holley/Member	" "	" "
8.	Ronald Thompson/Member	" "	" "
9.	James Whitmire, III/Member	" "	" "
10.	Victoria Nelson/Member	" "	" "

The Contracting Entity shall continue the above list on a sheet of paper entitled "disclosure of Principals – Continuation" until full and complete disclosure is made. If continuation sheets are attached, please indicate the number of sheets: 1.

Block 5 DISCLOSURE OF OWNERSHIP AND PRINCIPALS – ALTERNATE

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

Name of Attached Document: _____

Date of Attached Document: _____ Number of Pages: _____

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

_____
Name

8/10/10
Date

Subscribed and sworn to before me this 10th day of August, 2010.

N. Dalton
Notary Public

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
N. DALTON
Appt. No. 06-104159-1
My Appt. Expires March 27, 2014

Disclosure of Principals - Continuation

	FULL NAME/TITLE	BUSINESS ADDRESS	BUSINESS PHONE
11.	Jeffrey Albregts/Member	400 S. 4th St., 3rd Flr., LV, NV 89101	(702) 791-0308
12.	Dean Bennett/Member	" "	" "
13.	Andrew Glendon/Member	" "	" "
14.	Oliver Pancheri/Member	" "	" "
15.	Brian Boschee/Member	" "	" "
16.	Bryce Earl/Member	" "	" "
17.	Ogonna Atamoh/Member	" "	" "

ATTACHMENT 2
CERTIFICATE
DISCLOSURE OF OWNERSHIP/PRINCIPALS

1. Definitions

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

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

"CP V" means City Parkway V, Inc.

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

2. Policy

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

3. Instructions

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

4. Incorporation

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

Block 1 Contracting Entity	**Block 2 Description**
Name Santoro Driggs Walch et al.	**Legal Services**
Address 400 South 4th St. 3rd Floor LV	
Telephone (702) 791-0308	
EIN or DUNS 880356668	**Contract No.**

Block 3	**Type of Business**
☐ Individual ☐ Partnership ☒ Limited Liability Firm ☐ Corporation ☐ Trust ☐ Other:	

CERTIFICATE – DISCLOSURE OF OWNERSHIP/PRINCIPALS (CONTINUED)

Block 4 Disclosure of Ownership and Principals
In the space below, the Contracting Entity must disclose all principals (including partners) of the Contracting Entity, as well as persons or entities holding more than one-percent (1%) ownership interest in the Contracting Entity.

	FULL NAME/TITLE	BUSINESS ADDRESS	BUSINESS PHONE
1.	Gregory Walch/Member	400 S. 4th St., 3rd Flr., LV, NV 89101	(702) 791-0308
2.	Dennis Haney/Member	" "	" "
3.	Kenneth Woloson/Member	" "	" "
4.	Nicholas Santoro/Member	" "	" "
5.	Michael Kearney/Member	" "	" "
6.	J. Douglas Driggs, Jr./Member	" "	" "
7.	Richard Holley/Member	" "	" "
8.	Ronald Thompson/Member	" "	" "
9.	James Whitmire, III/Member	" "	" "
10.	Victoria Nelson/Member	" "	" "

The Contracting Entity shall continue the above list on a sheet of paper entitled "disclosure of Principals – Continuation" until full and complete disclosure is made. If continuation sheets are attached, please indicate the number of sheets: 1.

Block 5 DISCLOSURE OF OWNERSHIP AND PRINCIPALS – ALTERNATE

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

Name of Attached Document:

_____

Date of Attached Document: _____ Number of Pages: _____

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

_____
Name

8/10/10
Date

Subscribed and sworn to before me this 10th day of August, 2010.

N. Dalton
Notary Public

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
N. DALTON
Appt. No. 06-104159-1
My Appt. Expires March 27, 2014

Disclosure of Principals - Continuation

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15.	Brian Boschee/Member	" "	" "
16.	Bryce Earl/Member	" "	" "
17.	Ogonna Atamoh/Member	" "	" "

CHARLESTON NEIGHBORHOOD PRESERVATION

"Doing things today that will improve tomorrow"

Phone/Fax: 702-877-2438

TO: CLV MAYOR and COUNCILPERSONS
FROM: CNP
DATE: Sept. 1, 2010
RE: Selected CLV City Council Agenda items for this date

#12.—We suggest the LV Centennial funding allocation to be halved to $150,000. Creativeness Is appreciated with more visible support from city leaders and others.

#14.—Please re-evaluate the practical and immediate safety advice which these portray—use 'man on the street' advice and HALVE this $84,9000.

#15—NO name change. This business development was 'sold' to the public as the LV Bus. Ctr. . Certainly residents do not expect or desire or approve of a neighborhood specific title to a city establishment! A back handed, deceptive attempt to cater to one area over another. This may be "world " action, but it spits on "class". How disappointing that this item would be on CONSEN Is each neighborhood to receive a 'business park' as such RE naming would imply?
Please remove this item from CONSENT and place on a later - date agenda.

#24.When was the 1st Temporary granted?

#26. When was "and Science added to this business name?

#28. Who recommended this company be awarded the contract?

#32. NO for the purpose and the cost. The purpose is frivolous and the $1.2 million exorbitant. You know the charges for solar are ridiculous. Because these funds are 'available' is using it wise?

#33. Looked to us as though # 32 & #33 were signed over 2 ½ months before today. Is signing prior to council vote legal?

#34. Is this $30 thousand being applied to an expenditure? If yes, what is it?

#52. NO. As stated at the Recommending Committee regarding the timing on these increases and noting that increases extend to 2013, we repeat: "the current 2010 body will increase the costs of doing businesses in LV nearly 2 years early and BEFORE the next election of several different councilpersons and we the NEW COUNCIL to have this decision opportunity."

77. YES. We understand that FUTURA ENVIA cashes checks only at 2% and wires money using Moneygram, according to their communication with us. For these reasons, we recommend approval.

82. Please, NO.

85. Please, NO.

June Ingram
C N P President

Submitted at City Council
Date 9/1/10 Item 12, 14, 15, 24, 26, 28, 32, 33, 34, 52, 77, 82, 85
By: Juanita Clark

BOARD & ADVISORY MEMBERS
Dennis Ardine-Vicki Arnold-Dick Bratton-Erna Clark-Juanita Clark-Miriam Een- Danielle Hanslip-Rose Honrath-June Ingram-Rick Johnson-Jolanta Krol-Rod &Betty Larsen- Geno &Pearl Lonardo-Flo Montalvo-Dorothy Orr-Jim Seward-Pamela Stancliffe-Tim Volz-Marcus Gobel-Ginger Norton-Denise Reitz-Layne Rushforth-Jeanine Sweany-Julia Whaun-Jean Withers-Others

City of Las Vegas Agenda Item No.: **48.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: NEIGHBORHOOD SERVICES
DIRECTOR: STEPHEN K. HARSIN ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of an agreement with the Department of Housing and Urban Development (HUD) to receive an Earmark Award in the amount of $200,000 for the Foreclosure Prevention Partnership program - All Wards

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**

Amount: $200,000 (Revenue)
Funding Source: HUD Earmark Grant
Dept./Division: Neighborhood Services/Neighborhood Administration

PURPOSE/BACKGROUND:
The city of Las Vegas has been awarded a $200,000 Earmark from the Department of Housing and Urban Development (HUD) for the Foreclosure Prevention Partnership Program. Funding will be used for the StopNVForeclosures.Org Website, Housing Counseling Services and Rental Assistance for individuals displaced by foreclosures.

RECOMMENDATION:
Staff recommends that the Mayor and Council approve the agreement to receive an earmark award and authorize the Director of Neighborhood Services to sign any and all agreements/documents upon approval as to form by the City Attorney.

BACKUP DOCUMENTATION:
FY 2010 Neighborhood Initiative Project No. B-10-NI-NV-008 Grant Agreement

FY 2010 NEIGHBORHOOD INITIATIVE PROJECT NO. B-10-NI-NV-0008

GRANT AGREEMENT

This Grant Agreement between the Department of Housing and Urban Development (HUD) and City of Las Vegas (the Grantee) is made pursuant to the authority of Public Law 111-117 (Consolidated Appropriations Act, 2010) and House Report 111-366 (the Conference Report accompanying the Appropriations Act). The Grantee's application, as may be amended by the provisions of this Grant Agreement, is hereby incorporated into this Agreement.

In reliance upon and in consideration of the mutual representations and obligations hereunder, HUD and the Grantee agree as follows:

Subject to the provisions of the Grant Agreement, HUD will make grant funds in the amount of $200,000 available to the Grantee.

The Grantee agrees to abide by the following:

ARTICLE I. HUD Requirements.

The Grantee agrees to comply with the following requirements for which HUD has enforcement responsibility.

A. The grant funds will only be used for activities described in the application, which is incorporated by reference and made part of this Agreement as may be modified by Article VII (A) of this Grant Agreement.

B. EQUAL OPPORTUNITY REQUIREMENTS
The grant funds must be made available in accordance with the following:

1. For projects involving housing, the requirements of the Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR Part 100; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107.

2. The requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1.

3. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR Part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8.

4. The requirements of 24 CFR 5.105(a) regarding equal opportunity as well as the requirements of Executive Order 11246 (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR Chapter 60.

5. For those grants funding construction covered by 24 CFR 135, the requirements of section 3 of the Housing and Urban Development Act of 1968, (12 U.S.C. 1701u) which requires that economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, be given to low- and very low-income persons and to businesses that provide economic opportunities for these persons.

6. The requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise). Consistent with HUD's responsibilities under these Orders, the Grantee must make efforts to encourage the use of minority and women's business enterprises in connection with grant funded activities. See 24 CFR Part 85.36(e) , which describes actions to be taken by the Grantee to assure that minority business enterprises and women business enterprises are used when possible in the procurement of property and services.

7. Where applicable, Grantee shall maintain records of its efforts to comply with the requirements cited in Paragraphs 5 and 6 above.

C. ENVIRONMENTAL REVIEW REQUIREMENTS.

The Grantee shall fulfill any requirements that may be imposed by HUD, which is responsible for all environmental review and decision-making, pursuant to the National Environmental Policy Act and other environmental requirements implemented by 24 CFR Part 50, including HUD regulatory requirements on noise, sitting near flammable and explosive hazards and sitting near airports.

D. Administrative requirements of OMB Circular A-133 "Audits of States, Local governments and Non-Profit Organizations."

E. For State and Local Governments, the Administrative requirements of 24 CFR Part 85, including the procurement requirements of 24 CFR Part 85.36, and the requirements of OMB Circular A-87 regarding Cost Principles for State and Local Governments. For Non-Profits, the Administrative requirements of 24 CFR Part 84, including the procurement requirements of 24 CFR Part 84.40, and OMB Circular A-122 regarding Cost Principles for Non-Profit Institutions. For Institutions of Higher Education the applicable OMB Circular regarding Cost Principles is A-21.

F. The regulations at 24 CFR Part 87, related to lobbying, including the requirement that the Grantee obtain certifications and disclosures from all covered persons.

G. The regulations at 24 CFR Part 21, regarding requirements for Drug-Free Workplace.

H. The Uniform Relocation Act as implemented by regulations at 49 CFR Part 24.

I. The Grantee will comply with all accessibility requirements under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8, where applicable.

J. The regulations at 24 CFR Part 35, where applicable, regarding Lead-Based Paint Poisoning Prevention in Certain Residential Structures.

K. The regulations at 24 CFR Part 5.109, where applicable, regarding Equal Participation of Religious Organizations in HUD Programs and Activities.

ARTICLE II. Conditions Precedent to Draw Down.

The Grantee may not draw down grant funds until the following actions have taken place:

A. The Grantee has received and approved any certifications and disclosures required by 24 CFR 87.100 concerning lobbying.

B. Any conditions listed in Article VII of this Grant Agreement.

ARTICLE III. Draw Downs.

A. A request by the Grantee to draw down grant funds under the Voice Response Access system or any other payment system constitutes a representation by the Grantee that it and all participating parties are complying with the terms of this Grant Agreement.

B. The Grantee will be paid on an advance basis provided that the Grantee minimizes the time elapsing between transfer of the grant funds and disbursement for project purposes and otherwise follows the requirements of 24 CFR Part 85 or Part 84 and Treasury Circular 1075 (31 CFR Part 205).

ARTICLE IV. Progress Reports.

A. The Grantee shall submit to the Grant Officer a progress report every six months after the effective date of the Grant Agreement. Progress reports shall consist of (1) a narrative of work accomplished during the reporting period and (2) a completed Financial Status Report - Form 269 A.

Progress reports shall conform with 24 CFR 85.40 and 85.41 or 24 CFR Sections 84.50 through 84.53, as applicable.

HUD may require additional information or increased frequency of reporting as described in Article VII (C). Additional information required or increased frequency of reporting as may described in Article VII (C).

B. The performance reports must contain the information required under 24 CFR Part 85.40 or 24 CFR Part 84.51, as applicable including a comparison of actual accomplishment to the objectives indicated in the approved application, the reasons for slippage if established objectives were not met, and additional pertinent information including explanation of significant cost overruns.

C. No grant drawdowns will be approved for projects with overdue progress reports.

ARTICLE V. Project Close-out.

A. The grantee shall submit to the Grant Officer a written request to close-out the grant 30 days after the grantee has drawn down all funds and completed the activities described in the application, as may be amended. The final report shall consist of (1) a narrative of all work accomplished during the project period and (2) a completed Financial Status Report - Form 269 A covering the entire project period.

HUD will then send the Close-out Agreement and Close-out Certification to the Grantee. At HUD's option, the Grantee may delay initiation of project close-out until the resolution of any HUD monitoring findings. If HUD exercises this option the Grantee must promptly resolve the findings.

B. The Grantee recognizes that the close-out process may entail a review by HUD to determine compliance with the Grant Agreement by the Grantee and all participating parties. The Grantee agrees to cooperate with any review in any way possible, including making available records requested

C. The Grantee shall provide to HUD the following documentation:

1. A Certification of Project Completion.

2. A Certification of compliance with all requirements of the Grant Agreemer

3. A final financial report giving the amount and types of project costs charged to the grant (that meet the allowability and allocability requirements of OMB Circular A-122, A-87 or A-21 as applicable, including the "necessary and reasonable" standard); a certification of the costs; and the amounts and sources of other project funds.

4. A final performance report providing a comparison of actual accomplishments with each of the project commitments and objectives in the approved application, the reasons for slippage if established objectives were not met and additional pertinent information including explanation of significant cost overruns.

D. The Grantee agrees that the grant funds are allowable only to the extent that the project costs, meeting the standard of OMB Circular A-122, A-87 or A-21 as applicable, equal the grant amount plus other sources of project funds provided.

E. When HUD has determined that the grant funds are allowable, the activities were completed as described by the Grant Agreement, and all Federal requirements were satisfied, HUD and the Grantee will sign the Close-out Agreement and Close-out Certificate.

F. The Close-out Agreement will include the Grantee's Agreement to abide by any continuing federal requirements.

ARTICLE VI. Default.

A default under this Grant Agreement shall consist of using grant funds for a purpose other than as authorized by this Agreement, any noncompliance with legislative, regulatory, or other requirements applicable to the Agreement, any other material breach of this Agreement, or any material misrepresentation in the application submissions.

ARTICLE VII. Additional Provisions.

A. Project Description. The project is described in the application with the following changes:

B. Changes or Clarification to the Application Related to Participating Parties: The Administrative Agent if any:

C. Special Conditions:

The Consolidated Appropriaitons Act, 2010 provides that no funds made available under the Act may be used to support any Federal, State or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use. For purposes of this provision, public use shall not be construed to include economic development that primarily benefits private entities.

D. No funds may be drawn done under this grant, until the completion of the environmental pursuant to 24 CFR Part 50.

U.S. Department of Housing
and Urban Development

Authorized Signature

Robert Duncan
Associate Deputy Assistant Secretary
for Economic Development

Date

City of Las Vegas
~~Ms. Patty Braganza~~

Authorized Signature

Stephen Harsin, Director
Title Neighborhood Services Department

Date

ATTEST:

Beverly K. Bridges, City Clerk

APPROVED AS TO FORM:

J. Pantiello 8/26/10
Date

GRANTS GOV™

Grant Application Package

Opportunity Title:	Economic Development Initiative - NEIGHBORHOOD INITIATI
Offering Agency:	US Department of Housing and Urban Development
CFDA Number:	14.251
CFDA Description:	Economic Development Initiative-Special Project, Neighb
Opportunity Number:	2010-EDI-NI
Competition ID:	10-EDI-NI
Opportunity Open Date:	02/22/2010
Opportunity Close Date:	12/31/2010
Agency Contact:	Holly A. Kelly Deputy Director E-mail: Holly.Kelly@hud.gov Phone: 202-402-6324

This electronic grants application is intended to be used to apply for the specific Federal funding opportunity referenced here.

If the Federal funding opportunity listed is not the opportunity for which you want to apply, close this application package by clicking on the "Cancel" button at the top of this screen. You will then need to locate the correct Federal funding opportunity, download its application and then apply.

This opportunity is only open to organizations, applicants who are submitting grant applications on behalf of a company, state, local or tribal government, academia, or other type of organization.

*** Application Filing Name:** City of Las Vegas Neighborhood Svcs

Mandatory Documents

Move Form to Complete

Move Form to Delete

Mandatory Documents for Submission

Application for Federal Assistance (SF-424)
Disclosure of Lobbying Activities (SF-LLL)

Optional Documents

Move Form to Submission List

Move Form to Delete

Optional Documents for Submission

Instructions

1 **Enter a name for the application in the Application Filing Name field.**

- This application can be completed in its entirety offline; however, you will need to login to the Grants.gov website during the submission process.
- You can save your application at any time by clicking the "Save" button at the top of your screen.
- The "Save & Submit" button will not be functional until all required data fields in the application are completed and you clicked on the "Check Package for Errors" button and confirmed all data required data fields are completed.

2 **Open and complete all of the documents listed in the "Mandatory Documents" box. Complete the SF-424 form first.**

- It is recommended that the SF-424 form be the first form completed for the application package. Data entered on the SF-424 will populate data fields in other mandatory and optional forms and the user cannot enter data in these fields.

- The forms listed in the "Mandatory Documents" box and "Optional Documents" may be predefined forms, such as SF-424, forms where a document needs to be attached, such as the Project Narrative or a combination of both. "Mandatory Documents" are required for this application. "Optional Documents" can be used to provide additional support for this application or may be required for specific types of grant activity. Reference the application package instructions for more information regarding "Optional Documents".

- To open and complete a form, simply click on the form's name to select the item and then click on the => button. This will move the document to the appropriate "Documents for Submission" box and the form will be automatically added to your application package. To view the form, scroll down the screen or select the form name and click on the "Open Form" button to begin completing the required data fields. To remove a form/document from the "Documents for Submission" box, click the document name to select it, and then click the <= button. This will return the form/document to the "Mandatory Documents" or "Optional Documents" box.

- All documents listed in the "Mandatory Documents" box must be moved to the "Mandatory Documents for Submission" box. When you open a required form, the fields which must be completed are highlighted in yellow with a red border. Optional fields and completed fields are displayed in white. If you enter invalid or incomplete information in a field, you will receive an error message.

3 **Click the "Save & Submit" button to submit your application to Grants.gov.**

- Once you have properly completed all required documents and attached any required or optional documentation, save the completed application by clicking on the "Save" button.
- Click on the "Check Package for Errors" button to ensure that you have completed all required data fields. Correct any errors or if none are found, save the application package.
- The "Save & Submit" button will become active; click on the "Save & Submit" button to begin the application submission process.
- You will be taken to the applicant login page to enter your Grants.gov username and password. Follow all onscreen instructions for submission.

OMB Number 4- 040-0004
Expiration Date 03/31/2012

Application for Federal Assistance SF-424

* 1. Type of Submission:	* 2. Type of Application:	* If Revision, select appropriate letter(s)
☐ Preapplication	☒ New	
☒ Application	☐ Continuation	* Other (Specify):
☐ Changed/Corrected Application	☐ Revision	

* 3. Date Received:	4. Applicant Identifier:
Completed by Grants.gov upon submission.	

5a. Federal Entity Identifier:	5b. Federal Award Identifier:
B-10-NI-NV-0008	

State Use Only:

6. Date Received by State:	7. State Application Identifier:

8. APPLICANT INFORMATION:

* a. Legal Name:	City of Las Vegas

* b. Employer/Taxpayer Identification Number (EIN/TIN):	* c. Organizational DUNS:
88-6000198	0303816100000

d. Address:

* Street1:	400 Stewart Avenue
Street2:	
* City:	Las Vegas
County/Parish:	
* State:	NV: Nevada
Province:	
* Country:	USA: UNITED STATES
* Zip / Postal Code:	89101-2913

e. Organizational Unit:

Department Name:	Division Name:
Neighborhood Services	Administration

f. Name and contact information of person to be contacted on matters involving this application:

Prefix:	Mr.	* First Name:	Stephen
Middle Name:	K.		
* Last Name:	Harsin		
Suffix:			

Title:	Director

Organizational Affiliation:

* Telephone Number:	702-229-2330	Fax Number:	702-229-1033

* Email:	sharsin@lasvegasnevada.gov

Application for Federal Assistance SF-424

* 9. Type of Applicant 1: Select Applicant Type:

C: City or Township Government

Type of Applicant 2: Select Applicant Type:

Type of Applicant 3: Select Applicant Type:

* Other (specify):

* 10. Name of Federal Agency:

US Department of Housing and Urban Development

11. Catalog of Federal Domestic Assistance Number:

14.251

CFDA Title:

Economic Development Initiative-Special Project, Neighborhood Initiative and Miscellaneous Grants

* 12. Funding Opportunity Number:

2010-EDI-NI

* Title:

Economic Development Initiative - NEIGHBORHOOD INITIATIVE

13. Competition Identification Number:

10-EDI-NI

Title:

14. Areas Affected by Project (Cities, Counties, States, etc.):

Add Attachment | Delete Attachment | View Attachment

* 15. Descriptive Title of Applicant's Project:

Foreclosure Prevention Partnership Program focuses on Foreclosure Prevention Website, Housing Counseling Services and Rental Assistance.

Attach supporting documents as specified in agency instructions.

Add Attachments | Delete Attachments | View Attachments

Application for Federal Assistance SF-424

16. Congressional Districts Of:

* a. Applicant: NV-001 | b. Program/Project: NV-001

Attach an additional list of Program/Project Congressional Districts if needed.

Add Attachment | Delete Attachment | View Attachment

17. Proposed Project:

* a. Start Date: 09/30/2010 | * b. End Date: 12/30/2011

18. Estimated Funding ($):

* a. Federal	200,000.00
* b. Applicant	0.00
* c. State	0.00
* d. Local	0.00
* e. Other	0.00
* f. Program Income	0.00
* g. TOTAL	200,000.00

*** 19. Is Application Subject to Review By State Under Executive Order 12372 Process?**

- [ ] a. This application was made available to the State under the Executive Order 12372 Process for review on
- [ ] b. Program is subject to E.O. 12372 but has not been selected by the State for review.
- [x] c. Program is not covered by E.O. 12372.

*** 20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes," provide explanation in attachment.)**

- [ ] Yes
- [x] No

If "Yes", provide explanation and attach

Add Attachment | Delete Attachment | View Attachment

21. *By signing this application, I certify (1) to the statements contained in the list of certifications and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)**

- [x] ** I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

Authorized Representative:

Prefix:	
* First Name:	Patty
Middle Name:	
* Last Name:	Braganza
Suffix:	
* Title:	Financial Analyst
* Telephone Number:	702-229-6818
Fax Number:	
* Email:	pbraganza@lasvegasnevada.gov
* Signature of Authorized Representative:	Completed by Grants.gov upon submission.
* Date Signed:	Completed by Grants.gov upon submission.

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C.1352

Approved by OMB
0348-0046

1. * Type of Federal Action:
- [ ] a. contract
- [x] b. grant
- [ ] c. cooperative agreement
- [ ] d. loan
- [ ] e. loan guarantee
- [ ] f. loan insurance

2. * Status of Federal Action:
- [ ] a. bid/offer/application
- [x] b. initial award
- [ ] c. post-award

3. * Report Type:
- [x] a. initial filing
- [ ] b. material change

4. Name and Address of Reporting Entity:

[x] Prime [ ] SubAwardee

*Name: City of Las Vegas, Neighborhood Services Department

*Street 1: 400 Stewart Avenue Street 2:

*City: Las Vegas State: NV: Nevada Zip: 89101

Congressional District, if known:

5. If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime:

6. * Federal Department/Agency:

HUD

7. * Federal Program Name/Description:

Economic Development Initiative-Special Project, Neighborhood Initiative and Miscellaneous Grants

CFDA Number, *if applicable:* 14.251

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*

$

10. a. Name and Address of Lobbying Registrant:

Prefix: *First Name: Ball Middle Name:

*Last Name: Janik LLP Suffix:

*Street 1: 1455 F Street, NW, Suite 225 Street 2:

*City: Washington State: DC: District of Columbia Zip: 20005

b. Individual Performing Services (including address if different from No. 10a)

Prefix: *First Name: Victoria Middle Name:

*Last Name: Cram Suffix:

*Street 1: Street 2:

*City: State: Zip:

11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when the transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

*Signature: Completed on submission to Grants.gov

*Name: Prefix: *First Name: Patty Middle Name:

*Last Name: Braganza Suffix:

Title: Financial Analyst Telephone No.: 702-229-6818 Date: Completed on submission to Grants.gov

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL (Rev. 7-97)

Department of Housing and Urban Development

Neighborhood Initiatives Grant

Grant Number: B-10-NI-NV-0008

FY 2010 Grant Application Submittal

City of Las Vegas, Nevada

Foreclosure Prevention Partnership Program

July 6, 2010

PREPARED AND SUBMITTED BY THE

CITY OF LAS VEGAS

Department of Neighborhood Services

Stephen K. Harsin, AICP, Director

Lisa Morris Hibbler, DPA, Deputy Director

Las Vegas City Council: Mayor Oscar B. Goodman
Mayor Pro Tem Gary Reese, Ward 3 • Councilman Steve Wolfson, Ward 2
Councilwoman Lois Tarkanian, Ward 1• Councilman Steven D. Ross, Ward 6
Councilman Ricki Y. Barlow, Ward 5 • Councilman Stavros S. Anthony, Ward 4

City Manager: Elizabeth N. Fretwell

CITY OF LAS VEGAS
FORECLOSURE PREVENTION PARTNERSHIP PROGRAM

Background

Southern Nevada has experienced **43,040 foreclosures** from February 2008 - March 2009, with more than **14,267** foreclosed, vacant homes currently on the market. Despite the foreclosure moratorium, 100 new foreclosures have entered the Southern Nevada market each month since January 2009. With the foreclosure moratorium lifted in May 2009, it is anticipated that **20,000 to 30,000** properties previously protected will additionally impact our community over the next year. Nevada already has the highest foreclosure rate in the nation with **1 in every 70** homes affected, which is more than twice the nation's second highest foreclosure rate of 1 in every 165 homes experienced by California. Ninety percent of Nevada's foreclosures are located in Southern Nevada.

The city of Las Vegas developed the StopNVForeclosures.org website to offer residents a comprehensive and holistic approach to foreclosure prevention. The foreclosure process is time sensitive and as such every second counts. Often times, troubled borrowers do not have all of the necessary information required to determine their financial stability when they attend their housing counseling appointment. This causes delays and wastes time. Troubled borrowers can enter information about their financial situation including household budgets, loan information and statement of need online or download applicable forms. Once their online application is completed, the case will be assigned to a participating credit counseling agency to determine what options are available to families, and where warranted, negotiate the family's case with their lender or Mortgage Company. By completing and submitting the information prior to the face-to-face appointment, troubled borrowers have an opportunity to obtain the necessary information required to determine financial stability and ensure the application is complete which avoids time delays.

Program Description

The city of Las Vegas created the Foreclosure Prevention Partnership Program (FPPP) to bring together government agencies, housing counseling agencies, lenders and non-profit organizations. The Foreclosure Prevention Partnership Program is based on a comprehensive and collective approach to community problem solving. The uniqueness of the program is that multiple jurisdictions, non-profits and the private industry are working together in an effort to create a seamless foreclosure prevention model that strives to expedite the mortgage modification process and prevent troubled borrowers from falling victim to fraud. There are three key parts to the FPPP: Foreclosure Prevention Website, Housing Counseling Services and Rental Assistance.

Foreclosure Prevention Website - StopNVforeclosures.org

The website will provide information about educational seminars to engage and educate citizens about the foreclosure process and fraudulent pitfalls. At no cost to the borrower, these seminars will aim to create awareness of the mortgage foreclosure process and identify options from lenders, government and other financial institutions to assist the borrower in avoiding foreclosure. The website will also provide FPPP partners with a unified site to provide borrowers with the tools to combat the foreclosure crises, including access to educational materials, video presentations, and an online system designed to streamline the foreclosure case submittal.

In order to fully implement the program, several components, such as the translation function, administrative reporting, outreach and education modules need to be developed. The city of Las Vegas will use a portion of the earmark funding to build out the website.

Housing Counseling Services

The city of Las Vegas is seeking additional funding to offset costs associated with the mortgage modification process and incentivize HUD certified housing counselors who utilize the website. It is recommended that the counselor's receive up to $250 per case retrieved from the website.

Rental Assistance

Provide rental assistance to families when a determination has been made that they can no longer afford their mortgage or families who are impacted when their rental home is going into foreclosure. By helping families transition into affordable rental housing, we can prevent the household from going into crises and potentially minimize the damage/vandalism often caused. Assistance would include deposits for rent, utilities, application fees, etc. Services will be offered to families earning up to 120 percent of AMI. The average cost per household is $2,000.

Department of Housing and Urban Development
Neighborhood Initiatives Grant
Grant Number: B-10-NI-NV-0008
FY 2010 Grant Application Submittal

CITY OF LAS VEGAS
FORECLOSURE PREVENTION PARTNERSHIP PROGRAM
PROGRAM BUDGET

Program Summary

The city of Las Vegas is requesting $200,000 for the Foreclosure Prevention Partnership Program, which brings together government agencies, credit counseling agencies, and faith- and community-based organizations. The program is a multifaceted approach that focuses on Foreclosure Prevention Website, Housing Counseling Services and Rental Assistance.

Program Administration	**$20,000**

Costs associated with implementing and administering the program, monitoring and ongoing reporting.

Housing Counseling	**$55,000**

The city of Las Vegas is seeking additional funding to offset costs associated with the mortgage modification process and incentivize housing counselors who utilize the website. It is recommended that the counselors receive up to $250 per case retrieved from the website.

Foreclosure Prevention Website & Outreach	**$45,000**

Cover costs associated with promoting the program including workshops and maintaining a Regional website that will provide information and referrals, newspaper ads, printed materials, video web streams, etc.

Rental Assistance	**$80,000**

Assistance would include deposits for rent, utilities, application fees, etc. Services will be offered to families earning up to 120 percent of AMI. The average cost per household is $2,000. This includes costs associated with case management.

TOTAL REQUEST	**$200,000**

EDI

U.S. Department of Housing and Urban Development
Pacific/Hawaii Office
450 Golden Gate
San Francisco, CA 94102-3448

Level of Environmental Review Determination: Sec. 58.34 Exempt Activities
(Exempt per 24 CFR 58.34, Categorically excluded not subject to statutes per 58.35(b). Categorically excluded subject to statues per 58.35(a), Environmental Assessment per 58.36, or EIS per 40 CFR 1500)

Project Description: Foreclosure Prevention & Intervention B-10-NI-NV-0008 $200,000 – City of Las Vegas

STATUES and REGULATIONS listed at 24 CFR 58.6

FLOOD INSURANCE / FLOOD DISASTER PROTECTION ACT

1. Does the project involve acquisition, construction or rehabilitation of structures, buildings or mobile homes?

X No; flood insurance is not required. The review of this factor is completed.

___ Yes; continue

2. Is the structure or part of the structure located in a FEMA designated Special Flood Hazard Area?

X No. Source Document (FEMA/FIRM floodplain zone designation, panel number, date):
Public Service Activity for the City of Las Vegas (Factor review completed.)

___ Yes. Source Document (FEMA/FIRM floodplain zone designation, panel number, date):
_____ (Continue Review)

3. Is the community participating in the National Insurance Program (or has less than one year passed since FEMA notification of Special Flood Hazards)?

___ Yes. (Flood Insurance under the National Flood Insurance Program must be obtained and maintained for the economic life of the project, in the amount of the total project cost. A copy of the flood insurance policy declaration must be kept in the Environmental Review Record)

___ No **(Federal Assistance may not be used in the Special Flood Hazard Area)**

COASTAL BARRIERS RESOURCE ACT

1. Is the project located in a costal barrier resource?

X No; SD The state of Nevada is not bordered by any oceans or seas (This element is completed).

___ Yes **(Federal Assistance may not be used in such an area)**

AIRPORT RUNWAY OR CLEAR ZONES AND CLEAR ZONES DISCLOSURES

1. Does the project involve the sale or acquisition of existing property within a Civil Airport's Runway Clear Zone or a Military Clear Zone?

X No: SD Project complies with 24 CFR 51.303(a)(3).

___ Yes; **Disclosure statement must be provided** to buyer and a copy of the signed disclosure statement must be maintained in the Environmental Review Record.

Preparer Signature — Shawn Bolster, Sr NPO — Date: 7/1/10
Neighborhood Development – City of Las Vegas

Responsible Entity Official Signature — Stephen K. Harsin, AICP Director — Date 7/1/10
Neighborhood Services Department – City of Las Vegas

CATEGORICAL EXCLUSION (not subject to 58.5)

24 CFR 58.35(b)

EDI

FY 10/11

City of Las Vegas $200,000

Foreclosure Prevention & Intervention B-10-NI-NV-0008

I hereby certify that the following activities comprising the project above have been reviewed and determined to be a Categorical Excluded Activity per 24 CFR 58.35 (b) as follows:

_____	(1)	Tenant-based rental assistance;
X	(2)	Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, Federal government benefits and services;
_____	(3)	Operation costs, including but not limited to, equipment purchases, inventory financing, interest subsidy, operation expenses and similar costs to associated with construction or expansion of existing operation;
_____	(4)	Economic development activities, including but not limited to, equipment purchases, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations;
_____	(5)	Activities to assist home ownership of existing "or new dwelling units not assisted with Federal funds" including closing costs and down payment assistance to home buyers interest buy downs and similar activities that result in the transfer of title to a property;
_____	(6)	Affordable housing pre-development costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.
_____	(7)	Approval of supplemental assistance to a project previously approved under this part, if the approval is made by the same responsible entity that conducted the ER on the original project.

In accordance with 24CFR 58.34 (b), no further approval from HUD or the State is necessary for the drawdown of funds to implement this program. However, the responsible entity must still document in writing its determination that each activity or project is exempt and meets the conditions specified for such exemption in this section. However, the recipient remains responsible for carrying out any applicable requirements under Sec 58.6 and must attach a Compliance with Part 58.6 Worksheet when applicable.

PREPARER SIGNATURE _____ DATE 7/1/10

PREPARER NAME: Shawn M. Bolster, Sr. Neighborhood Programs Officer

City of Las Vegas Agenda Item No.: **49.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: PUBLIC WORKS
DIRECTOR: JORGE CERVANTES ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a Sewer Connection agreement with NDL Group, Inc. on behalf of First Christian Methodist Episcopal Church, owner and Interlocal Contract with Clark County Water Reclamation District (Torrey Pines Drive and Cheyenne Avenue, APN 138-11-408-014) - County (near Ward 5 - Barlow)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
This request is to connect one parcel with a proposed usage as a place of worship. The owner proposes to connect to the existing 8 inch sewer in Torrey Pines Drive east of the centerline to a depth and location acceptable to the City of Las Vegas Collection System Planning. It has been determined the project will be allowed to remain within the county boundary. However, should the use and or zoning change in the future this property, at that time, may be required to annex into the City of Las Vegas. The applicant has signed a "Sewer Connection Agreement".

RECOMMENDATION:
Public Works recommends approval subject to conformance with all City codes and departmental standards and off-site improvements.

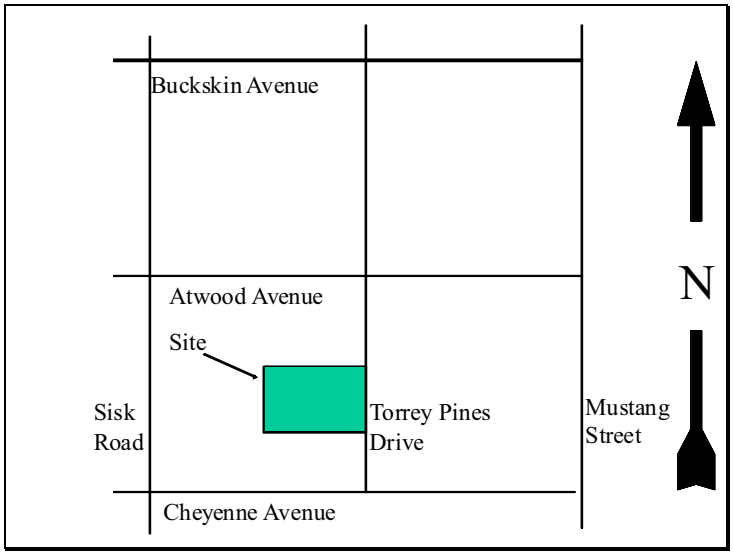
BACKUP DOCUMENTATION:
Agenda Memo

City of Las Vegas

AGENDA MEMO

CITY COUNCIL MEETING DATE: SEPTEMBER 15, 2010
DEPARTMENT: PUBLIC WORKS
ITEM DESCRIPTION: APPROVAL OF A SEWER CONNECTION AGREEMENT WITH NDL GROUP, INC ON BEHALF OF FIRST CHRISTIAN METHODIST EPISCOPAL CHURCH, OWNER AND INTERLOCAL CONTRACT WITH CLARK COUNTY WATER RECLAMATION DISTRICT (TORREY PINES DRIVE AND CHEYENNE AVENUE, APN 138-11-408-014)

VICINITY MAP



City of Las Vegas Agenda Item No.: **50.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: PUBLIC WORKS
DIRECTOR: JORGE CERVANTES ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of an encroachment request from Martin & Martin Civil Engineers on behalf of Acquest Vegas, LLC, owner (Alexander Road and Rancho Drive) - Ward 6 (Ross)

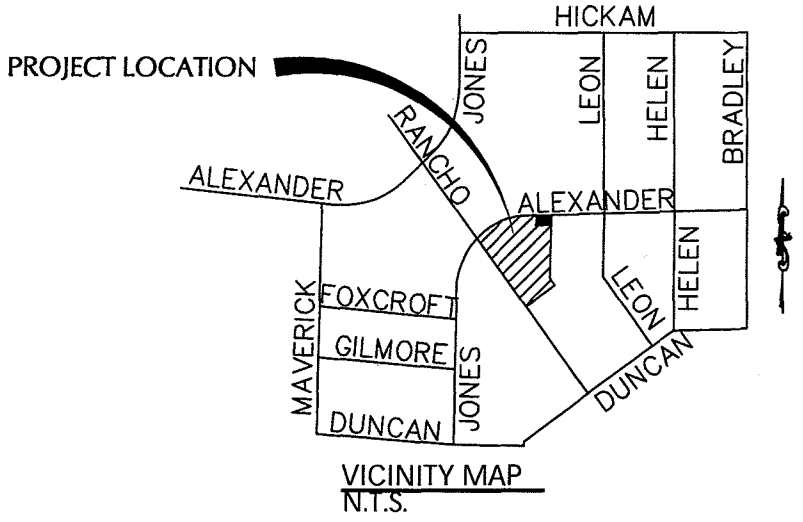
Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

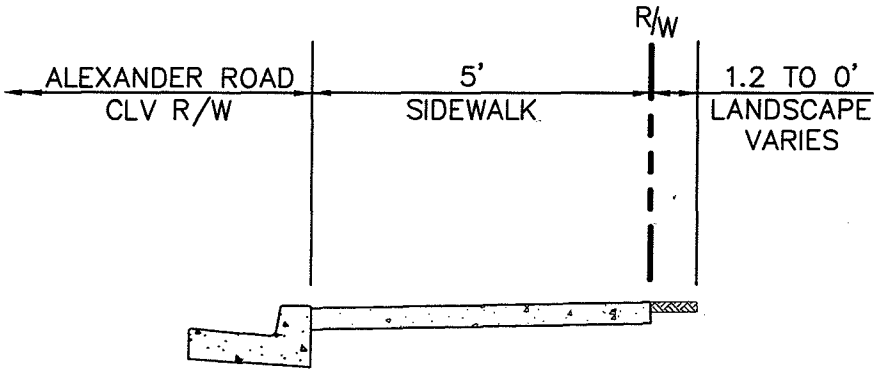
PURPOSE/BACKGROUND:
This request is for landscaping of approximately 3634 square feet along the south side of Alexander Road located in the buffer area between the sidewalk and curb consisting of trees, shrubs, ground cover and an irrigation system to comply with SDR #36432, Item 20.

RECOMMENDATION:
Approval. If approved, the applicant will be required to sign an Encroachment Agreement that has conditions of maintenance, liability and removal.

BACKUP DOCUMENTATION:
Copy of Encroachment Exhibit "A" (Alexander Road and Rancho Drive)

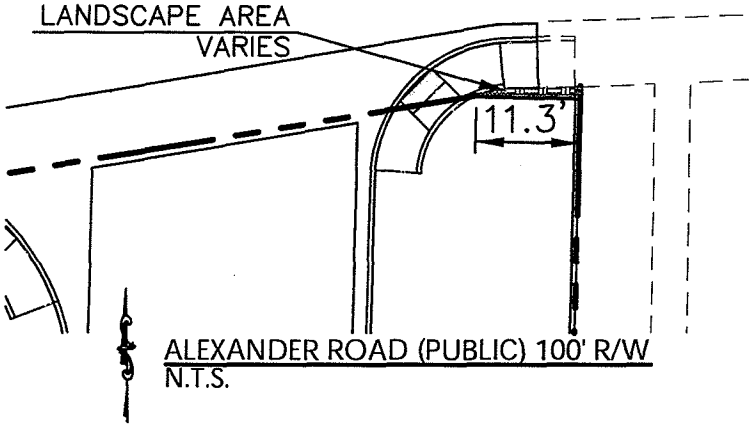


VICINITY MAP
N.T.S.



ALEXANDER ROAD SECTION
N.T.S.

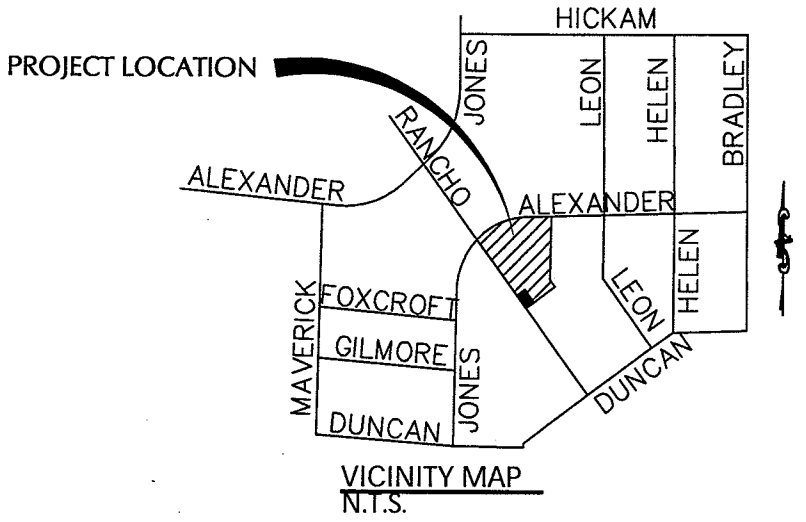
ALEXANDER ROAD (PUBLIC)



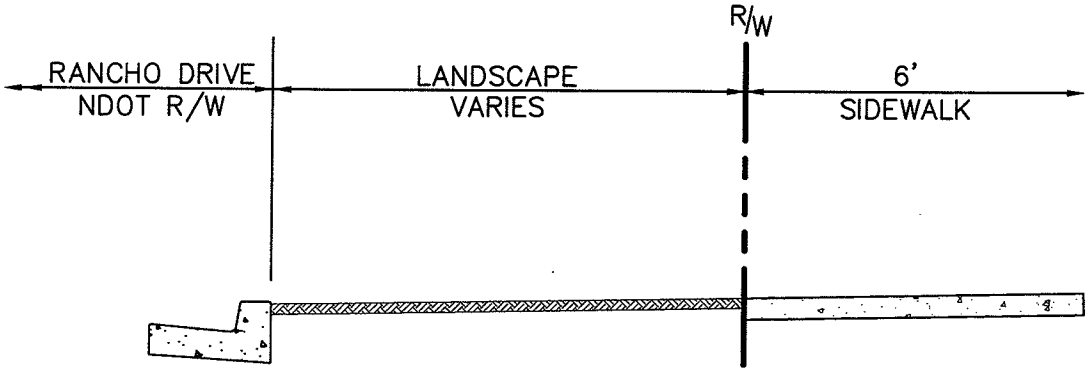
ALEXANDER ROAD (PUBLIC) 100' R/W
N.T.S.

DEPARTMENT OF VETERANS AFFAIRS
NORTHWEST LAS VEGAS OUTPATIENT CLINIC

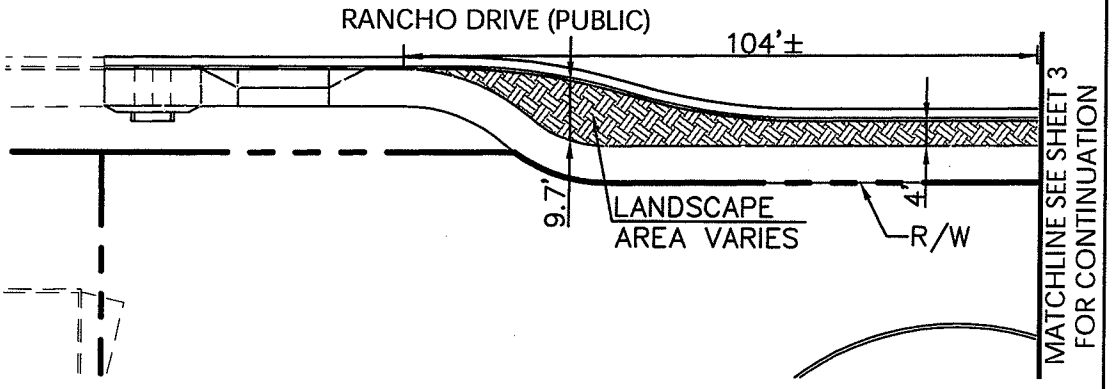
ENCROACHMENT EXHIBIT



VICINITY MAP
N.T.S.



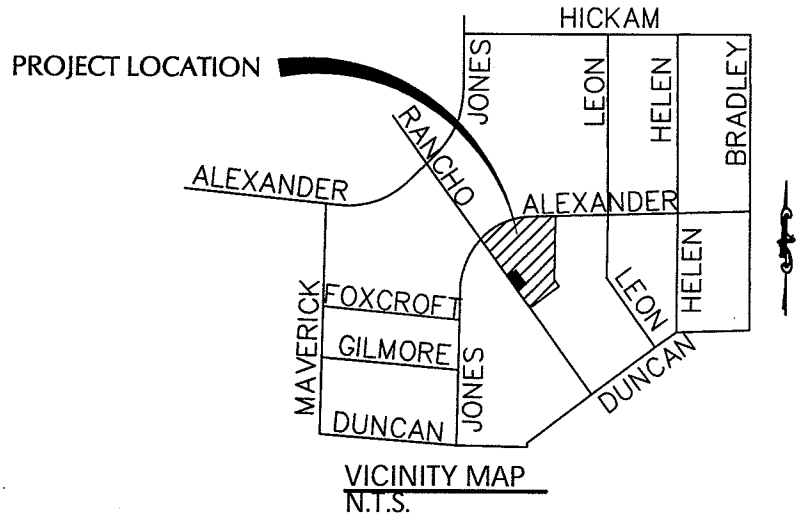
RANCHO DRIVE SECTION
N.T.S.



RANCHO DRIVE (PUBLIC) 142.5 NDOT ' R/W
N.T.S.

DEPARTMENT OF VETERANS AFFAIRS
NORTHWEST LAS VEGAS OUTPATIENT CLINIC

ENCROACHMENT EXHIBIT



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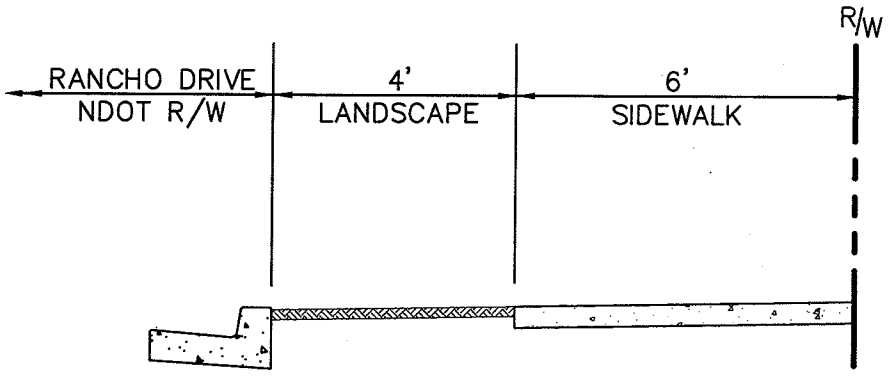

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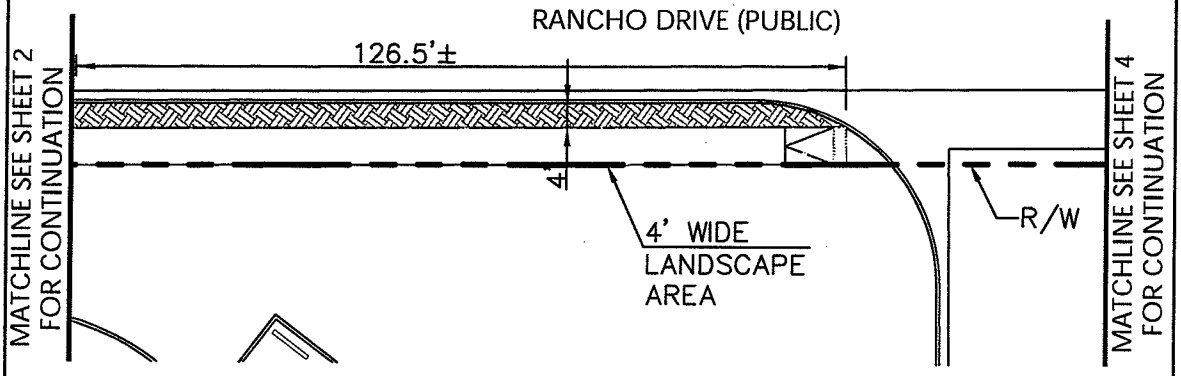
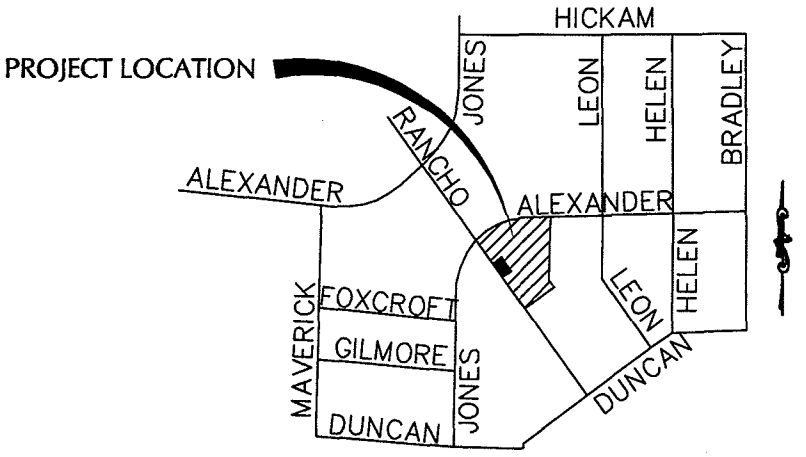


RANCHO DRIVE (PUBLIC) 142.5 NDOT ' R/W
N.T.S.

DEPARTMENT OF VETERANS AFFAIRS
NORTHWEST LAS VEGAS OUTPATIENT CLINIC

ENCROACHMENT EXHIBIT

SHEET 3 OF 6



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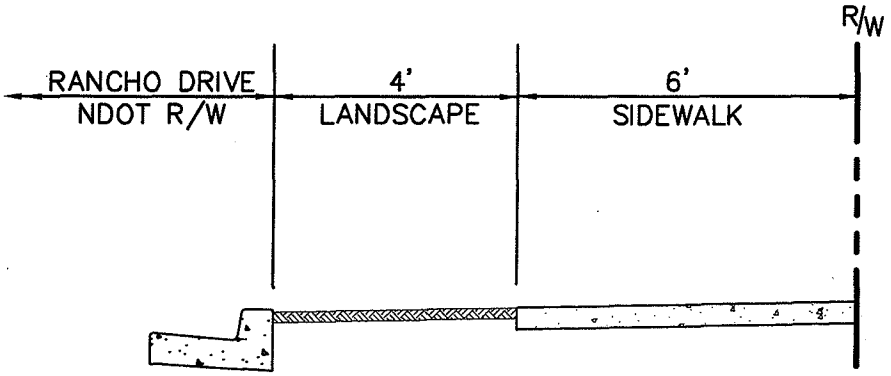

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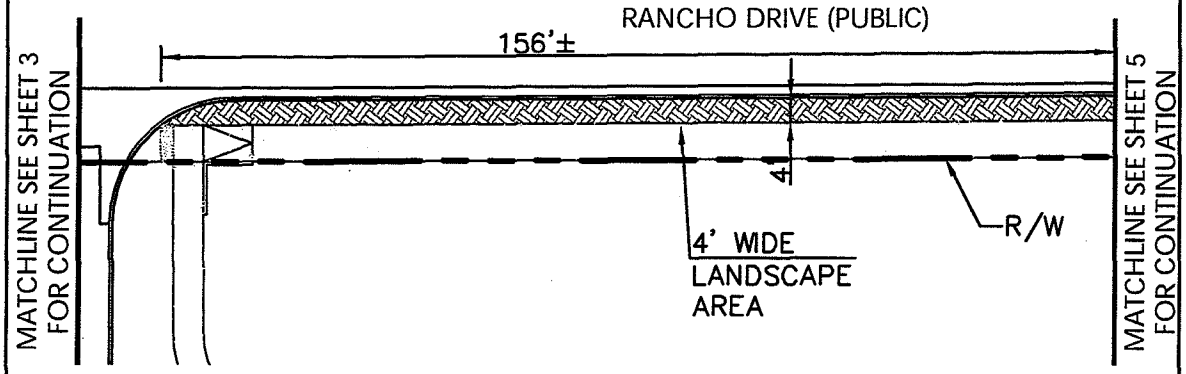

RANCHO DRIVE (PUBLIC) 142.5 NDOT ' R/W
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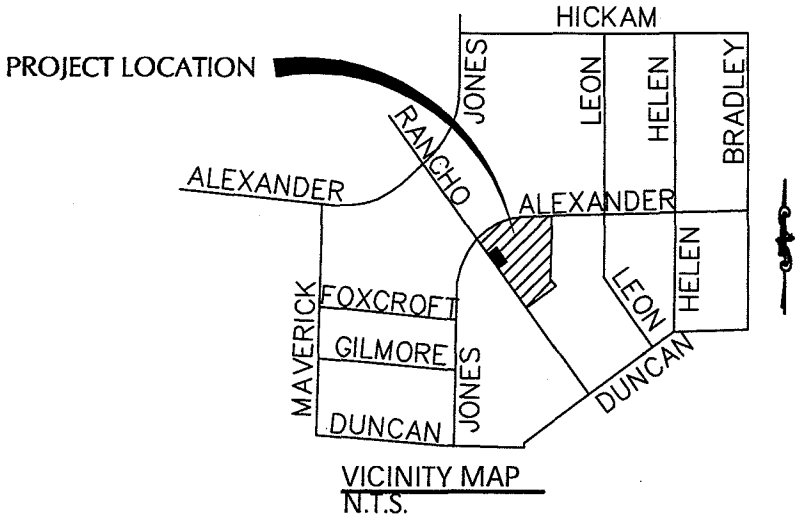
DEPARTMENT OF VETERANS AFFAIRS
NORTHWEST LAS VEGAS OUT PATIENT CLINIC

ENCROACHMENT EXHIBIT



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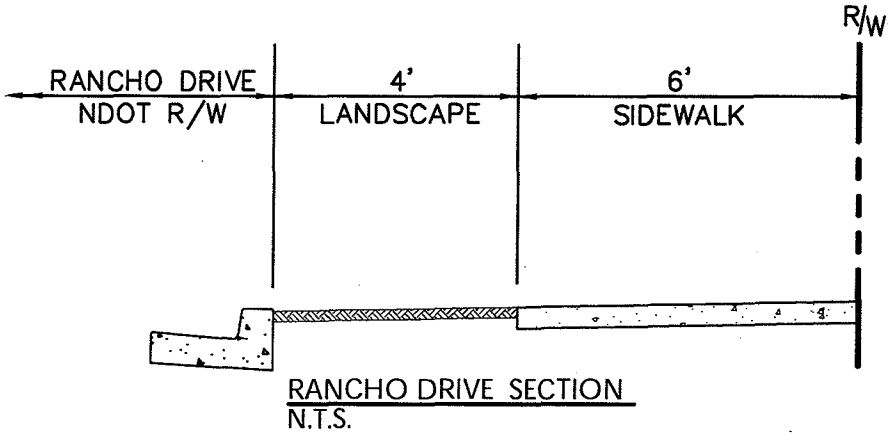

RANCHO DRIVE SECTION
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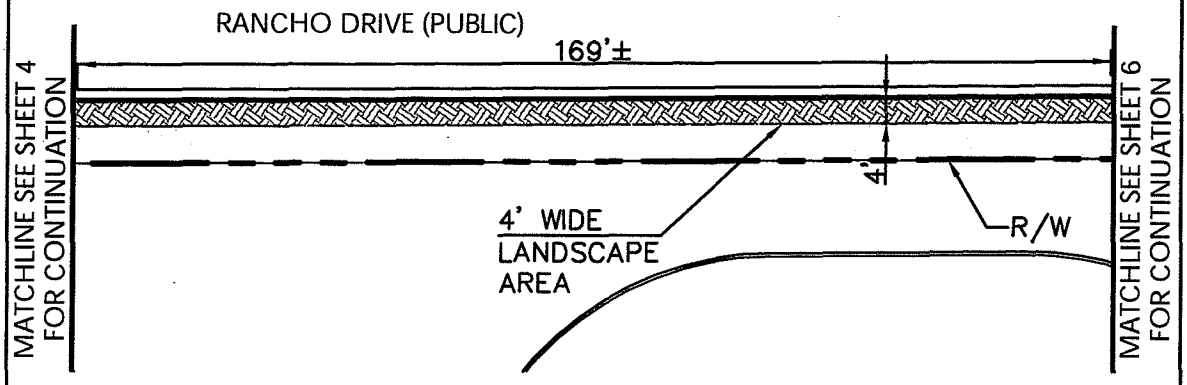
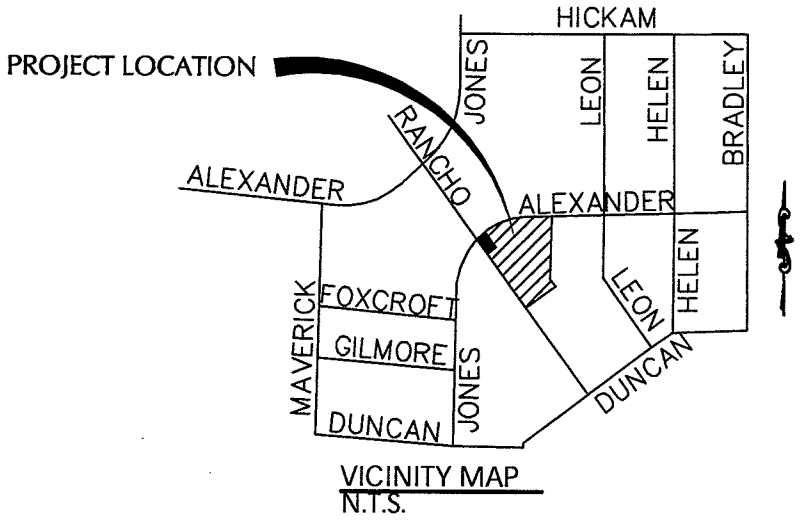


RANCHO DRIVE (PUBLIC) 142.5 NDOT ' R/W
N.T.S.

DEPARTMENT OF VETERANS AFFAIRS
NORTHWEST LAS VEGAS OUT PATIENT CLINIC

ENCROACHMENT EXHIBIT

SHEET 5 OF 6



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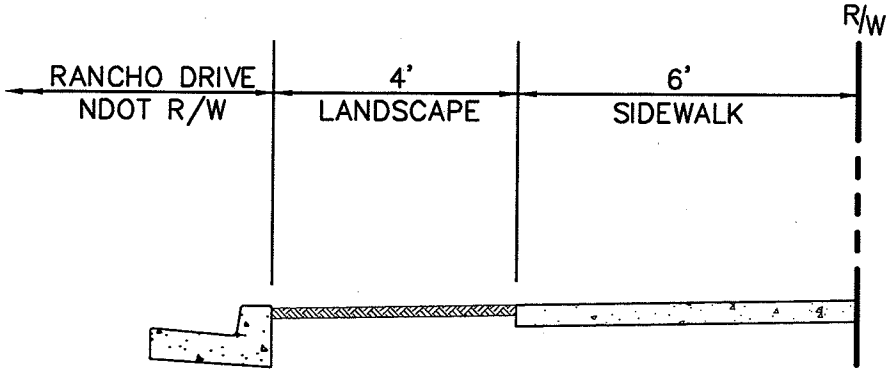

RANCHO DRIVE SECTION
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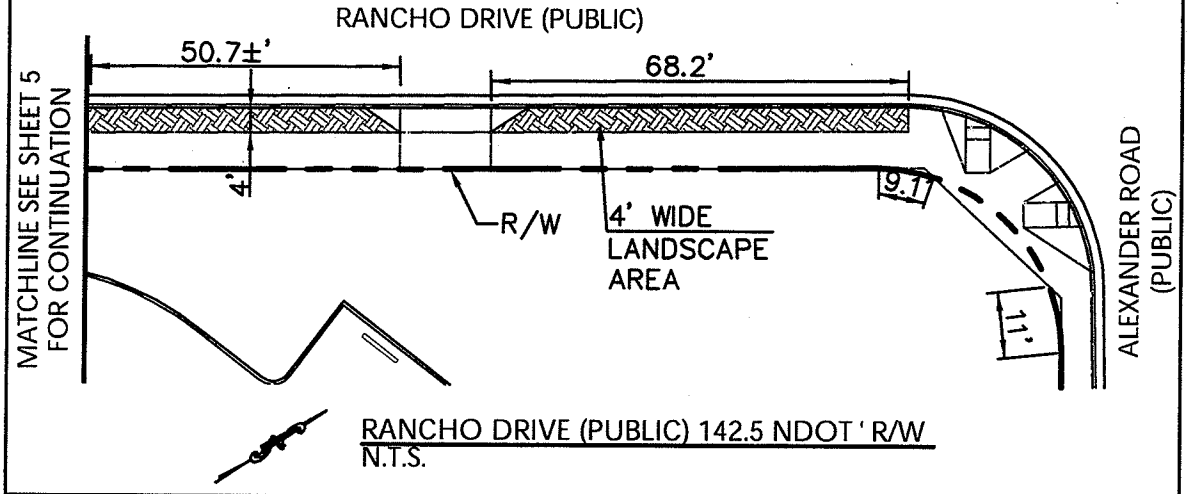


RANCHO DRIVE (PUBLIC) 142.5 NDOT ' R/W
N.T.S.

DEPARTMENT OF VETERANS AFFAIRS
NORTHWEST LAS VEGAS OUT PATIENT CLINIC

ENCROACHMENT EXHIBIT

SHEET 6 OF 6

City of Las Vegas Agenda Item No.: **51.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: PUBLIC WORKS
DIRECTOR: JORGE CERVANTES ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a Grant of Easement from the City of Las Vegas to NV Energy for a portion of the Northeast Quarter, of the Northwest Quarter of Section 21, Township 20 South, Range 61 East, Mount Diablo Meridian, with regard to the Martin Luther King Jr. Boulevard Improvement project - Assessor Parcel Number 139-21-199-025 - Ward 5 (Barlow)

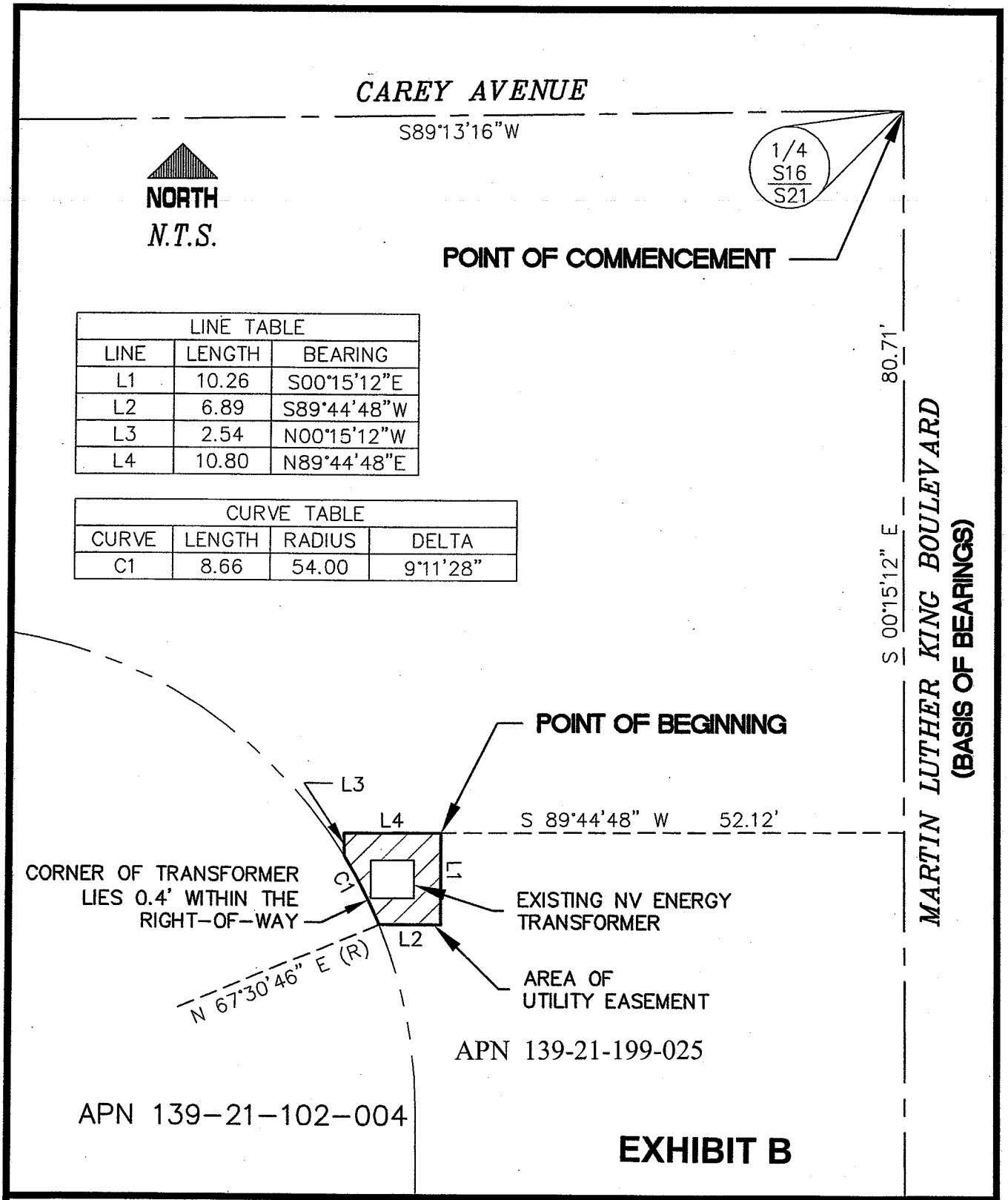
Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
In furtherance of the Martin Luther King Jr. Boulevard widening project certain NV Energy facilities were relocated. This easement is a 95 square foot easement area for a NV Energy transformer. It was necessary to place the transformer easement within City of Las Vegas right of way in order to avoid considerable project delays.

RECOMMENDATION:
Approval

BACKUP DOCUMENTATION:
Map



LINE TABLE		
LINE	LENGTH	BEARING
L1	10.26	S00°15'12"E
L2	6.89	S89°44'48"W
L3	2.54	N00°15'12"W
L4	10.80	N89°44'48"E

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	8.66	54.00	9°11'28"

EXHIBIT B

DEPARTMENT OF PUBLIC WORKS
SURVEY SECTION

DATE: 07/13/2010 DRAWN BY: MK

SHEET: 1 OF 1

MARTIN LUTHER KING BOULEVARD
NV ENERGY EASEMENT

EXHIBIT TO ACCOMPANY LEGAL

City of Las Vegas Agenda Item No.: **52.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: PUBLIC WORKS
DIRECTOR: JORGE CERVANTES ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of Interlocal Contract 661 between the City of Las Vegas and the Regional Transportation Commission of Southern Nevada (RTC) to proceed with funding for the engineering design of the Main Street/Commerce Street One-Way Couplet ($1,250,000 - RTC) - Wards 3 and 5 (Reese and Barlow)

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☒ **Budget Funds Available**

Amount: $1,250,000
Funding Source: RTC
Dept./Division: PW / City Engineer

PURPOSE/BACKGROUND:
This Interlocal Contract applies to improvements associated with the Main Street / Commerce Street One-Way Couplet. The design for the basic improvements includes sidewalks, L-curbs, full-width paving, improved street lighting, pavement markings and signing, drainage facilities, and traffic signal systems as warranted. The RTC agrees to provide from Senate Bill 5 (SB5) funds for project costs. Total cost of the contract shall not exceed $1,250,000. The Regional Transportation Commission of Southern Nevada approved this contract at their August 12, 2010 Board meeting.

RECOMMENDATION:
Approval

BACKUP DOCUMENTATION:
Interlocal Contract 661

INTERLOCAL CONTRACT FOR MAIN STREET / COMMERCE STREET ONE-WAY COUPLET

THIS INTERLOCAL CONTRACT made and entered into this 12th day of August, 2010, by and between the CITY OF LAS VEGAS, a municipal corporation, hereinafter referred to as the "CITY" and the Regional Transportation Commission of Southern Nevada hereinafter referred to as "RTC".

W I T N E S S E T H

WHEREAS, a Project to design, purchase right-of-way, perform construction inspection and construct roadway improvements for the Main Street / Commerce Street One-Way Couplet located totally within the CITY has been approved by the Regional Transportation Commission of Southern Nevada.

NOW, THEREFORE, in consideration of the covenants, conditions, agreements, and promises of the parties hereto, the RTC authorizes the CITY to proceed with the Project as it is mutually agreed and understood, as follows:

SECTION I: SCOPE OF PROJECT

This Interlocal Contract applies to improvements associated with Main Street / Commerce Street One-Way Couplet. The basic improvements include sidewalks, L-curbs, full-width paving, improved street lighting, pavement markings and signing, landscaping, drainage facilities, bicycle lanes, and traffic signal systems as warranted.

SECTION II: PROJECT COSTS

The RTC agrees to provide from Senate Bill 5 (SB5) funds for project costs according to Section 6.1 REIMBURSEMENT COSTS of the Policies and Procedures Manual of the RTC within the limits specified below:

1. The total cost for engineering design, contract administration, surveying, inspection, testing, right-of-way acquisition, right-of-way other, utility relocation and construction shall not exceed $1,250,000.

2. "Authorization to Proceed" will be granted for engineering design in an amount not to exceed $1,150,000 and for right-of-way other in an amount not to exceed $100,000, at the time written "Authorization to Proceed" is received from the RTC. The design contract for this project will be awarded prior to 60 days from the date of the signed Authorization to Proceed or the Authorization to Proceed will be automatically rescinded by the RTC and the funds will be re-appropriated to the next highest ranked project on the SB5 pending list.

3. A supplemental interlocal contract and a separate request for an "Authorization to Proceed" will be required for right-of-way acquisition, construction and construction engineering.

4. A written request must be made to the RTC and an additional supplemental interlocal contract approved to allow exceptions to the adopted policies and procedures of the RTC or the amount noted above prior to payment of any additional funds.

SECTION III: GENERAL

1. The title sheet of both the plans and specifications shall show the RTC as the funding agency. If construction funds are provided by sources other than the RTC, the plans, contract documents, special provisions, and Project signs shall also show the RTC as a funding agency.

2. Preliminary engineering, design and right-of-way engineering shall be performed by the CITY or by a consultant employed by the CITY.

3. The design, construction, right-of-way acquisition and contract administration of the Project shall comply with the requirements as set forth in the current "Policies and Procedures" of the RTC.

4. The CITY's Department of Public Works has a policy, which effectively prohibits utility cuts through the pavement for a period of five years after the completion of a project.

5. Upon completion of the construction of the Project, it shall be maintained by the CITY and no funding is provided by this Contract for such maintenance.

6. The Project must be completed to the satisfaction of the RTC prior to June 30, 2015. The RTC may, at any time thereafter, grant time extensions or terminate this Contract and require all sums advanced to the CITY be repaid.

7. It is understood and agreed that the purpose of this Interlocal Contract is to fund the Project as hereinabove set forth. It is further understood and agreed that the CITY is responsible for the design and construction of the Project and will hold the other parties to this Interlocal Contract and the RTC harmless for any liability therefore except the funding provided by this Interlocal Contract.

8. Should the construction funds be provided by sources other than the RTC, the CITY will reimburse the RTC for a percentage of the preliminary engineering and design costs associated with other funding sources, as mutually agreed upon by the RTC and the CITY.

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IN WITNESS WHEREOF, this INTERLOCAL CONTRACT is effective as of the date first set forth above.

Date of Commission Action:

8/12/10

REGIONAL TRANSPORTATION COMMISSION

BY: Lawrence L Brown III

LAWRENCE L. BROWN III, Chairman

Attest:

Lisa Magnusson

LISA MAGNUSSON, Executive Assistant

Approved as to Form and Legality:

ZEV KAPLAN, General Counsel

Date of Council Action:

CITY OF LAS VEGAS

BY: _____

OSCAR B. GOODMAN, Mayor

Attest:

BEVERLY K. BRIDGES, MMC
City Clerk

Approved as to Form and Legality:

John S. Ridilla 8/20/10

Deputy City Attorney Date

John S. Ridilla
Deputy City Attorney

City of Las Vegas Agenda Item No.: **53.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: CITY ATTORNEY
DIRECTOR: BRADFORD R. JERBIC ☒ **Consent** ☐ **Discussion**

SUBJECT:
RESOLUTIONS:

R-61-2010 - Approval of a Resolution Making Provisional Order and Directing that the Notice of Public Hearing thereon be given regarding: Special Improvement District No. 1519 Sidewalk Infill - Oakey Boulevard (west of Rancho Drive) and 11th Street (north of Charleston Boulevard) - Wards 1 and 3 (Tarkanian and Reese)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
The construction and installation of sidewalk.

RECOMMENDATION:
It is recommended that the City Council adopt this Resolution.

BACKUP DOCUMENTATION:
Resolution No. R-61-2010

RESOLUTION NO. R-61-2010

A RESOLUTION MAKING A PROVISIONAL ORDER TO THE EFFECT THAT CERTAIN IMPROVEMENTS IN THE CITY SHALL BE ACQUIRED PURSUANT TO THE CONSOLIDATED LOCAL IMPROVEMENTS LAW TO BE KNOWN AS CITY OF LAS VEGAS, NEVADA, SPECIAL IMPROVEMENT DISTRICT NO. 1519 SIDEWALK INFILL - OAKEY BOULEVARD (WEST OF RANCHO DRIVE) AND 11TH STREET (NORTH OF CHARLESTON BOULEVARD); AND CALLING A HEARING ON THE PROJECT.

Summary: Provisional Order

WHEREAS, the City Council of the City of Las Vegas (hereinafter the "City Council" and "City", respectively) in the County of Clark and the State of Nevada, is of the opinion that the interest of the City requires the creation of a special improvement district pursuant to the Consolidated Local Improvements Law (NRS Chapter 271) and the acquisition and improvement of a Sidewalk Project as defined in NRS 271.205 (collectively, hereinafter the "Project"); and

WHEREAS, the Director of Public Works, together with the City Engineer Division of the City (collectively, hereinafter the "Engineer"), has filed at the office of the City Clerk, in connection with the Project and with the proposed City of Las Vegas, Nevada, Special Improvement District No. 1519 Sidewalk Infill – Oakey Boulevard (west of Rancho Drive) and 11th Street (north of Charleston Boulevard) the following:

(A) Preliminary plans and specifications showing a typical section of the contemplated improvements, the type or types of material, approximate thickness and wideness for the Project;

(B) A preliminary estimate of the total cost of the Project and of each type of construction, the estimate being made in a lump sum or by unit prices, and further, including in the total estimate, without limiting the generality of the foregoing, the advertising, appraising, engineering, legal, interest on interim warrants, if any, discount on any bonds, printing, and such other expenses as in the judgment of the Engineer are necessary or essential to the completion of such work or improvement, and the payment of the cost thereof;

(C) An assessment plat or map, including an addendum thereto (designated as a "Tabulation of Parcels") showing the descriptions of the property to be assessed, showing the area to be assessed, the market values, a description of each lot, tract or

parcel of land, the name and address of each owner, the amounts of estimated preliminary assessments, the amount of maximum benefits (and corresponding market value increases) estimated to be assessed against each lot, tract or parcel of land in the assessment area, such estimate being based on the method of assessment set forth herein (an equitable adjustment having been made for assessments to be levied against wedge or "V" or other irregularly-shaped lots or lands, or for any lot, tract or parcel of land not specially benefited for other reasons in direct proportion to its front footage, so that assessments according to benefits will be equal and uniform); and

(D) The Engineer's Report to the City Council on Benefits, as to the method of determining benefits and corresponding market value increases and as to whether the creation of the District is economically sound and feasible; and

WHEREAS, the City Council has examined the improvement plans, assessment plat, typical section of contemplated improvements, preliminary estimate of the cost, estimate of maximum benefits, and Engineer's Report, so filed with the City Clerk, and has found, and does hereby declare the same to be satisfactory in all respects; and

WHEREAS, the City Council has also determined, and does hereby determine, that all of the assessable property in the City which is specially benefited by the improvements to be acquired in the Special Improvement District No. 1519 Sidewalk Infill – Oakey Boulevard (west of Rancho Drive) and 11th Street (north of Charleston Boulevard) and only the property which is so specially benefited, is included in the District; and

WHEREAS, a portion of the property to be included within the proposed District is located in the City; and

WHEREAS, pursuant to NRS 271.015 the City may assess property which is located without the City boundaries with the consent of the County; and

WHEREAS, the City Council has determined and does hereby determine that the exception provided by NRS 271.306(2)(b) does exist in that not more than 2,640 feet remain unimproved in any street between improvements already made to the same street or between intersecting streets.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAS VEGAS IN THE COUNTY OF CLARK, AND THE STATE OF NEVADA THAT:

Section 1. The special improvement district shall be designated "City of Las Vegas, Nevada, Special Improvement District No. 1519 Sidewalk Infill – Oakey Boulevard (west of Rancho Drive) and 11th Street (north of Charleston Boulevard)" (hereinafter the "District").

Section 2. This Resolution shall be known as, and may be cited by, the short title "Special Improvement District 1519 Provisional Order Resolution" (hereinafter the "Resolution").

Section 3. The City Council hereby ratifies the preparation by the Engineer of and does accept, the plans and specifications, assessment plat, typical section of the contemplated improvements, preliminary estimate of cost, the Engineer's Report on Benefits, and the estimate of maximum benefits (and corresponding market value increases) to be assessed against each lot, tract, or parcel of land in the assessment area.

Section 4. The Project shall be acquired at an estimated preliminary total cost of $ 31,294.78 including engineering, legal, and incidental expenses, as more particularly hereinafter set forth and as described in the plans and specifications herein accepted, reference to which is hereby made and which are available for public inspection at the office of the City Clerk at 400 Stewart Avenue, Las Vegas, Nevada 89101.

Section 5. The City Council has also determined and does hereby declare as follows:

1. The public convenience and necessity require the creation of the District and construction of the Project;

2. The creation of the District is economically sound and feasible; and

3. The market value of each of the benefited lots, tracts and parcels of land in the District will be increased by an amount directly attributable to the Project for which the assessment is made.

Section 6. The boundaries of the District, within which is located the Project and the lots, tracts and parcels of land to be assessed, shall be as designated in the form of notice set forth in Section 7 of this Resolution. It is estimated that the total cost shall be apportioned as follows:

Estimated Amount of Special Assessments	Amount Available from Other Sources	Total Cost
$ 31,294.78	$ 0.00	$ 31,294.78

The amounts to be assessed shall be made upon all tracts benefited in proportion to the special benefits received, as more fully described in the form of notice set forth in Section 7 of this Resolution.

Section 7. On Wednesday, October 20, 2010, at 1:00 p.m. in the City Council Chambers, 400 Stewart Avenue, Las Vegas, Nevada (i.e., a time at least 20 days after the adoption of this Resolution) the City Council will consider the ordering of the Project and will hear all complaints, protests, and objections that may be made in writing, and filed as hereafter provided, or made verbally at the hearing, concerning the same, by the owners of land to be assessed or any interested person. The owners of the property to be assessed or any other persons interested therein, may file a written protest or objection, and may appear before the City Council and be heard as to the propriety and advisability of making such improvements, as to the estimated cost thereof, as to the manner of payment therefor, as to the amount thereof to be assessed against the property to be improved, and as to the amount of special benefits and corresponding market value increases. Twenty (20) days' prior notice, in writing, of such time and place shall be given to such property owners, postage prepaid, as first-class mail, to each property owner at his last known address, the names and addresses of such property owners are to be obtained from the records of the County Assessor or from such other sources as the City Clerk deems reliable. Such notice shall also be given to the owner and each tenant of mobile home parks, if any, located on any tracts to be assessed. Any such list of names and addresses may be revised from time to time, but such list need not be revised more frequently than at twelve month intervals. Notice shall also be given by posting on the web site of the City, or in three (3) public places located on public property at or near the site of the Project at least twenty (20) days prior to October 20, 2010. Proof of such mailing and posting shall be made by the affidavit of the City Clerk or Deputy City Clerk, proof of same to be filed with the City Clerk, provided that failure to mail such notice or notices shall not invalidate any assessment nor any other of the proceedings hereunder. Notice of the time and place of such hearing shall also be given by publication in the Las Vegas Review-Journal, a daily newspaper published in Las Vegas and of general circulation in the City of Las Vegas, Nevada, once each week for three (3) consecutive weekly publications, by three (3) weekly insertions, the first publication in such newspaper to be at least fifteen (15) days prior to October 20, 2010. Not less than fourteen (14) days shall intervene between the first publication and the last publication in such newspaper. Such service by publication shall be verified by the affidavit of the publishers and filed with the City Clerk. The proof of publication, the proof of mailing and

the proof of posting shall be maintained in the records of the office of the City Clerk until all the assessments pertaining to the District shall have been paid in full principal, interest and any penalties or collection costs. Said notice shall be in substantially the following form:

(Form of Notice)

NOTICE OF HEARING ON PROPOSED PROJECT AND ASSESSMENTS WITHIN THE PROPOSED CITY OF LAS VEGAS, NEVADA SPECIAL IMPROVEMENT DISTRICT NO. 1519 SIDEWALK INFILL - OAKEY BOULEVARD (WEST OF RANCHO DRIVE) AND 11TH STREET (NORTH OF CHARLESTON BOULEVARD)

NOTICE IS HEREBY GIVEN to the property owners within the proposed City of Las Vegas, Nevada, Special Improvement District No. 1519 Sidewalk Infill – Oakey Boulevard (west of Rancho Drive) and 11th Street (north of Charleston Boulevard) (hereinafter the "District") and to all interested persons that:

The City Council of the City of Las Vegas (hereinafter the "City Council" and "City", respectively) in the County of Clark and the State of Nevada, has provisionally ordered the acquisition of a Street Project (collectively, the "Project") as more particularly described as follows:

Oakey Boulevard (NORTH SIDE) - from the centerline of Rancho Road west along Oakey Boulevard approximately 370-feet (80-foot right-of-way).

11th Street (EAST SIDE) - from the centerline of Bonneville Avenue south approximately 220-feet (80-foot right-of-way).

Except as shown on the preliminary plans and specifications now on file in the office of the City Clerk and in the office of the Special Improvement District in Las Vegas, Nevada, the character of such Project shall be described more particularly as follows: The improvements on Oakey Boulevard will consist of sidewalk and a handicap ramp. The improvements on 11th Street will consist of sidewalk THE CITY HAS NO OBLIGATION TO PROVIDE WATER OR SEWER SERVICE TO ANY PROPERTY WITHIN THE DISTRICT REGARDLESS OF WHETHER THE CITY COUNCIL PROCEEDS WITH ALL OR ANY PART OF THE PROJECT.

The preliminary estimated total cost of the Project and the amount to be assessed is as follows:

Estimated Amount of Special Assessments	Amount Available from Other Sources	Total Cost
$ 31,294.78	$ 0.00	$ 31,294.78

The amounts to be assessed for the improvements in the District will be levied upon all tracts in the District, i.e., upon all abutting tracts in proportion to the special benefits derived (as shown by the estimated benefits and corresponding market value increases). However, an equitable adjustment will be

made for assessments to be levied against wedge or "V" or other irregularly shaped lots or lands, if any, and for any lot, tract or parcel not specially benefited by the improvements so that assessments according to benefits are to be equal and uniform. The portion of the costs to be assessed against and the maximum amount of benefits estimated (and corresponding market value increases) to be conferred upon each piece or parcel of property in the District is stated in the assessment plat and addendum thereto designated "Tabulation of Parcels" or preliminary assessment roll. In cases of wedge or "V" or any other irregularly shaped tracts, the amount apportioned thereto shall be in proportion to the special benefits thereby derived.

The assessments will be levied on a front foot basis, provided that those tracts which front a cul-de-sac and which abut or front a street or streets being improved will be assessed on a "unit lot" basis, i.e., all lots abutting the cul-de-sac are to be assessed the same amount based upon the front footage of those lots abutting the street or streets being improved which also abut the cul-de-sac. Each property owner will be assessed for the cost of a full width street pavement section, curb and gutter, sidewalks, driveway approaches and streetlights, where not already existing. The owners of property who elect to have water or sewer laterals installed will be assessed per foot of lateral installed on a per service or unit lot basis.

The boundaries of the District shall be the exterior boundary of each parcel of property fronting a street to be improved by the improvements or fronting a cul-de-sac which abuts or fronts a street to be improved by the improvements.

All persons interested are hereby advised that the preliminary plans and specifications (showing a typical section of the contemplated improvements) and the assessment plat, including a tabulation of parcels or preliminary assessment roll, a preliminary estimate of the total cost, a description of the lots, tracts and parcels of land to be assessed, the portion of the cost to be assessed thereagainst, and the amount of maximum benefits (including the corresponding market value increases) estimated to be conferred on each piece or parcel of property, the Engineer's report as to the method of determining benefits, and all proceedings in the premises are on file in the office of the Special Improvement District, Department of Public Works, and at the office of the City Clerk, 400 Stewart Avenue, Las Vegas, Nevada. All of the foregoing can be seen and examined by any property owner or other interested persons during regular business hours, from 8:00 a.m. to 5:00 p.m., Monday through Friday.

On Wednesday, October 20, 2010 at 1:00 p.m., in the City Council Chambers at 400 Stewart Avenue, in Las Vegas, Nevada, the City Council will consider the ordering of the proposed Project, and will hear all complaints, protests and objections that may be made in writing and filed as hereafter provided, or made verbally at the hearing, concerning the same, by the owner of any tract to be assessed or any interested person. The owners of the property to be assessed, or any other person interested therein, may appear before the City Council and be heard as to the propriety and advisability of acquiring and improving such Project, as to the estimated cost thereof, as to the manner of payment therefor, as to the amount thereof to be assessed, the benefits estimated to be conferred against each tract, and the corresponding market value increases expected for each tract in the District.

The City Council requests that any property owner or interested person wishing to protest or object, do so in writing at the office of the City Clerk at least three (3) days before the time set for such hearing, i.e., on or before Friday, October 15, 2010. On the date and at the time and place fixed for such hearing, any and all property owners interested in the Project may, by written complaint, protest or objection, present their views to the City Council, or present them orally, and the City Council may adjourn the hearing from time to time to discuss and consider said issues before it. Any person filing a written protest or objection as hereinabove provided, shall have the right within thirty (30) days after the City Council has finally passed on such protest or objection to commence an action or suit in any court of competent jurisdiction to correct or set aside such determination, but thereafter, all actions or suits attacking the validity of the proceedings and the amount of benefits shall be perpetually barred. A PROPERTY OWNER'S **ONLY** CHANCE TO PRESENT EVIDENCE TO DEMONSTRATE THAT HIS OR HER ESTIMATED ASSESSMENTS ARE EXCESSIVE WILL BE AT THE PUBLIC HEARING AND A PROPERTY OWNER WILL NOT BE ABLE TO PRESENT ANY ADDITIONAL EVIDENCE UPON SUBSEQUENT APPEAL TO DISTRICT COURT.

A person should object to the formation of the District, using the procedure outlined in this notice, if his support for the District is based upon a statement or representation concerning the Project that is not contained in the language of this notice.

If a person objects to the amount of maximum benefits estimated to be assessed or to the legality of the proposed assessments in any respect:

(1) He is entitled to be represented by counsel at the hearing;

(2) Any evidence he desires to present on these issues must be presented at the hearing; and

(3) Evidence on these issues that is not presented at the hearing may not thereafter be presented in an action brought pursuant to NRS 271.315.

The City Council has determined and does hereby determine that the exception provided by NRS 271.306(2)(b) does exist in that not more than 2,640 feet remain unimproved in any street between improvements already made to the same street or between intersecting streets, (which exception is that the City, at its option, may proceed with the improvements in the District regardless of the percentage of protests).

After such hearing, the City Council shall determine the advisability of undertaking each part of the Project, and, if it determines to proceed, shall determine the kind and character of such improvements to be made, and shall authorize the advertising for bids for performing such work and furnishing all necessary materials with the lowest and best bidder or bidders. The City Council may determine not to proceed with all or any part of the Project regardless of the protests or objections.

After the determination of the actual cost of the Project, assessments shall be levied in accordance with the laws of the State of Nevada. In no event shall the assessments exceed the estimated maximum special benefits to the property assessed or the reasonable market value of the property being assessed (as determined by the City Council). The City Council shall provide that the assessments may be payable without interest and without demand during a specified cash payment period and the City Council shall provide that the assessments may be paid at the election of the owner in twenty (20) substantially equal semi-annual installments of principal and interest. The City Council shall also provide the time and terms of payment of such assessments and shall fix penalties to be collected upon delinquent payments (at a rate not exceeding two percent (2%) per month or such lower rate, may be zero percent, for such period as determined by the City Treasurer). The City Director of Finance and Business Services shall also provide the rate of interest on unpaid installments of assessments, which will not exceed the maximum rate of interest permitted under the statutes of the State. If assessment bonds are issued, such rate will not exceed by more than 1% of the highest rate of interest on the assessment bonds for the District. The effective interest rate on the assessment bonds of the District will not exceed the statutory maximum rate, i.e., will not exceed by more than 3% the "Index of Twenty Bonds", which

shall have been most recently published before the time bids for the bonds are received, or at the time a negotiated offer for the sale of such bonds is accepted. If assessment bonds are not issued, such rate shall not exceed 9%.

Pursuant to NRS 271.357 and NRS 271.360, the City has established a procedure to allow any person whose principal residence will be included in the District to apply for a Hardship Determination. Any assessment against property for which an application for Hardship Determination has been approved by the City Council shall be postponed, but the owner shall make payments of interest on the unpaid balance of previous and current assessments at the same rate and terms as are established for other assessments in the manner provided. The assessment shall remain postponed until the earlier of the following occurrences: (a) the property is sold or transferred to a person other than one to whom a Hardship Determination has been granted; (b) the term of the bonds expires; (c) the property owner's application for renewal of the Hardship Determination is disapproved; (d) the property owner fails to pay interest on the unpaid balance of assessments in a timely manner; or (e) the property owner pays all previous and current assessments. A person desiring to apply for a Hardship Determination shall file an application no later than October 15, 2010, with the Clark County Department of Social Services, 1600 Pinto Lane, Las Vegas, Nevada 89106, (702) 455-8687.

By order of the City Council of the City, Nevada, and dated this September 15, 2010.

_____
BEVERLY K. BRIDGES, MMC
City Clerk

(End of Form of Notice)

Section 8. That all action, proceedings, matters and things heretofore taken, had and done by the City and the officers thereof (not inconsistent with the provisions of this Resolution) concerning the City of Las Vegas, Nevada, Special Improvement District No. 1519 Sidewalk Infill – Oakey Boulevard (west of Rancho Drive) and 11th Street (north of Charleston Boulevard) be, and the same hereby are, ratified, approved and confirmed.

Section 9. That the officers of the City are directed to effectuate the provisions of this Resolution.

Section 10. That all resolutions, or parts thereof, in conflict herewith are hereby repealed to the extent of such inconsistency.

Section 11. That the invalidity of any provision of this Resolution shall not affect any remaining provisions hereof.

Section 12. That the City Council has determined, and does hereby declare, that this Resolution shall be in effect after its passage in accordance with the law.

PASSED, ADOPTED AND APPROVED this 15th day of September, 2010.

OSCAR B. GOODMAN, Mayor

Attest:

BEVERLY K. BRIDGES, MMC
City Clerk

Approved as to Form:

9/1/10
Date

Assistant City Attorney

STATE OF NEVADA	)
	)
COUNTY OF CLARK	) ss
	)
CITY OF LAS VEGAS	)

I, Beverly K. Bridges, MMC, the duly chosen and qualified City Clerk of the City of Las Vegas (hereinafter the "City"), in the State of Nevada, do hereby certify:

1. The foregoing pages constitute a true, correct, complete and compared copy of a resolution adopted by the City Council of the City (hereinafter the "City Council") at a meeting held on September 15, 2010.

2. The adoption of the resolution was duly moved and seconded and the resolution was adopted by an affirmative vote of a majority of the members of City Council as follows:

Those Voting Aye:	Oscar B. Goodman Gary Reese Steve Wolfson Lois Tarkanian Steven D. Ross Ricki Y. Barlow Stavros S. Anthony
Those Voting Nay:	_____ _____
Those Absent:	_____ _____

3. The original of the resolution has been approved and authenticated by the signatures of the Mayor of the City and myself as City Clerk and has been recorded in the regular official record of the City Council kept for that purpose in my office, which record has been duly signed by the officers and properly sealed.

4. All members of the City Council were given due and proper notice of the meeting. Pursuant to § 241.020, Nevada Revised Statues, written notice of the meeting was given not later than 9:00 a.m. on the third working day before the meeting, including in the notice the time, place, location, and agenda of the meeting:

(A) By posting a copy of the notice at least three working days before the meeting at the principal office of the City Council, or if there is no principal office, at the building in

which the meeting is to be held, and at least three (3) other separate, prominent places within the jurisdiction of the City Council, to wit:

(i) City Clerk's Bulletin Board
City Hall Plaza
2nd Floor Skybridge
Las Vegas, Nevada

(ii) Bulletin Board
City Hall Plaza (next door to Metro Records)
Las Vegas, Nevada

(iii) Las Vegas Library
833 Las Vegas Boulevard North
Las Vegas, Nevada

(iv) Clark County Government Center
500 South Grand Central Parkway
Las Vegas, Nevada

(v) Grant Sawyer Building
555 E. Washington Avenue
Las Vegas, Nevada

(vi) The City of Las Vegas Website

(B) By mailing a copy of the notice to each person, if any, who has requested notice of the meetings of the City Council in the same manner in which notice is required to be mailed to a member of the City Council. Such notice was delivered to the postal service no later than 9:00 a.m. on the third working day prior to the meeting.

5. Upon request, the City Council provides at no charge, at least one copy of the agenda for its public meetings, any proposed ordinance or regulation which will be discussed at the public meeting, and any other supporting materials provided to the City Council for an item on the agenda, except for certain confidential materials and materials pertaining to closed meetings, as provided by law.

6. A copy of such notice so given of the meeting of the City Council on September 15, 2010, is attached to this certificate as Exhibit "A". A copy of the affidavit of publication of the Notice of Public Hearing is attached hereto as Exhibit "B", and a copy of the minutes of the public hearing held on October 20, 2010, is attached hereto as Exhibit "C".

IN WITNESS WHEREOF, I have hereunto set my hand on this ____ day of_____, 2010.

(SEAL)

_____
BEVERLY K. BRIDGES, MMC
City Clerk

Exhibit "A"

(Attach Notice of Meeting and Agenda)

Exhibit "B"

(Attach Affidavit of Publication of Notice of Hearing)

Exhibit "C"

(Attach minutes of public hearing on October 20, 2010)

STATE OF NEVADA)
) ss.
CITY OF LAS VEGAS)

AFFIDAVIT OF MAILING
NOTICE OF HEARING

Beverly K. Bridges, MMC, does hereby swear, upon oath according to law:

1. I am and at all times hereinafter mentioned was the duly qualified and sworn City Clerk of the City of Las Vegas, Nevada.

2. I posted or caused to be posted a notice entitled "NOTICE OF HEARING ON PROPOSED PROJECT AND ASSESSMENTS WITHIN THE PROPOSED CITY OF LAS VEGAS, NEVADA SPECIAL IMPROVEMENT DISTRICT NO. 1519 SIDEWALK INFILL - OAKEY BOULEVARD (WEST OF RANCHO DRIVE) AND 11TH STREET (NORTH OF CHARLESTON BOULEVARD)" on the City's website on _____, 2010, being at least twenty (20) days prior to the hearing, on October 20, 2010 in accordance with NRS 271.170.

3. I mailed or caused to be mailed a notice entitled "NOTICE OF HEARING ON PROPOSED PROJECT AND ASSESSMENTS WITHIN THE PROPOSED CITY OF LAS VEGAS, NEVADA Special Improvement District No. 1519 Sidewalk Infill – Oakey Boulevard (west of Rancho Drive) and 11th Street (north of Charleston Boulevard)" by deposit in the United States mail, postage prepaid, as first-class mail, at the post office in the City of Las Vegas, Nevada, on _____, 20__, being at least twenty (20) days prior to the hearing, on October 20, 2010, to the last known address of each last known owner of land within the District whose property will be assessed for the cost of the improvements, such addresses and owners being those appearing on the records of the County Assessor of Clark County, Nevada, and from such other sources as I, the City of Las Vegas and Public Works Department deemed to be reliable.

4. A list of said owners and their addresses is hereto attached, marked Exhibit A and made a part hereof, all addresses therein being situated within the City of Las Vegas, Nevada, unless otherwise indicated, such names and addresses being the same as those shown on the "Tabulation of Parcels" or "Preliminary Assessment Roll".

5. There is attached hereto, marked Exhibit B and made a part hereof, a full, true and correct copy of the notice as mailed as herein described.

6. Copies of the affidavit of publication of said notice, verified by the affidavit of the publisher, and a copy of this affidavit are on file in the office of the City Clerk.

Further Affiant sayeth naught.

_____
BEVERLY K. BRIDGES, MMC
City Clerk

SUBSCRIBED and SWORN to before me in the City of Las Vegas, Nevada, this _____ _____, 20__.

My commission expires _____.

_____
Notary Public

(NOTARIAL STAMP)

EXHIBIT "A"

(Attach List of Property Owners with Their Addresses)

EXHIBIT "B"

(Attach Notice of Hearing as Mailed)

City of Las Vegas Agenda Item No.: **54.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: CITY ATTORNEY
DIRECTOR: BRADFORD R. JERBIC ☒ **Consent** ☐ **Discussion**

SUBJECT:
RESOLUTIONS

R-62 -2010 - Approval of Resolution confirming that the City Manager or a designee is authorized to approve and execute certain types of documents related to City interests in property – All Wards

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
This Resolution will confirm that the City Manager or a designee is authorized to approve and execute certain types of documents related to City interests in property. The Resolution follows up Resolution R-42-10 (adopted several months ago) and is intended to expand upon and supersede that resolution. Documents to which this Resolution will apply include land development-related applications filed on behalf of the City, applications and documents relating to BLM-owned property, and documents granting temporary construction-related rights in City property.

RECOMMENDATION:
It is recommended that the City Council approve this Resolution and authorize its execution on behalf of the City.

BACKUP DOCUMENTATION:
Resolution No. R-62-2010

RESOLUTION CONFIRMING THAT THE CITY MANAGER OR A DESIGNEE IS AUTHORIZED TO APPROVE AND EXECUTE CERTAIN TYPES OF DOCUMENTS RELATING TO CITY INTERESTS IN PROPERTY

WHEREAS, pursuant to Section 3.030(7) of the Las Vegas City Charter, the City Council may authorize the City Manager to execute those contracts delegated to him or her by the Council; and

WHEREAS, in June 2010 the City Council approved a resolution (R-42-2010) to confirm that the City Manager or a designee is authorized to approve and execute certain types of documents pertaining to land use planning and development requests; and

WHEREAS, other types of documents have been identified as appropriate for approval and execution by the City Manager or a designee; and

WHEREAS, the City Council finds that it is of benefit to the City to expand the authority previously granted in order to include such additional types of documents; and

WHEREAS, the City Council intends to set forth in this Resolution the authorization granted by Resolution R-42-2010, together with the authorization to be extended regarding those additional types of documents.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Las Vegas, Nevada, to confirm that the City Manager or a designee is authorized to approve and execute the following types of documents:

1. Applications and related documents submitted under Titles 18 and 19 of the Municipal Code by which the City seeks development-related approvals for property owned by the City or held by the City under a lease or other interest granted by the Bureau of Land Management (BLM).

2. Applications and related documents by which the City seeks an interest in BLM-owned property, including without limitation a patent, lease, public purpose reservation, right-of-way, free use permit, temporary use permit, or other use of BLM property.

3. Applications or other documents by which the City seeks to renew an interest identified in Item 2, change the use associated with such interest, or amend the amount and description of property subject to such interest.

4. Documents by which the City relinquishes, closes or terminates a City interest in BLM-owned property, or by which the City withdraws an application for a City interest in such property.

5. Other documents requested or required by BLM in connection with Items 2 through 4 above.

6. Documents by which the City grants to utilities or other third parties temporary rights to enter or use property owned by the City or held by the City under a lease or other interest granted by BLM.

7. Documents by which the City modifies or terminates the rights previously granted to others to enter or use property owned by the City or held by the City under a lease or other interest granted by BLM.

8. Documents by which the City indicates its acceptance of temporary rights granted in favor of the City or its assigns to enter or use the property of another for construction purposes.

9. Other documents reasonably related to those identified in Items 1 through 8 above that do not go beyond the scope or type of authority granted with respect to those items.

BE IT FURTHER RESOLVED by the City Council that the City Manager may designate more than one person to exercise the authority granted in this Resolution, including the designation of persons from one department to approve and execute certain types of documents, and persons from other departments to approve and execute other types of documents.

BE IT FURTHER RESOLVED by the City Council that this Resolution shall replace and supersede Resolution R-42-2010.

PASSED, ADOPTED, AND APPROVED this _____ day of _____, 2010.

CITY OF LAS VEGAS

BY _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM

Val Steed 9-1-10
Date

City of Las Vegas Agenda Item No.: **55.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 1, 2010

DEPARTMENT: CITY MANAGER
DIRECTOR: ELIZABETH N. FRETWELL ☐ **Consent** ☒ **Discussion**

SUBJECT:
ADMINISTRATIVE:

ABEYANCE ITEM - Discussion and possible action to authorize the City of Las Vegas to withdraw as a member entity of the Clean Water Coalition and other matters related thereto - All Wards

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
The Clean Water Coalition was established in 2002 for the purpose of designing, constructing, operating and maintaining the System of Conveyance and Operations Program (SCOP). Changes in the environment and the way wastewater is now treated have negated the need for SCOP. As such, the city does not feel it is in the best interests of the residents of Las Vegas for the city to continue as a member agency of the CWC, and to collect the user fees from its residents to finance the ongoing operation of the CWC.

RECOMMENDATION:
Approval

BACKUP DOCUMENTATION:
Clean Water Coalition Interlocal Cooperative Agreement

AMENDED
INTERLOCAL COOPERATIVE AGREEMENT
ESTABLISHING THE CLEAN WATER COALITION

This Amended Agreement ("Amended Agreement") is dated the 8th day of September, 2006, and is among the City of Las Vegas, City of Henderson, City of North Las Vegas, and the Clark County Water Reclamation District (formerly the Clark County Sanitation District), all of which are public agencies in the State of Nevada (the "Members").

RECITALS:

A. NRS 277.110 and 277.120 provide that any one or more public agencies may enter into agreement with any one or more other public agencies for the joint exercise of any power, privilege or authority exercised or capable of exercise by any one or more of the public agencies or for joint or cooperative action by the public agencies and may create a separate legal or administrative entity to conduct the joint or cooperative undertaking.

B. Each of the Members share a common environmental, economic and regulatory interest in the efficient and responsible collection, treatment, reuse and discharge of municipal Effluent.

C. The Members have a history of cooperatively working on programs and projects of common benefit and interest.

D. On November 20, 2002, the City of Las Vegas, the City of Henderson, and the Clark County Sanitation District entered into an Interlocal Cooperative Agreement ("Agreement") which formed the Clean Water Coalition, a political subdivision of the State of Nevada pursuant to NRS 277.110 and 277.120 for the purpose of planning, permitting, designing, constructing, and operating a Systems Conveyance and Operations Program (SCOP) to collect and convey treated Effluent from the respective Treatment Facilities of each agency to Lake Mead.

E. The City of North Las Vegas provides its citizens with Wastewater service and currently contracts with the City of Las Vegas and the Clark County Water Reclamation District for treatment services and, therefore, has no additional obligation for past SCOP costs.

F. In order to finance the design and construction of the SCOP facilities, it will be necessary to consider the establishment of regional sewer connection charges and regional sewer user charges ("Regional Fees") which will be collected from each of the Members.

NOW, THEREFORE, the Members agree as follows:

Section I
CWC Created

1.1 There was created a legal entity known as the "Clean Water Coalition" ("CWC") by interlocal agreement effective November 20, 2002, by and between the Clark County Sanitation District (now known as the Clark County Water Reclamation District), the City of Henderson, and the City of Las Vegas. This Amended Agreement is to amend the Agreement as set forth herein. This Amended Agreement completely restates the Agreement, and is by and between the Clark County Water Reclamation District, the City of Henderson, the City of Las Vegas, and the City of North Las Vegas. The CWC is established pursuant to the provisions of Chapter 277, NRS, is a political subdivision of the State of Nevada, and is an entity separate from its members pursuant to NRS 277.074 and NRS 277.120.

Section II
Conferred and Prohibited Functions of CWC

2.1 **Conferred Functions:** To undertake implementation of all aspects of the Systems Conveyance and Operations Program ("SCOP") as may be approved by the Governing Boards of each Member and by the Board of the CWC as provided in this Amended Agreement.

2.1.1 SCOP means the planning, designing, financing, construction, and operation and maintenance of a regional system for the conveyance of Effluent from existing and future Wastewater Treatment Facilities, to the ultimate outfall location(s) returning Effluent to the Colorado River system or other locations as the CWC Members approve. The regional system may include the following:

(a) Physical facilities such as pipelines, tunnels, energy recovery facilities, and all appurtenant structures.

(b) Real and personal property, including leases of the same, rights-of-way permits, and licenses associated with the regional system facilities, including environmental impact statements.

(c) Any other regional system facilities associated with the treatment and conveyance of Effluent, downstream of the discharge point of the Member's treatment facilities.

(d) Any other such items as listed in Paragraphs (a) through (c) of this section 2.1.1 that the Members may include within the SCOP.

2.1.2 To manage the Effluent flowing through CWC facilities.

2.1.3 To enter into contracts for the sale or lease of power produced from energy recovery facilities which may be constructed as part of the CWC Facilities.

2.2 **Prohibited Functions:** Any function which is not a conferred function is a prohibited function.

2.2.1 Except to the extent permitted by applicable law, the CWC shall not perform any function or exercise any power that is not performable or exercisable by at least one of the Members.

2.2.2 Except as provided herein with respect to Members, nothing in this Agreement is intended to supersede or restrict the jurisdiction of any federal, state, or local public entity.

2.2.3 CWC shall not perform any function that is being performed by a Member without written consent of such Member.

Section III
Powers

3.1 **Powers.** In furtherance of the Conferred Functions, and subject to the limitations thereof, the CWC shall have the power to undertake any of the following:

(a) To adopt and amend operating plans and procedures for all CWC activities.

(b) To adopt and amend Capital Improvement Plans.

(c) To adopt and amend Capital Budgets and Operating Budgets.

(d) To hire personnel, including legal counsel, and fix salaries and compensation for such personnel.

(e) To contract for the services of engineers, attorneys, planners, financial, and other consultants.

(f) To have and exercise the power of eminent domain throughout Clark County, Nevada.

(g) To contract with any Member or other public agency for the provision of services to or by the CWC.

(h) To enter into such contracts for design, construction, and other work as necessary to carry out its Conferred Functions and to exercise its powers.

(i) To open and maintain bank accounts and to deposit funds therein and withdraw funds therefrom.

(j) To sue and be sued in its own name.

(k) To acquire, outright or through installment purchase contracts, possess, own, lease, encumber, and dispose of outright or through installment sales contracts, real and personal property, including easements and rights of way.

(l) To obtain state, federal, or local licenses, permits, grants, loans, or aid from any agency of the United States, the State of Nevada, or any other public or private entity necessary or convenient for the performance of any Conferred Function or the exercise of any of its powers.

(m) To finance the design, construction, operation, maintenance and replacement of all facilities which may be needed to carry out the Conferred Functions of this Agreement, including the establishment of equitable funding arrangements for all aspects of the development, construction, and operation of the SCOP, with full power to borrow money, incur debts, liabilities, and obligations, including the issuance of bonds, notes, or other evidences of indebtedness.

(n) To perform all other acts necessary or convenient for the performance of any Conferred Function or the exercise of any of its powers.

(o) To enter into contracts to produce revenue for the CWC.

(p) To assess Members for their agreed on share of administrative, operation, and maintenance and capital costs of the CWC.

(q) To establish and adjust regional sewer connection charges and/or regional sewer user charges to defray all or any portion of the costs of the CWC.

Section IV
Governing Board of CWC

4.1 The business and affairs of CWC shall be conducted and managed by a governing board, which shall be termed the Management Board ("Board"), which shall be subject to Nevada law pertaining to open meetings, if applicable.

4.2 The Board shall consist of one (1) representative from each Member signing this Amended Agreement, together with one (1) alternate representative from each Member. Each Member shall promptly designate its representative and alternate to the Board. Each representative and alternate shall hold office until the Member appointing such representative or alternate selects a successor and notifies the Board in writing of each successor's appointment. In the absence of a Member's representative, that Member's alternate shall act as its representative. A Member's representative and alternate shall be members of the governing board of such Member.

4.3 The officers of CWC shall consist of a Chairman, a Vice Chairman, and Secretary who shall be Members of the Board. The Board shall, at a meeting of the Board, which shall

be held in December each year or at the next Board meeting if no meeting is held in December, elect the Chairman, Vice Chairman, and Secretary who shall serve until their successors are chosen. In the event an officer's appointment to the Board is terminated by the Member designating such officer, the Board shall select a replacement officer at its next meeting.

4.4 The Chairman shall conduct the meetings of the Board or, in his absence, the meetings shall be conducted by the Vice Chairman. The Secretary shall be responsible for keeping accurate minutes of all meetings of the Board.

4.5 The time and place of regular meetings of the Board shall be determined by the Board, but such meetings shall be held at least every three (3) months. Any member of the Board may call a meeting of the Board, provided each member and alternate is given at least seven (7) working days' written notice and notice in accordance with Nevada's open meeting law. The Members of the Board may waive notice in writing or by attendance at a meeting.

4.6 A quorum for the transaction of business by the Board shall be present if seventy-five percent (75%) of the Members are represented by their respective representatives or alternates.

4.7 The following actions of the Board require that there be unanimous consent of the representatives or alternates of all the Members:

(a) Approval and amendment of all Capital Improvement Plans.

(b) Approval of all Annual Capital Budgets and Annual Operating Budgets.

(c) Authorization to borrow money.

(d) Admission of a new member to the CWC.

(e) Termination of this Agreement.

(f) Dispute resolution pursuant to Section XX of this Amended Agreement.

(g) Determining the point of connection between CWC Facilities and new or additional facilities, which introduce additional Effluent into CWC's Facilities.

4.8 All other action of the Board shall be taken by majority vote of the Members of the Board.

4.9 The CWC shall notify each Member in writing pursuant to Section XXI of any proposed increase in Regional Fees not less than thirty (30) days prior to the Board meeting at which such increase is to be considered.

4.10 The Board may adopt Rules for conduct of the business of the Board. Such Rules shall include an obligation on each representative to submit information on a timely basis, as necessary, for annual or more frequent approvals of Operating Plans and Budgets.

Section V
Approval of Certain Matters by the Governing Boards of the Members

5.1 Except as provided in Subsection 5.2, the approval of the governing boards of each Member, in addition to action taken by the Board as required by this Amended Agreement, shall be required for the following actions:

(a) Approval and amendment of all Capital Improvement Plans.

(b) Approval and amendment of all Annual Operating Budgets and Annual Capital Budgets.

(c) Authorization to borrow money.

(d) Admission of new Members.

(e) Termination of this Agreement.

5.2 After the date established by the Board pursuant to the provisions of Paragraph 12.2.1, the approval of the governing boards of each Member shall not be required with respect to items (b) and (c) set forth above in Subsection 5.1 and items (b) and (c) set forth above in Subsection 4.7 shall no longer require unanimous consent of the representatives or alternates of all Board Members.

Section VI
Fiscal Year

6.1 The fiscal year of CWC shall be July 1 through June 30.

Section VII
Principal Office

7.1 The principal office of CWC shall be established by the Board.

Section VIII
Additional Members

8.1 In the event an entity other than the Members desires to become a Member ("New Member") of the CWC, such entity may become a Member on such terms and conditions as the Board shall prescribe, provided that the terms and conditions shall include, without limitation, the following provisions:

(a) That the NPDES permits of the Members will not be adversely affected by the proposed New Member using CWC Facilities.

(b) That the proposed New Member will assume its pro rata share of existing financial obligations of CWC in a manner acceptable to the Members. In the event each Member is jointly and severally liable for certain financial obligations of the CWC, the proposed New Member shall also assume joint and several liability in like manner as the existing Members.

(c) That the proposed New Member shall execute a copy of this Amended Agreement and all amendments hereto and shall agree to be bound by all provisions hereof.

(d) That the proposed New Member shall, concurrently with its execution of this Amended Agreement and all amendments hereto, pay its proportionate share of all cash obligations of the Members for the then current period.

(e) Any provision which may be appropriate as determined by the Board concerning purchase of an equity position in CWC.

8.2 Alternatively, in lieu of admitting an entity as a New Member, the Board may elect to accept such entity's Discharge through the CWC Facilities on such terms as the Board shall determine and for such charges as the Board shall determine, in its sole discretion, taking into account the Annual Capital Budget obligations, the Annual Operating Budget requirements, debt service, and any other matters the Board deems relevant. Any action by the Board pursuant to this Section shall include the provisions of Subparagraph (a) of Subsection 8.1, above.

Section IX
General Manager (formerly the Program Administrator)

9.1 The General Manager shall be the chief administrative officer of the CWC, shall be appointed by and serve at the pleasure of the Board, and shall be responsible to the Board for the proper and efficient administration of the CWC.

9.2 The Board shall review the performance and compensation of the General Manager annually.

9.3 Subject to the direction by the Board, and to such requirements as the Board may impose, the General Manager shall have the power:

(a) To plan, organize, and direct all CWC activities;

(b) Subject to law, to appoint and remove CWC employees;

(c) To enter into contracts on behalf of the CWC but only as approved by the Board for contracts which obligate the CWC to expend the sum of $25,000 or more; and

(d) To take such action and authorize such expenditures as specifically authorized by the Board.

Section X
Water Rights

10.1 Each Operating Member holds or has applied to the State Engineer for primary permits which cover the Discharge from their respective Treatment Facilities. Accordingly, it is the intent of the parties that each Operating Member shall own its proportionate share of the combined Discharge through the CWC Facilities subject to the provisions of this Amended Agreement until such time as the same is discharged into the Colorado River, at which time it is understood that the Discharge constitutes return flow to the river for which the State of Nevada is entitled to credit from the United States Secretary of Interior under existing contracts.

Section XI
Electric Energy and Other Revenue

11.1 Revenues received by the CWC from any source, including its own electrical energy production, shall be applied to the obligations and benefit of the CWC, as determined by the Board, and shall not inure to the benefit of any particular Member or Members or other entity.

Section XII
Fiscal Matters

12.1 **Annual Budgets.** Unless otherwise provided by law, tentative Annual Operating Budgets and Annual Capital Budgets shall be prepared for each ensuing fiscal year on or before March 15 with the final annual budgets being adopted on or before June 1 of each year.

12.1.1 The annual budgets shall be prepared in a line item format.

12.1.2 All Annual Operating Budgets and Annual Capital Budgets shall include all repayment obligations and long and short term contract obligations, which become payable during the period covered by such budgets.

12.1.3 The CWC shall not, during any fiscal year, expend or contract to expend any money, or incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts appropriated in the annual budgets for any category of expenditure, unless such expenditure is specifically approved by the Board.

12.2 **Assessment and Contributions for Operating and Capital Expenses.**

12.2.1 Until Regional Fees are in place to provide funding for CWC activities, the financial obligations of the CWC with respect to all Annual Operating Budgets and All Annual Capital Budgets shall be satisfied by the Members in the following percentages:

City of Las Vegas	30%
Clark County Water Reclamation District	46%
City of Henderson	14%
City of North Las Vegas	10%

After the date Regional Fees are in place and are providing funding for the CWC activities, including operating costs, debt reserves and debt funding, as such date is determined by the Board, the obligations of the Members to pay the costs of the CWC based on the percentages set forth in this paragraph shall cease.

12.2.2 Regional Fees.

12.2.2.1 Initial sewer connection charges will be assessed at $800 per Equivalent Residential Unit (ERU), effective October 1, 2006. The CWC ERU charges are as defined within Attachment 1. Sewer connection charges will increase by 1.5% every six months, beginning July 1, 2007, and continue through January 1, 2009.

12.2.2.2 Initial sewer usage charges will be assessed at $0.105 per thousand gallons of Influent. Influent data will used as reported to the Clark County Sewage and Wastewater Advisory Committee (SWAC) or

as otherwise agreed to by the Board. Usage charges will be effective July 1, 2007.

12.2.2.3 After January 1, 2009, connection and usage charges will be evaluated periodically to ensure adequate revenue has been generated. Any adjustments to charges will be approved by the CWC Board.

12.2.2.4 Each Member shall determine, in its sole judgment, the method it chooses to raise funds needed to satisfy its obligations hereunder.

12.2.2.5 Member agencies may, at their discretion and with the concurrence of the CWC, enter into separate agreements with the CWC for the purpose of specifying the manner in which the Member agency will collect funds for the purpose of fulfilling its ratepayers' obligations to fund the SCOP project providing, however, that the terms of the separate agreement are consistent with the provisions of this agreement.

12.2.3 The dates for payments to be made by the Members in satisfaction of their obligations hereunder shall be as determined by the Board. Each member shall pay in full, when due, its obligations herein agreed to be paid. Each Member shall be liable to the CWC and every other Member to pay its respective share of Annual Operating and Annual Capital Budgets and any other obligations assessed against the Members in accordance with this Amended Agreement.

12.2.4 In the event, for whatever reason, insufficient funds are available to the CWC to satisfy all of its annual obligations (other than by reason of the default of a Member in paying its allocated share of such annual obligations), then such deficiency shall be assessed by the CWC against all Members: (a) in the same percentages set forth in Paragraph 12.2.1, if such deficiency occurs prior to the date established by the Board that Regional Fees are providing funding for CWC activities, or (b) in proportion to each Member's contribution to CWC funding obligations from Regional Fees, for the twelve (12) months prior to the month the deficiency occurs, if the deficiency occurs after the date that Regional Fees are providing funding for CWC activities as determined by the Board pursuant to Paragraph 12.2.1. If the deficiency arises before the expiration of twelve (12) months from the date established by the Board, the Members contributions for the time period which is available shall be annualized. The CWC shall send a statement to each Member for its apportioned share of the deficiency immediately upon exercising its rights pursuant to this Subsection. Each Member shall pay the amount of the deficiency apportioned to it within 45 days after receipt of the statement pursuant to Section XXI hereof. The CWC may continue to apportion deficiencies to Members pursuant to this Subsection for so long as the deficiency exists. The Board may establish reserves and procedures for determining available funds.

12.2.5 The Board, in establishing Annual Operating Budgets and Annual Capital Budgets, may establish such reserves as deemed appropriate by the Board as may be required by any debt instrument of the CWC, or as may be required by the state or county bond banks.

12.2.6 Contributions or advances of public funds and of personnel, supplies, equipment, or property may be made to the CWC by any Member for any of the purposes of this Amended Agreement, with the consent of the Board. Any such advance may be made subject to repayment as agreed to by the Member and the CWC.

12.3 **Revenue Bonds.** The Board shall have the power and authority to issue revenue bonds, notes, and other obligations for the purposes and in accordance with the procedure and requirements set forth in NRS 277.0705 through 277.0755.

12.4 **Other Indebtedness.** The Board shall have the power and authority to issue bonds, notes, and other indebtedness, and to participate in state and local bond banks as provided by law.

12.5 **Accounting Procedures.** Complete books and accounts shall be maintained for the CWC in accordance with generally accepted accounting principles and standards, including compliance with all applicable statutes and regulations. Unless otherwise provided by law, the CWC may, in accordance with its needs, maintain funds and account groups pursuant to NRS 354.604.

12.6 **Audit.** The CWC shall provide for an annual audit of all funds and accounts pursuant to NRS 354.624. The audit must cover the business of the CWC during the full fiscal year. The audit shall be made by a public accountant, certified or registered, or by a partnership or professional corporation registered under the provisions of NRS Chapter 628. Such financial audit shall be conducted in accordance with generally accepted auditing standards, including comment on compliance with all applicable statutes and regulations, recommendations for improvements, and any other expression of opinion on any financial statements. The audit shall be completed and copies of the audit report provided to the Members not later than five (5) months after the close of the fiscal year for which the audit is conducted. The CWC shall act upon any recommendations of the report within three (3) months after receipt of the report, unless prompter action is required, pursuant to NRS 354.624.

12.7 **Reimbursement.**

12.7.1 No person, including Members, may receive reimbursement from the CWC for expenditures on behalf of the CWC in excess of $25,000, unless the Board approves such reimbursement.

12.7.2 No person, including Members, may receive reimbursement from the CWC for expenditures on behalf of the CWC for amounts equal to or less than $25,000, unless such reimbursement is approved in writing by the General Manager.

12.8 **Audit of Payment of Regional Fees to the CWC.**

12.8.1 All payments of Regional Fees to the CWC by the Members shall be accompanied by sufficient information to enable the CWC to determine the basis of the Member's calculation of the Regional Fees being paid.

12.8.2 The CWC, in its sole discretion may audit the books and records of any Member to verify the accuracy of payments of Regional Fees made by such Member to the CWC. All audits shall be conducted during regular business hours on not less than fourteen (14) working days' notice and shall be conducted pursuant to generally accepted auditing standards.

Section XIII
Rights and Obligations of Members

13.1 **Rights.** All Members shall have all such rights as are set forth in this Amended Agreement. Specifically and subject to the terms of this Amended Agreement, all Members shall have the right to have the treated Effluent from the Wastewater generated within their respective jurisdictional boundaries or service territory, transported through the CWC Facilities up to the capacity of such facilities, whether the Member is an Operating Member or is a Member who contracts for its Wastewater to be treated by an Operating Member or Members.

13.2 **Obligations.** All Members are obligated to comply with the terms of this Amended Agreement and are bound by the provisions hereof. Specifically, and subject to the terms of this Amended Agreement, all Members are obligated to pay to the CWC, when due as determined by the Board, their share of the CWC costs whether based on a fixed and agreed percentage or based on Regional Fees. Each member is further specifically obligated to accurately determine the basis for calculating the Regional Fees to be paid by it to the CWC.

Section XIV
Liabilities of the CWC

14.1 The debts, liabilities, and obligations of CWC shall be the debts, liabilities, and obligations of CWC alone and not any of the Members.

14.2 The Board shall provide for the timely payment of all liabilities and obligations of the CWC as the same may accrue from time to time.

14.3 The funds of CWC shall be used to defend, indemnify, and hold harmless the CWC, its officers and employees, and any Member for actions taken within the scope of the CWC. Nothing herein shall limit the right of the CWC to purchase insurance to provide coverage for any of the foregoing.

14.4 CWC may, with Board approval, assume contract obligations of any Member accruing after November 20, 2002, pursuant to contracts existing on such date which pertain to the planning and design of CWC Facilities and the preparation of an environmental impact statement therefore.

Section XV
Discharge Standards

15.1 Each Operating Member shall adhere to the discharge standards set forth in its discharge permit issued by the Nevada Division of Environmental Protection ("NDEP"). The point of measurement of various elements and flows that are the subject of the discharge permit shall be at the point designated in each Operating Member's permit.

15.2 It is the intent of the parties that each Operating Member or other entity discharging Effluent into the CWC Facilities is responsible for maintaining the required standards for each Operating Member's or entity's Discharge and that there shall be no independent obligation on CWC to treat Effluent nor to obtain its own NPDES or equivalent discharge permit from the NDEP or from any other governmental agency, unless otherwise required by law.

Section XVI
Operating Member Facilities – CWC Interface

16.1 Operating Member owned and operated Discharge facilities shall consist of all existing facilities of each Operating Member to the point of connection ("Point of Connection"), which shall be determined in each instance by the Board. All facilities, including monitoring and measuring equipment downstream of the Point of Connection, shall be owned and maintained by the CWC from and after the determination of the Point of Connection by the Board. Promptly, after the determination of the Point of Connection, each Operating Member shall transfer title to any facilities it may own downstream of the Point of Connection to the CWC, free and clear of all encumbrances, together with easements not less than 30 feet in width on either side of the centerline of such facilities, together with necessary access easements from public roads.

16.2 All new or additional facilities which may in the future be designed to discharge into the CWC Facilities shall be owned and maintained by the Operating Member or entity whose Effluent is being discharged, to the Point of Connection with the CWC Facilities, at (or before) which point the Discharge shall be monitored and measured. The Point of Connection shall be determined in each instance by the Board.

Section XVII
Operation and Maintenance of Facilities

17.1 The operation and maintenance of CWC Facilities and equipment shall be conducted and/or administered as designated by the Board. The Board may enter into agreements with an Operating Member or other person or entity to act as the Operating Agent for the CWC.

17.2 During the fiscal year preceding the fiscal year when it is anticipated by the General Manager that CWC Facilities will be in operation, the General Manager will submit to the Board not later than March 15, a Tentative Operating Plan. The Board shall approve an Operating Plan for the next fiscal year not later than June 1. Thereafter, Tentative Operating Plans shall be submitted by the General Manager to the Board by March 15 each year and the Board shall approve such plans for the next fiscal year not later than June 1.

17.3 The Operating Members shall cooperate with the CWC and its Operating Agent with respect to Discharge from their respective Treatment Facilities into the CWC Facilities or into the Las Vegas Wash. Subject to the operating constraints, if any, of the respective Treatment Facilities, it is agreed that the CWC, consistent with the approved Operating Plan, shall be responsible for determining at all times the amount of Effluent from each Operating Member's Treatment Facilities that will be discharged to the Las Vegas Wash and the amount that will be introduced into the CWC Facilities. The Operating Members shall cooperate with the CWC with respect to operation of gates, pumps, and valves and other equipment necessary to direct the flow of Effluent.

17.4 Subject to the operating constraints of the Treatment Facilities of each Operating Member, and without adversely affecting the operation of such facilities, the Operating Members agree to cooperate with the CWC with respect to Effluent volumes from their respective Treatment Facilities as may be necessary to (a) meet water quality objectives, and (b) to maximize power production from the CWC power plant during peak power usage periods and as may be necessary for other operational needs or objectives of the CWC.

17.5 Nothing in this Amended Agreement shall prohibit or interfere with an Operating Member's right to contract for reuse of Effluent from its Treatment Facility prior to such Effluent reaching the Point of Connection.

17.6 During construction of the CWC Facilities, each Operating Member shall cooperate with the CWC as may be necessary with respect to diverting Effluent around construction sites and other necessary actions for the construction to commence and proceed efficiently and smoothly to completion, including providing temporary space for the storage of construction materials and equipment, provided that such cooperation will not interfere with the efficient operation of the Treatment Facility.

Section XVIII
Withdrawal or Termination

18.1 The CWC shall continue in existence until dissolved in accordance with terms of this Section.

18.2 A Member may withdraw from CWC on such terms and conditions as may be specified in an agreement of withdrawal executed by all Members.

18.3 This Amended Agreement may be rescinded and the CWC terminated by a written agreement of termination executed by all Members except during the term of any outstanding indebtedness incurred by or at the request of the CWC or for which the CWC is otherwise responsible, unless such indebtedness is dealt with in a manner satisfactory to the holder or holders of such debt and satisfactory to all of the Members.

18.4 On termination of the CWC, all of the assets of the CWC shall be disposed of in accordance with the above-referenced written agreement of termination.

Section XIX
Delinquencies

19.1 In the event a Member defaults in paying when due any obligation required to be paid to the CWC by such Member under this Agreement, which default continues for more than 60 days from the time such obligation is to be paid, the Board may require the payment of such delinquency by the non-defaulting Members (a) in the same percentages set forth in Subsection 12.2.1, calculated without taking into account the percentage of the defaulting Member, if the delinquency occurs prior to the date established by the Board that Regional Fees are providing funding for CWC activities or (b) in proportion to each member's contribution to CWC funding obligations from Regional fees for the twelve (12) months prior to the month for which the delinquency has occurred, calculated without taking into account the obligations of the defaulting Member, if the deficiency occurs after the date that Regional Fees are providing funding for CWC activities as determined by the Board pursuant to Subsection 12.2.1. If the delinquency occurs before the expiration of twelve (12) months from the date established by the Board, the Member's contributions for the time period which is available shall be annualized. The Board shall send each non-defaulting Member a statement in accordance with Section XXI promptly on action of the Board pursuant to this Subsection. Each non-defaulting Member shall pay the statement within 45 days after receiving the statement. The CWC may continue to apportion delinquencies pursuant to this Subsection for so long as the defaulting Member remains in default for 60 days or more. Non-defaulting Members making payments pursuant to this Subsection shall be subrogated to the rights of the CWC and shall have a right of direct reimbursement against the defaulting Member.

19.2 **Refund of Section 19.1 Payments.** If a defaulting Member pays its delinquent amounts owed directly to the CWC instead of directly reimbursing the non-defaulting Members for their payment of the delinquent amounts owed pursuant to Subsection 19.1, the CWC shall distribute said payment to the non-defaulting Members, subject to the provisions of

Subsection 19.5 in the same proportions that they made payment to the CWC of the delinquent amounts. Any accrued interest on the delinquent amounts paid by the defaulting Member shall be distributed to the non-defaulting Members in same proportion as the reimbursement payments. If a non-defaulting Member has been wholly reimbursed directly by a defaulting Member, it shall not receive any payments under this Subsection from said defaulting Member. If only partial reimbursement has been made directly by a defaulting Member, then payment under this Section to the non-defaulting Member shall be limited to the balance owed.

19.3 **Loss of Voting Rights.** If a Member is delinquent for more than 60 days in making payment to the CWC of any amount due under this Amended Agreement, during the period of such delinquency (i) the Board Member and alternate appointed by such Member to the CWC Board shall not be entitled to vote on any matter coming before the Board, (ii) the governing board of the defaulting Member shall have no right of approval pursuant to the provisions of this Amended Agreement, and (iii) during the time of delinquency, any provision of this Amended Agreement requiring the approval of the Board Member or alternate of the defaulting Member shall be determined without reference to the required vote of such delinquent Member.

19.4 **Late Charges.** The Board shall have the right to establish late charges to be paid by any Member which is delinquent by more than 60 days in any charge or other payment due under this Agreement.

19.5 **Crediting of Delinquent Payments.** Payments to the CWC by a defaulting Member of delinquent amounts owed under this Amended Agreement shall be credited (i) first, to interest and late charges then owing, (ii) second, to the amounts then due and owing to the CWC, applying such payments first to the most recent amounts then due and owing and (iii) third, to the amounts owed to the non-defaulting Members for reimbursement of delinquent amounts paid on behalf of the defaulting Member pursuant to Subsection 19.1 and 19.2.

19.6 **Statement of Late Charges and Interest.** Each month the CWC shall send a statement of late charges and interest owed to the defaulting Member. Payment shall be due within 45 days after receipt of the statement. Receipt shall be presumed two days after mailing if sent in accordance with Section XXI; otherwise, receipt will be presumed five days after the date on the statement if sent by regular mail.

19.7 **Interest.** All delinquent payments shall bear interest from the date the payment was due at the prime rate most recently published in the Western Edition of the Wall Street Journal plus 2 two percent per annum.

Section XX
Dispute Resolutions

20.1 **Dispute Resolution by Board Action.**

20.1.1 Except for delinquencies covered by Section XIX of this Amended Agreement, all disputes between the Members to this Amended Agreement or between a Member and the CWC arising out of or relating to the performance of this Amended Agreement, or the breach of this Amended Agreement, shall first be presented for resolution to the Board in accordance with this Section. The unanimous decision of the Board shall be binding on all Members.

20.1.2 **Filing**. A request to the Board for dispute resolution must be submitted in writing, setting forth the parties to the dispute, the allegations regarding the dispute, and be accompanied by any supporting documentation.

20.1.3 **Notice**. Notice of the written request for Board dispute resolution and the written request shall be served by the party seeking dispute resolution on the other party or parties within five (5) working days after the written request is filed with the Board. The requesting party shall file proof of service with the Board within three (3) days of service.

20.1.4 **Response.** The responding Party or the General Manager, if the dispute is with the CWC, may file its response with the Board and serve a copy on the requesting Member within five (5) working days of receipt of the requesting Member's allegations. The responding party or the General Manager, as the case may be, shall file proof of service with the Board within three (3) days of service.

20.1.5 **Hearing**. The Board shall schedule a dispute resolution hearing not later than fifteen (15) days after proof of service of a notice of written request for dispute resolution has been filed with it.

20.2 **Dispute Resolution by Arbitration or Mediation.**

20.2.1 **Arbitration**. Should the Board not be able to reach a unanimous decision on a dispute submitted to it for resolution pursuant to Subsection 20.1, any person who is a party to the dispute may submit the dispute for arbitration in accordance with this Section.

20.2.2 **Rules.** All disputes submitted to arbitration pursuant to Paragraph 20.2.1 shall be decided by arbitration in accordance with the Arbitration Rules of the Nevada Arbitration Association or the American Arbitration Association then existing, subject to any of the mandatory provisions of the Nevada Uniform Arbitration Act of 2000 as set forth at NRS 38.206 to NRS 38.248, inclusive or subsequent amendments thereto. Each party shall pay its own attorney fees and other costs. Unless the Arbitrator orders otherwise, the Arbitrator's fees and court reporter fees and other costs of arbitration shall be divided equally among the parties to the dispute.

20.2.3 **Right of Joinder.** Any arbitration arising out of or relating to this Amended Agreement may include, by consolidation, joinder, or in any other manner, any additional person not a Member to this Amended Agreement if so requested by a Member. Any consent to arbitration involving an additional person or persons shall not constitute consent to arbitration of any dispute not described therein.

20.2.4 **Binding.** In the event arbitration is the designated forum, such arbitration shall be binding.

20.2.5 **Notice.** In order to be able to arbitrate any dispute between the Members, or between one or more Members and the CWC, written notice thereof must be given by the Member or the CWC requesting arbitration to the other Member or the CWC within fifteen (15) days after the Board has failed, pursuant to Subsection 20.1, to reach a unanimous decision regarding such dispute.

20.2.6 **Waiver.** The filing of the aforementioned notice of claim shall preserve that Member's or the CWC's right to arbitration, but shall not obligate the Member or the CWC to proceed with arbitration. In the event that the Member or the CWC requesting arbitration desires to proceed with arbitration, a written demand for arbitration shall be filed with the American Arbitration Association or the Nevada Arbitration Association within sixty (60) days after the above notice of arbitration, and the failure to make such demand shall forever bar such dispute from being arbitrated.

20.2.7 **Mediation.** By mutual written consent, in addition to the remedy of arbitration, the Members or the CWC may endeavor to settle the dispute in question by mediation in accordance with the then current mediation rules of the Nevada Arbitration Association, the American Arbitration Association, or other mediation service agreed to by the Members and if applicable, the CWC. Such mediation may occur at any time, including prior to the date that hearing may have been scheduled for arbitration. If a written request for mediation arises prior to the expiration of the sixty (60) days notice requirement set forth above, then such time period shall be tolled (i) for a period of ten (10) days while the request is agreed to or denied, or (ii) if the request for mediation is agreed to, then until completion of the mediation.

Section XXI
Notice

21.0 All notices under this Amended Agreement shall be in writing and shall be deemed to be delivered on the earlier to occur of (i) the date of actual receipt of the Notice (regardless of how it is delivered), and (ii) whether or not actually received, two days after the notice has been deposited in the United States mail, postage paid, registered or certified mail, return receipt requested, addressed to the Members or CWC, as the case may be, at the addresses set forth below.

To Members:

City Manager
City of Las Vegas
400 Stewart Avenue
Las Vegas, Nevada 89101

City Manager
City of Henderson
240 Water Street
Henderson, Nevada 89015

General Manager
Clark County Water Reclamation District
5857 E. Flamingo Road
Las Vegas, Nevada 89122

City Manager
City of North Las Vegas
2200 Civic Center Drive
North Las Vegas, Nevada 89030

To CWC:

General Manager
Clean Water Coalition
1001 Whitney Ranch Drive, #100
Henderson, Nevada 89014

21.1 Any address in this Section may be changed by furnishing to the CWC and all other Members a change of address in writing.

Section XXII
Miscellaneous Provisions

22.1 **Other Agreements Superseded.** This Amended Agreement constitutes the entire agreement and understanding of the Members hereto with respect to the subject matter contained in this Amended Agreement, and supersedes all other oral and written negotiations, agreements, and understandings of every kind. The Members understand, agree, and declare that no promise, warranty, statement, or representation of any kind whatsoever, which is not expressly stated in this Amended Agreement has been made by any Member hereto or its officers, employees, or other agents to induce execution hereof.

22.2 **Duration.** This Amended Agreement shall be effective when approved by the governing boards of all the Members and the condition of Section XXIV has been satisfied ("Effective Date") and shall continue in force and effect until this Amended Agreement is rescinded and the CWC is terminated as provided in Section XVIII.

22.3 **Applicable Law.** This Amended Agreement shall be interpreted under the laws of the State of Nevada including, but not limited to, Chapters 41 and 277 of the Nevada Revised Statutes.

22.4 **Amendment.** This Amended Agreement may be amended by prior action taken by the governing board of each Member and upon any required approval given, or deemed to be given, by the Attorney General of Nevada.

22.5 **Assignment; Binding on Successors.** Except as otherwise provided in this Amended Agreement, the rights and duties of the Members may not be assigned or delegated without the written consent of all Members. Any attempt to assign or delegate such rights or duties in contravention of this Subsection shall be null and void. Any approved assignment or delegation shall be consistent with the terms of any contracts, resolutions, indemnities, and other obligations then in effect. This Amended Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Members signing such agreement.

22.6 **Force Majeure.** Force majeure means delays or defaults due to acts of God, government (other than acts or failure to act by the Members), litigation preventing performance of obligations imposed by this Amended Agreement by any party, general strikes, or any other event beyond a party's reasonable control.

22.7 **Severability.** If one or more clauses or provisions of this Amended Agreement shall be determined by a court of competent jurisdiction to be unlawful, invalid, or unenforceable, this Amended Agreement shall nevertheless remain in full force and effect provided that the purposes of this Amended Agreement shall not be impaired thereby nor shall any inequity to one or more Members result therefrom.

Section XXIII
Definitions

23.1 **Annual Capital Budget.** "Annual Capital Budget" means all obligations expected to require cash payment in a fiscal year pertaining to Capital Costs.

23.2 **Annual Operating Budget.** "Annual Operating Budget" means all obligations expected to be paid in cash in a fiscal year pertaining to operating the CWC Facilities and conducting the business of the CWC other than Capital Costs.

23.3 **Board.** "Board" means the Management Board of the CWC.

23.4 **Capital Costs.** "Capital Costs" means the cost of constructing, financing, acquiring, planning, designing and permitting (including environmental review and any mitigation costs and filing fees) CWC Facilities, and funding of reasonable construction reserves.

23.5 **Capital Improvement Plan.** "Capital Improvement Plan" means a plan extending over a designated period of time to construct or acquire CWC Facilities, including timelines, cost estimates for various component parts of the CWC Facilities to be constructed or acquired, including all environmental and administrative costs and allocation of such projected costs among the Members by fiscal year.

23.6 **CWC Facilities.** "CWC Facilities" means the regional system constructed by CWC for the conveyance of Effluent, together with all component parts thereof, including electrical energy generating installations.

23.7 **Discharge.** "Discharge" means any release of Effluent from treatment facilities to a conveyance or to receiving water.

23.8 **Effluent.** "Effluent" means treated wastewater.

23.9 **Equivalent Residential Unit (ERU).** "ERU" means the equivalent amount of wastewater produced by a single family residence.

23.10 **Influent.** "Influent" means untreated wastewater.

23.11 **Member.** "Member" means a party to this Agreement.

23.12 **NDEP.** "NDEP" means the Nevada Division of Environmental Protection.

23.13 **NPDES.** "NPDES" means National Pollutant Discharge Elimination System as set forth in the Clean Water Act, pursuant to which the Members' discharge permits are issued by the NDEP.

23.14 **NRS.** "NRS" means Nevada Revised Statutes.

23.15 **Operating Agent.** "Operating Agent" means an agent, other than a CWC employee, appointed by the Board to operate the CWC Facilities.

23.16 **Operating Member.** "Operating Member" means a Member who owns and operates Treatment Facilities.

23.17 **Regional Fees.** "Regional Fees" means regional sewer connection charges and/or regional sewer user charges established by the Board.

23.18 **Treatment Facilities.** "Treatment Facilities" means the devices and systems used in the storage, treatment, recycling, and reclamation of sewage, or industrial waste of a liquid nature.

23.19 **Wastewater.** "Wastewater" means the spent or used water from a community or industry that contains dissolved or suspended matter.

Section XXIV
Condition to Effectiveness of this Amended Agreement

24.0 This Amended Agreement shall become effective when approved by the Attorney General of the State of Nevada pursuant to NRS 277.140.

IN WITNESS WHEREOF, the Members have caused this Amended Agreement to be executed as of the date first written above in this Amended Agreement.

Approved as to Form:

Robert W. Marshall, Counsel

CLEAN WATER COALITION

By: _____
Chip Maxfield, Chairman of the Board

Attest:

Shirley P. Parraguirre, Clerk

CLARK COUNTY
WATER RECLAMATION DISTRICT

By: _____
Chip Maxfield, Chairman

Approved as to Form:

Kimberly Phillips, Deputy District Attorney

Attest:

Monica Simmons, City Clerk

THE CITY OF HENDERSON

By: _____
James B. Gibson, Mayor

COUNCIL ACTION
JUN 20 2006

Approved as to Form:

for Shauna Hughes, City Attorney

Attest:

Barbara Jo Ronemus, City Clerk

THE CITY OF LAS VEGAS

By: _____
Oscar B. Goodman, Mayor

Approved as to Form:

Bradford R. Jerbic, City Attorney

Attest:

Karen Storms, City Clerk

THE CITY OF NORTH LAS VEGAS

By:
Michael L. Montandon , Mayor

Approved as to Form:

Sean McGowan, City Attorney

Approved as to form and legality (NRS 277.140)
this 8th day of September, 2006.

GEORGE CHANOS
Attorney General of the State of Nevada

By:
Senior Deputy Attorney General

ATTACHMENT 1

Clean Water Coalition

REGIONAL CONNECTION CHARGES PROJECTED IMPLEMENTATION AND SEMI ANNUAL CHANGES

	ERU	10/1/06	7/1/07	1/1/08	7/1/08	1/1/09
Single Family Residence, Trailer Court (space)	1	$800	$812	$824	$836	$849
Condominium, Apartment, Townhouse (unit)	0.7	560	568	577	586	595
Senior Apartment Housing (unit)	0.5	400	406	412	418	424
Hotel/Motel (per room)	0.6	480	487	494	501	509
Casino, Hotel/Motel outside room (per fixture)	1.5	1,200	1,218	1,236	1,255	1,274
Recreational Vehicle Park (space)	0.7	560	568	577	586	595
Recreational Vehicle Park – other than spaces (per fixture)	0.45	360	365	370	376	382
Convalescent/Rest Home (per bed)	0.75	600	609	618	627	636
Custodial Institution (per fixture)	0.65	520	528	536	544	552
Hospital (per bed)	1.2	960	974	989	1,004	1,019
Restaurant (per fixture)	1.33	1,064	1,080	1,096	1,112	1,129
Food Sales – no cooking facilities (per fixture)	0.65	520	528	536	544	552
Bar/Tavern w/ Food (per fixture)	1	800	812	824	836	849
Bar/Tavern w/o Food (per fixture)	0.65	520	528	536	544	552
Community/Special Event Center (per fixture)	0.65	520	528	536	544	552
Office/Warehouse (per fixture)	0.45	360	365	370	376	382
Medical/Dental/Veterinarian (per fixture)	0.25	200	203	206	209	212
Beauty/Barber/Nail/Tanning Shop (per fixture)	0.25	200	203	206	209	212
House of Worship (per fixture)	0.5	400	406	412	418	424

Motor Vehicle Wash (per bay)/ Motor Vehicle Sales w/ auto vehicle wash (per fixture)	1	800	812	824	836	849
Vehicle Maintenance/Repair Shop (per fixture)	0.45	360	365	370	376	382
School/Child Care Center (per student - maximum)	0.1	80	81	82	83	84
Service Station (per fixture)	0.65	520	528	536	544	552
Retail Store (per fixture)	0.65	520	528	536	544	552
Dry Cleaners (per fixture)	1	800	812	824	836	849
Dry Cleaner Pick-up Station – Alterations (per fixture)	0.65	520	528	536	544	552
Laundry/Laundromat (per fixture)	0.45	360	365	370	376	382
Financial Institutions (per fixture)	0.45	360	365	370	376	382
Pet Grooming (per fixture)	0.65	520	528	536	544	552
Private Club (per fixture)	0.65	520	528	536	544	552
Theme Park/Sports Complex (per fixture)	0.65	520	528	536	544	552
Theaters (per fixture)	0.45	360	365	370	376	382
Special Events Center – Limited Use (per fixture)	0.45	360	365	370	376	382
Markets w/ Disposal (per fixture)	1	800	812	824	836	849
Large Commercial Users	*	*	*	*	*	*
All other businesses not otherwise identified (per fixture)	0.65	520	528	536	544	552

* Rates are determined by using 85% of estimated annual water usage, dividing by 90,000 gallons, and multiplying by the single family residence cost ($800 for the initial charge, $812 as of July 1, 2007, $824 as of January 1, 2008, $836 as of July 1, 2008, $849 as of January 1, 2009).

City of Las Vegas Agenda Item No.: **56.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: CITY MANAGER
DIRECTOR: ELIZABETH N. FRETWELL ☐ **Consent** ☒ **Discussion**

SUBJECT:
ADMINISTRATIVE:

ABEYANCE ITEM – Discussion and possible action regarding the First Addendum to the Second Amendment to the Interlocal Cooperative Agreement Establishing the Clean Water Coalition and other matters related thereto – All Wards

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
The Clean Water Coalition (CWC) was established in 2002 for the purpose of designing, constructing, operating and maintaining the System of Conveyance and Operations Program (SCOP). Changes in the environment and the way wastewater is now treated have negated the need for SCOP. As such, the City believes that it is in best interests of the residents of Las Vegas that the City discontinue membership in the CWC. Discontinuation of the City's membership can occur in one of two ways. First, the Member Agencies can dissolve the CWC in its entirety, or second, the CWC can permit those Members that believe that it can provide the same services in a more cost-effective manner to withdraw without dissolving the CWC.

The City has presented this First Addendum to the other Member Agencies managers. In a nutshell, the First Addendum will permit any Member Agency to withdraw from the CWC upon sixty days notice to the CWC General Manager, and it will require the General Manager of the CWC to refund monies to the withdrawing Member in that Member's proportionate share of contribution to the CWC upon a Member's date of withdrawal.

RECOMMENDATION:
Approval

BACKUP DOCUMENTATION:
1. First Addendum to the Second Amendment to the Interlocal Cooperative Agreement Establishing the Clean Water Coalition dated January 4, 2007
2. Second Amendment to Interlocal Cooperative Agreement Establishing the Clean Water Coalition

FIRST ADDENDUM TO THE SECOND AMENDMENT TO THE INTERLOCAL COOPERATIVE AGREEMENT ESTABLISHING THE CLEAN WATER COALITION DATED JANUARY 4, 2007

This FIRST ADDENDUM TO THE SECOND AMENDMENT TO THE INTERLOCAL COOPERATIVE AGREEMENT ESTABLISHING THE CLEAN WATER COALITION DATED JANUARY 4, 2007 ("First Addendum") is dated this _____ day of _____, 2010 by and among the City of Las Vegas (the "City"), the City of Henderson ("Henderson"), the City of North Las Vegas ("NLV"), and the Clark County Water Reclamation District ("CCWRD") (formerly the Clark County Sanitation District), all of which are political subdivisions of the State of Nevada. The City, Henderson, NLV and CCWRD may hereinafter by referred to individually as a Party or a Member, or collectively as the "Parties" or "Members."

RECITALS

A. While each of the Members share a common environmental, economic and regulatory interest in the efficient and responsible collection, treatment, reuse and discharge of municipal effluent, one or more Members could find it to be more cost-effective to manage the collection, treatment, reuse and discharge of municipal effluent by using existing Member-owned wastewater treatment facilities.

B. However, Section 18.2 of the Second Amendment to the Interlocal Cooperative Agreement Establishing the Clean Water Coalition dated January 4, 2007, only permits the withdrawal of a Member upon "such terms and conditions as may be specified in an agreement of withdrawal executed by all Members." This subsection makes it extremely difficult for a Member to withdraw.

C. While the intent of subsection 18.2 was originally intended to make it difficult for a Member to exit the consortium of Members, the Members now realize in this difficult economic climate that a Member should not be required to remain a Member of the CWC unless it is in the interests of that Member's citizenry. One or more Members may decide that the fees required to remain a member of the CWC are not cost-effective, and that the savings achieved by withdrawing from the CWC could be passed back to that Member's citizenry through reductions in connection fees and monthly usage charges.

D. The Members now desire to append the Second Amendment to the Interlocal Cooperative Agreement Establishing the Clean Water Coalition dated January 4, 2007 (the "CWC Interlocal") to permit a Member to withdraw at will upon a period of required notice to the other Members. This First Addendum is meant to accomplish that desire.

. . .

. . .

NOW THEREFORE, based upon good and sufficient consideration, the Members have mutually agreed to the following:

1. Amended Language.

For purposes of this amendment, words deleted from the CWC Interlocal are explicitly shown with a ~~strike through~~ and words added to the CWC Interlocal are explicitly underlined. Words in plain text remain unchanged and effective.

2. The Members hereby amend Section V of the CWC Interlocal as follows:

Section V
Approval of Certain Matters by the Governing Boards of the Members

5.1 Except as provided in Subsection 5.2, the approval of the governing boards of each Member, in addition to action taken by the Board as required by this Amended Agreement, shall be required for the following actions:

(a) Approval and amendment of all Capital Improvement Plans.

(b) Approval and amendment of all Annual Operating Budgets and Annual Capital Budgets.

(c) Authorization to borrow money.

(d) Admission of new Members.

(e) Termination of this Agreement.

(f) Approval of an Annual Operating Plan or a Regional Water Quality Plan that will require a Member Agency to expend $100,000 per annum or more of its funds with respect to its operations.

5.2 After the date established by the Board pursuant to the provisions of Paragraph 12.2.1, the approval of the governing boards of each Member shall not be required with respect to items (b) ~~and (c)~~ set forth above in Subsection 5.1. ~~and items (b) and (c) set forth above in Subsection 4.7 shall no longer require unanimous consent of the representatives or alternates of all Board Members.~~

3. The Members hereby amend Subsection 12.1.3 of the CWC Interlocal as follows:

12.1.3 The CWC shall not, during any fiscal year, expend or contract to expend any money, or incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts appropriated in the annual budgets for any category of expenditure, unless such expenditure is specifically approved by a unanimous vote the Board.

4. The Members hereby amend Subsection 12.3 of the CWC Interlocal as follows:

12.3 Revenue Bonds. Upon a unanimous vote of the Board, the Board shall have the power and authority to issue revenue bonds, notes, and other obligations for the purposes and in accordance with the procedure and requirements set forth in NRS 277.0705 through 277.0755.

5. The Members hereby amend Subsection 12.4 of the CWC Interlocal as follows:

12.4 Other Indebtedness. Upon a unanimous vote of the Board, the Board shall have the power and authority to issue bonds, notes, and other indebtedness, and to participate in state and local bond banks as provided by law.

6. The Members hereby amend Subsection 14.3 of the CWC Interlocal as follows:

14.3 The funds of CWC shall be used to defend, indemnify, and hold harmless the CWC, its officers and employees, and any Member for actions taken within the scope of the CWC. Nothing herein shall limit the right of the CWC to purchase insurance to provide coverage for any of the foregoing. This indemnification shall inure to and be used to defend, indemnify, and hold harmless a Member after withdrawal of that Member from the CWC for any actions or omissions of the CWC during the withdrawing Member's tenure in the CWC.

7. The Members hereby amend Subsection 16.1 of the CWC Interlocal as follows:

16.1 Operating Member owned and operated Discharge facilities shall consist of all existing facilities of each Operating Member to the point of connection ("Point of Connection"), which shall be determined in each instance by the Board. All facilities, including monitoring and measuring equipment downstream of the Point of Connection, shall be owned and maintained by the CWC from and after the determination of the Point of Connection by the Board. Promptly, after the determination of the Point of Connection, each Operating Member shall transfer title to any facilities it may own downstream of the Point of Connection to the CWC, free and clear of all encumbrances, together with easements not less than 30 feet in width on either side of the centerline of such facilities, together with necessary access easements from public roads. Conveyance of title to any facilities, easements, real property, or any type or kind of equipment shall be approved by the governing body of the Member requested to make such a conveyance prior to any such conveyance.

8. The Members hereby amend Section XVIII of the CWC Interlocal as follows:

Section XVIII

Withdrawal or Termination

18.1 The CWC shall continue in existence until dissolved in accordance with terms of this Section.

~~18.2 A Member may withdraw from CWC on such terms and conditions as may be specified in an agreement of withdrawal executed by all Members.~~

18.~~3~~2 This Amended Agreement may be rescinded and the CWC terminated by a written agreement of termination executed by all Members except during the term of any outstanding indebtedness incurred by or at the request of the CWC or for which the CWC is otherwise responsible, unless such indebtedness is dealt with in a manner satisfactory to the holder or holders of such debt and satisfactory to all of the Members. This section does not apply to the opportunity for any Member to withdraw, as provided by subsection 18.4, below.

18.4~~3~~ On termination of the CWC, all of the assets of the CWC shall be disposed of in accordance with the above-referenced written agreement of termination.

18.4 Withdrawal of a Member. Notwithstanding 18.1 or 18.2, a Member may withdraw from the CWC and entirely terminate its relationship with the CWC for any reason, or no reason at all, upon sixty (60) calendar days written notice to the General Manager of the CWC.

The General Manager is hereby authorized and shall refund the withdrawing Member's proportionate share of the total of the CWC's cash and cash equivalents within seven (7) calendar days after the last day of the withdrawing Member's membership in the CWC, without the need for specific Board authorization as follows:

18.4.1 Refund of monies to a Withdrawing Member. A withdrawing Member is entitled to a refund of that Member's contribution to the CWC and the SCOP project on a based upon its proportionate total "amount of contribution" to the CWC. This total includes any and all monies provided to the CWC by a Member, specifically including any monies collected by the CWC that exceed the yearly budget for CWC operations.

For purposes of this subsection, the "amount of contribution" to the CWC is to be calculated upon the following percentages, which are equivalent to the total contributions by each Member into the CWC since the inception of the CWC. Upon withdrawal, each Member is entitled to a refund of monies in the following percentage of all cash or cash equivalents held by the CWC:

18.4.1.1	CCWRD	52%
18.4.1.2	City of Las Vegas	27%
18.4.1.3	City of Henderson	12%
18.4.1.4	City of North Las Vegas	9%

The General Manager may withhold from this required refund a withdrawing Member's proportionate share of the budgeted costs for day-to-day CWC operations for the remainder of the fiscal year in which the withdrawing Member terminates its membership in the CWC in the same proportion as indicated above.

As an example, if NLV was to terminate its relationship with the CWC, and there was a total of Sixty Five Million Dollars ($65,000,000.00) in cash and cash equivalents held by the CWC, and the operating budget for the CWC that fiscal year was Four Million Dollars ($4,000.000.00), and NLV terminated its relationship with the CWC with 6 months remaining in the fiscal year, NLV would be entitled to a 9% refund ($65M x 9% = $5,850,000.00), minus NLV's 9% share of that fiscal year's remaining operating costs for the CWC ($4M x 50% of the year x 9% = $180,000.00), for a total of $5,670,000.00.

18.4.2 Nothwithstanding the dispute resolution language at Section XX herein, any dispute between a withdrawing Member and the CWC regarding a withdrawing Member's refund shall not be forwarded for Board resolution or arbitration or mediation as provided by Section XX. If the General Manager fails to refund the necessary amount of money to a withdrawing Member as provided above, such withdrawing Member may immediately avail itself any judicial remedy available to it under Nevada law, including, but not limited to an action before the Eighth Judicial District Court, Clark County, Nevada.

18.4.3 Refund of Individual Connection Charges Pursuant to Law. For seven hundred-thirty (730) calendar days after the withdrawal of a Member from the CWC pursuant to this section 18.4, the CWC shall recognize any proper refund request for connection fees from a person within the jurisdiction of the withdrawing Member, provided that the withdrawing Member approved the refund of such connection fees pursuant to its municipal code, rules or regulations, whichever applies to such refund request.

9. CWC Interlocal Terms Remain Unchanged.

Except as explicitly appended by this First Addendum, the terms and provisions of the CWC Interlocal remain unchanged and effective as provided therein.

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10. Counterparts Authorized.

This First Addendum may be executed in counterparts, each of which will be an original with regard to any Member whose name appears thereon and all of which together will constitute one and the same First Addendum. Each Member shall deliver five (5) original executed copies to the City for distribution to the other Members and the General Manager of the CWC.

11. Condition to Effectiveness of First Addendum.

This First Addendum shall become effective upon the signatures of all Members and upon the signature of the Nevada Attorney General pursuant to NRS 277.140.

IN WITNESS WHEREOF, the parties here to have caused this agreement to be executed by their duly authorized representatives on the day and in the year first above written.

CITY OF LAS VEGAS

By: _____

OSCAR B. GOODMAN, Mayor

ATTEST:

_____

Beverly Bridges, MMC, City Clerk

Approved as to Form: _____

Deputy City Attorney

CLARK COUNTY WATER
RECLAMATION DISTRICT

By: _____

LARRY BROWN, Chairman

ATTEST:

_____

DIANA ALBA, County Clerk

Approved as to Form: _____

Deputy District Attorney

CITY OF HENDERSON

By:

_____

ANDY HAFEN, Mayor

ATTEST:

_____

Sabrina Mercadante, CMC, Acting City Clerk

Approved as to Form: _____

Deputy City Attorney

CITY OF NORTH LAS VEGAS

By:

_____

SHARI BUCK, Mayor

ATTEST:

_____

KAREN L. STORMS, CMC, City Clerk

Approved as to Form: _____

Deputy City Attorney

APPROVED AS TO FORM AND LEGALITY (NRS 277.140)
this _____ day of _____ 2010.

CATHERINE CORTEZ MASTO
NEVADA ATTORNEY GENERAL

By:_____

Title:_____

SECOND AMENDMENT TO
INTERLOCAL COOPERATIVE AGREEMENT
ESTABLISHING THE CLEAN WATER COALITION

This Second Amended Agreement ("Amended Agreement") is dated the 4th day of January, 2007, and is among the City of Las Vegas, City of Henderson, City of North Las Vegas, and the Clark County Water Reclamation District (formerly the Clark County Sanitation District), all of which are public agencies in the State of Nevada (the "Members").

RECITALS:

A. NRS 277.110 and 277.120 provide that any one or more public agencies may enter into agreement with any one or more other public agencies for the joint exercise of any power, privilege or authority exercised or capable of exercise by any one or more of the public agencies or for joint or cooperative action by the public agencies and may create a separate legal or administrative entity to conduct the joint or cooperative undertaking.

B. Each of the Members share a common environmental, economic and regulatory interest in the efficient and responsible collection, treatment, reuse and discharge of municipal Effluent.

C. The Members have a history of cooperatively working on programs and projects of common benefit and interest.

D. On November 20, 2002, the City of Las Vegas, the City of Henderson, and the Clark County Sanitation District entered into an Interlocal Cooperative Agreement ("Agreement") which formed the Clean Water Coalition, a political subdivision of the State of Nevada pursuant to NRS 277.110 and 277.120 for the purpose of planning, permitting, designing, constructing, and operating a Systems Conveyance and Operations Program (SCOP) to collect and convey treated Effluent from the respective Treatment Facilities of each agency to Lake Mead.

E. On the 8th day of September, 2006, the Interlocal Cooperative Agreement dated November 20, 2002 was amended generally to add the City of North Las Vegas as a Member and to provide for establishment of Regional Fees.

F. This Second Amended Interlocal Cooperative Agreement provides for the preparation, review, approval and implementation of Regional Water Quality Plans and Annual Operating Plans.

NOW, THEREFORE, the Members agree as follows:

Section I
CWC Created

1.1 There was created a legal entity known as the "Clean Water Coalition" ("CWC") by interlocal agreement effective November 20, 2002, by and between the Clark County Sanitation District (now known as the Clark County Water Reclamation District), the City of Henderson, and the City of Las Vegas.. The November 20, 2002 Interlocal Cooperative Agreement was amended on September 8, 2006. This Second Amended Interlocal Cooperative Agreement completely restates the Interlocal Cooperative Agreement in its entirety. The CWC is established pursuant to the provisions of Chapter 277, NRS, is a political subdivision of the State of Nevada, and is an entity separate from its members pursuant to NRS 277.074 and NRS 277.120.

Section II
Conferred and Prohibited Functions of CWC

2.1 **Conferred Functions:** To undertake implementation of all aspects of the Systems Conveyance and Operations Program ("SCOP") as may be approved by the Governing Boards of each Member and by the Board of the CWC as provided in this Amended Agreement.

2.1.1 SCOP means the planning, designing, financing, construction, and operation and maintenance of a regional system for the conveyance of Effluent from existing and future Wastewater Treatment Facilities, to the ultimate outfall location(s) returning Effluent to the Colorado River system or other locations as the CWC Members approve. The regional system may include the following:

(a) Physical facilities such as pipelines, tunnels, energy recovery facilities, and all appurtenant structures.

(b) Real and personal property, including leases of the same, rights-of-way permits, and licenses associated with the regional system facilities, including environmental impact statements.

(c) Any other regional system facilities associated with the treatment and conveyance of Effluent, downstream of the discharge point of the Member's treatment facilities.

(d) Any other such items as listed in Paragraphs (a) through (c) of this section 2.1.1 that the Members may include within the SCOP.

2.1.2 To manage the Effluent flowing through CWC facilities.

2.1.3 To enter into contracts for the sale or lease of power produced from energy recovery facilities which may be constructed as part of the CWC Facilities.

2.1.4 To prepare, review, approve and implement Regional Water Quality Plans with respect to Effluent produced by the Treatment Facilities of each Operating Member.

2.2 **Prohibited Functions:** Any function which is not a conferred function is a prohibited function.

2.2.1 Except to the extent permitted by applicable law, the CWC shall not perform any function or exercise any power that is not performable or exercisable by at least one of the Members.

2.2.2 Except as provided herein with respect to Members, nothing in this Agreement is intended to supersede or restrict the jurisdiction of any federal, state, or local public entity.

2.2.3 CWC shall not perform any function that is being performed by a Member without written consent of such Member.

Section III
Powers

3.1 **Powers.** In furtherance of the Conferred Functions, and subject to the limitations thereof, the CWC shall have the power to undertake any of the following:

(a) To prepare, review, approve and implement Regional Water Quality Plans and adopt and amend Annual Operating Plans and procedures for all CWC activities.

(b) To adopt and amend Capital Improvement Plans.

(c) To adopt and amend Capital Budgets and Operating Budgets.

(d) To hire personnel, including legal counsel, and fix salaries and compensation for such personnel.

(e) To contract for the services of engineers, attorneys, planners, financial, and other consultants.

(f) To have and exercise the power of eminent domain throughout Clark County, Nevada.

(g) To contract with any Member or other public agency for the provision of services to or by the CWC.

(h) To enter into such contracts for design, construction, and other work as necessary to carry out its Conferred Functions and to exercise its powers.

(i) To open and maintain bank accounts and to deposit funds therein and withdraw funds therefrom.

(j) To sue and be sued in its own name.

(k) To acquire, outright or through installment purchase contracts, possess, own, lease, encumber, and dispose of outright or through installment sales contracts, real and personal property, including easements and rights of way.

(l) To obtain state, federal, or local licenses, permits, grants, loans, or aid from any agency of the United States, the State of Nevada, or any other public or private entity necessary or convenient for the performance of any Conferred Function or the exercise of any of its powers.

(m) To finance the design, construction, operation, maintenance and replacement of all facilities which may be needed to carry out the Conferred Functions of this Agreement, including the establishment of equitable funding arrangements for all aspects of the development, construction, and operation of the SCOP, with full power to borrow money, incur debts, liabilities, and obligations, including the issuance of bonds, notes, or other evidences of indebtedness.

(n) To perform all other acts necessary or convenient for the performance of any Conferred Function or the exercise of any of its powers.

(o) To enter into contracts to produce revenue for the CWC.

(p) To assess Members for their agreed on share of administrative, operation, and maintenance and capital costs of the CWC.

(q) To establish and adjust regional sewer connection charges and/or regional sewer user charges to defray all or any portion of the costs of the CWC.

Section IV
Governing Board of CWC

4.1 The business and affairs of CWC shall be conducted and managed by a governing board, which shall be termed the Management Board ("Board"), which shall be subject to Nevada law pertaining to open meetings, if applicable.

4.2 The Board shall consist of one (1) representative from each Member signing this Amended Agreement, together with one (1) alternate representative from each Member. Each Member shall promptly designate its representative and alternate to the Board. Each representative and alternate shall hold office until the Member appointing such representative or alternate selects a successor and notifies the Board in writing of each successor's appointment. In the absence of a Member's representative, that Member's

alternate shall act as its representative. A Member's representative and alternate shall be members of the governing board of such Member.

4.3 The officers of CWC shall consist of a Chairman, a Vice Chairman, and Secretary who shall be Members of the Board. The Board shall, at a meeting of the Board, which shall be held in December each year or at the next Board meeting if no meeting is held in December, elect the Chairman, Vice Chairman, and Secretary who shall serve until their successors are chosen. In the event an officer's appointment to the Board is terminated by the Member designating such officer, the Board shall select a replacement officer at its next meeting.

4.4 The Chairman shall conduct the meetings of the Board or, in his absence, the meetings shall be conducted by the Vice Chairman. The Secretary shall be responsible for keeping accurate minutes of all meetings of the Board.

4.5 The time and place of regular meetings of the Board shall be determined by the Board, but such meetings shall be held at least every three (3) months. Any member of the Board may call a meeting of the Board, provided each member and alternate is given at least seven (7) working days' written notice and notice in accordance with Nevada's open meeting law. The Members of the Board may waive notice in writing or by attendance at a meeting.

4.6 A quorum for the transaction of business by the Board shall be present if seventy-five percent (75%) of the Members are represented by their respective representatives or alternates.

4.7 The following actions of the Board require that there be unanimous consent of the representatives or alternates of all the Members:

(a) Approval and amendment of all Capital Improvement Plans.

(b) Approval of all Annual Capital Budgets and Annual Operating Budgets.

(c) Authorization to borrow money.

(d) Admission of a new member to the CWC.

(e) Termination of this Agreement.

(f) Dispute resolution pursuant to Section XX of this Amended Agreement.

(g) Determining the point of connection between CWC Facilities and new or additional facilities, which introduce additional Effluent into CWC's Facilities.

(h) Approval of Regional Water Quality Plans and Annual Operating Plans and amendments thereto.

4.8 All other action of the Board shall be taken by majority vote of the Members of the Board.

4.9 The CWC shall notify each Member in writing pursuant to Section XXI of any proposed increase in Regional Fees not less than thirty (30) days prior to the Board meeting at which such increase is to be considered.

4.10 The Board may adopt Rules for conduct of the business of the Board. Such Rules shall include an obligation on each representative to submit information on a timely basis, as necessary, for annual or more frequent approvals of Operating Plans and Budgets.

Section V
Approval of Certain Matters by the Governing Boards of the Members

5.1 Except as provided in Subsection 5.2, the approval of the governing boards of each Member, in addition to action taken by the Board as required by this Amended Agreement, shall be required for the following actions:

(a) Approval and amendment of all Capital Improvement Plans.

(b) Approval and amendment of all Annual Operating Budgets and Annual Capital Budgets.

(c) Authorization to borrow money.

(d) Admission of new Members.

(e) Termination of this Agreement.

(f) Approval of an Annual Operating Plan or a Regional Water Quality Plan that will require a Member Agency to expend $100,000 per annum or more of its funds with respect to its operations.

5.2 After the date established by the Board pursuant to the provisions of Paragraph 12.2.1, the approval of the governing boards of each Member shall not be required with respect to items (b) and (c) set forth above in Subsection 5.1 and items (b) and (c) set forth above in Subsection 4.7 shall no longer require unanimous consent of the representatives or alternates of all Board Members.

Section VI
Fiscal Year

6.1 The fiscal year of CWC shall be July 1 through June 30.

Section VII
Principal Office

7.1 The principal office of CWC shall be established by the Board.

Section VIII
Additional Members

8.1 In the event an entity other than the Members desires to become a Member ("New Member") of the CWC, such entity may become a Member on such terms and conditions as the Board shall prescribe, provided that the terms and conditions shall include, without limitation, the following provisions:

(a) That the NPDES permits of the Members will not be adversely affected by the proposed New Member using CWC Facilities.

(b) That the proposed New Member will assume its pro rata share of existing financial obligations of CWC in a manner acceptable to the Members. In the event each Member is jointly and severally liable for certain financial obligations of the CWC, the proposed New Member shall also assume joint and several liability in like manner as the existing Members.

(c) That the proposed New Member shall execute a copy of this Amended Agreement and all amendments hereto and shall agree to be bound by all provisions hereof.

(d) That the proposed New Member shall, concurrently with its execution of this Amended Agreement and all amendments hereto, pay its proportionate share of all cash obligations of the Members for the then current period.

(e) Any provision which may be appropriate as determined by the Board concerning purchase of an equity position in CWC.

8.2 Alternatively, in lieu of admitting an entity as a New Member, the Board may elect to accept such entity's Discharge through the CWC Facilities on such terms as the Board shall determine and for such charges as the Board shall determine, in its sole discretion, taking into account the Annual Capital Budget obligations, the Annual Operating Budget requirements, debt service, and any other matters the Board deems relevant. Any action by the Board pursuant to this Section shall include the provisions of Subparagraph (a) of Subsection 8.1, above.

Section IX
General Manager

9.1 The General Manager shall be the chief administrative officer of the CWC, shall be appointed by and serve at the pleasure of the Board, and shall be responsible to the Board for the proper and efficient administration of the CWC.

9.2 The Board shall review the performance and compensation of the General Manager annually.

9.3 Subject to the direction by the Board, and to such requirements as the Board may impose, the General Manager shall have the power:

(a) To plan, organize, and direct all CWC activities;

(b) Subject to law, to appoint and remove CWC employees;

(c) To enter into contracts on behalf of the CWC but only as approved by the Board for contracts which obligate the CWC to expend the sum of $25,000 or more; and

(d) To take such action and authorize such expenditures as specifically authorized by the Board.

Section X
Water Rights

10.1 Each Operating Member holds or has applied to the State Engineer for primary permits which cover the Discharge from their respective Treatment Facilities. Accordingly, it is the intent of the parties that each Operating Member shall own its proportionate share of the combined Discharge through the CWC Facilities subject to the provisions of this Amended Agreement until such time as the same is discharged into the Colorado River, at which time it is understood that the Discharge constitutes return flow to the river for which the State of Nevada is entitled to credit from the United States Secretary of Interior under existing contracts.

Section XI
Electric Energy and Other Revenue

11.1 Revenues received by the CWC from any source, including its own electrical energy production, shall be applied to the obligations and benefit of the CWC, as determined by the Board, and shall not inure to the benefit of any particular Member or Members or other entity.

Section XII
Fiscal Matters

12.1 **Annual Budgets.** Unless otherwise provided by law, tentative Annual Operating Budgets and Annual Capital Budgets shall be prepared for each ensuing fiscal year on or before March 15 with the final annual budgets being adopted on or before June 1 of each year.

12.1.1 The annual budgets shall be prepared in a line item format.

12.1.2 All Annual Operating Budgets and Annual Capital Budgets shall include all repayment obligations and long and short term contract obligations, which become payable during the period covered by such budgets.

12.1.3 The CWC shall not, during any fiscal year, expend or contract to expend any money, or incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts appropriated in the annual budgets for any category of expenditure, unless such expenditure is specifically approved by the Board.

12.2 **Assessment and Contributions for Operating and Capital Expenses.**

12.2.1 Until Regional Fees are in place to provide funding for CWC activities, the financial obligations of the CWC with respect to all Annual Operating Budgets and All Annual Capital Budgets shall be satisfied by the Members in the following percentages:

City of Las Vegas	30%
Clark County Water Reclamation District	46%
City of Henderson	14%
City of North Las Vegas	10%

After the date Regional Fees are in place and are providing funding for the CWC activities, including operating costs, debt reserves and debt funding, as such date is determined by the Board, the obligations of the Members to pay the costs of the CWC based on the percentages set forth in this paragraph shall cease.

12.2.2 Regional Fees.

12.2.2.1 Initial sewer connection charges were assessed at $400 per Equivalent Residential Unit (ERU), effective October 1, 2006. The CWC ERU charges are as defined within Attachment 1. Sewer connection charges will increase by 1.5% every six months, beginning July 1, 2007, and continue through January 1, 2009.

12.2.2.2 Initial sewer usage charges will be assessed at $0.105 per thousand gallons of Influent. Influent data will be used as reported to the Clark County Sewage and Wastewater Advisory Committee (SWAC) or as otherwise agreed to by the Board. Usage charges will be effective July 1, 2007.

12.2.2.3 After January 1, 2009, connection and usage charges will be evaluated periodically to ensure adequate revenue has been generated. Any adjustments to charges will be approved by the CWC Board.

12.2.2.4 Each Member shall determine, in its sole judgment, the method it chooses to raise funds needed to satisfy its obligations hereunder.

12.2.2.5 Member agencies may, at their discretion and with the concurrence of the CWC, enter into separate agreements with the CWC for the

purpose of specifying the manner in which the Member agency will collect funds for the purpose of fulfilling its ratepayers' obligations to fund the SCOP project providing, however, that the terms of the separate agreement are consistent with the provisions of this agreement.

12.2.3 The dates for payments to be made by the Members in satisfaction of their obligations hereunder shall be as determined by the Board. Each member shall pay in full, when due, its obligations herein agreed to be paid. Each Member shall be liable to the CWC and every other Member to pay its respective share of Annual Operating and Annual Capital Budgets and any other obligations assessed against the Members in accordance with this Amended Agreement.

12.2.4 In the event, for whatever reason, insufficient funds are available to the CWC to satisfy all of its annual obligations (other than by reason of the default of a Member in paying its allocated share of such annual obligations), then such deficiency shall be assessed by the CWC against all Members: (a) in the same percentages set forth in Paragraph 12.2.1, if such deficiency occurs prior to the date established by the Board that Regional Fees are providing funding for CWC activities, or (b) in proportion to each Member's contribution to CWC funding obligations from Regional Fees, for the twelve (12) months prior to the month the deficiency occurs, if the deficiency occurs after the date that Regional Fees are providing funding for CWC activities as determined by the Board pursuant to Paragraph 12.2.1. If the deficiency arises before the expiration of twelve (12) months from the date established by the Board, the Members contributions for the time period which is available shall be annualized. The CWC shall send a statement to each Member for its apportioned share of the deficiency immediately upon exercising its rights pursuant to this Subsection. Each Member shall pay the amount of the deficiency apportioned to it within 45 days after receipt of the statement pursuant to Section XXI hereof. The CWC may continue to apportion deficiencies to Members pursuant to this Subsection for so long as the deficiency exists. The Board may establish reserves and procedures for determining available funds.

12.2.5 The Board, in establishing Annual Operating Budgets and Annual Capital Budgets, may establish such reserves as deemed appropriate by the Board as may be required by any debt instrument of the CWC, or as may be required by the state or county bond banks.

12.2.6 Contributions or advances of public funds and of personnel, supplies, equipment, or property may be made to the CWC by any Member for any of the purposes of this Amended Agreement, with the consent of the Board. Any such advance may be made subject to repayment as agreed to by the Member and the CWC.

12.3 **Revenue Bonds.** The Board shall have the power and authority to issue revenue bonds, notes, and other obligations for the purposes and in accordance with the procedure and requirements set forth in NRS 277.0705 through 277.0755.

12.4 **Other Indebtedness.** The Board shall have the power and authority to issue bonds, notes, and other indebtedness, and to participate in state and local bond banks as provided by law.

12.5 **Accounting Procedures.** Complete books and accounts shall be maintained for the CWC in accordance with generally accepted accounting principles and standards, including compliance with all applicable statutes and regulations. Unless otherwise provided by law, the CWC may, in accordance with its needs, maintain funds and account groups pursuant to NRS 354.604.

12.6 **Audit.** The CWC shall provide for an annual audit of all funds and accounts pursuant to NRS 354.624. The audit must cover the business of the CWC during the full fiscal year. The audit shall be made by a public accountant, certified or registered, or by a partnership or professional corporation registered under the provisions of NRS Chapter 628. Such financial audit shall be conducted in accordance with generally accepted auditing standards, including comment on compliance with all applicable statutes and regulations, recommendations for improvements, and any other expression of opinion on any financial statements. The audit shall be completed and copies of the audit report provided to the Members not later than five (5) months after the close of the fiscal year for which the audit is conducted. The CWC shall act upon any recommendations of the report within three (3) months after receipt of the report, unless prompter action is required, pursuant to NRS 354.624.

12.7 **Reimbursement.**

12.7.1 No person, including Members, may receive reimbursement from the CWC for expenditures on behalf of the CWC in excess of $25,000, unless the Board approves such reimbursement.

12.7.2 No person, including Members, may receive reimbursement from the CWC for expenditures on behalf of the CWC for amounts equal to or less than $25,000, unless such reimbursement is approved in writing by the General Manager.

12.8 **Audit of Payment of Regional Fees to the CWC.**

12.8.1 All payments of Regional Fees to the CWC by the Members shall be accompanied by sufficient information to enable the CWC to determine the basis of the Member's calculation of the Regional Fees being paid.

12.8.2 The CWC, in its sole discretion may audit the books and records of any Member to verify the accuracy of payments of Regional Fees made by such Member to the CWC. All audits shall be conducted during regular business hours on not less than fourteen (14) working days' notice and shall be conducted pursuant to generally accepted auditing standards.

Section XIII
Rights and Obligations of Members

13.1 **Rights.** All Members shall have all such rights as are set forth in this Amended Agreement. Specifically and subject to the terms of this Amended Agreement, all Members shall have the right to have the treated Effluent from the Wastewater generated within their respective jurisdictional boundaries or service territory, transported through the CWC Facilities up to the capacity of such facilities, whether the Member is an Operating Member or is a Member who contracts for its Wastewater to be treated by an Operating Member or Members.

13.2 **Obligations.** All Members are obligated to comply with the terms of this Amended Agreement and are bound by the provisions hereof. Specifically, and subject to the terms of this Amended Agreement, all Members are obligated to pay to the CWC, when due as determined by the Board, their share of the CWC costs whether based on a fixed and agreed percentage or based on Regional Fees. Each member is further specifically obligated to accurately determine the basis for calculating the Regional Fees to be paid by it to the CWC.

Section XIV
Liabilities of the CWC

14.1 The debts, liabilities, and obligations of CWC shall be the debts, liabilities, and obligations of CWC alone and not any of the Members.

14.2 The Board shall provide for the timely payment of all liabilities and obligations of the CWC as the same may accrue from time to time.

14.3 The funds of CWC shall be used to defend, indemnify, and hold harmless the CWC, its officers and employees, and any Member for actions taken within the scope of the CWC. Nothing herein shall limit the right of the CWC to purchase insurance to provide coverage for any of the foregoing.14.4 CWC may, with Board approval, assume contract obligations of any Member accruing after November 20, 2002, pursuant to contracts existing on such date which pertain to the planning and design of CWC Facilities and the preparation of an environmental impact statement therefore.

Section XV
Discharge Standards

15.1 Each Operating Member shall adhere to the discharge standards set forth in its discharge permit issued by the Nevada Division of Environmental Protection ("NDEP"). The point of measurement of various elements and flows that are the subject of the discharge permit shall be at the point designated in each Operating Member's permit.

15.2 It is the intent of the parties that each Operating Member or other entity discharging Effluent into the CWC Facilities is responsible for maintaining the required standards for each Operating Member's or entity's Discharge and that there shall be no independent

obligation on CWC to treat Effluent nor to obtain its own NPDES or equivalent discharge permit from the NDEP or from any other governmental agency, unless otherwise required by law.

15.3 Regional Water Quality Plans approved by the Board may contain discharge goals which are more strict than the discharge standards set forth in the Operating Members discharge permits issued by NDEP.

Section XVI
Operating Member Facilities – CWC Interface

16.1 Operating Member owned and operated Discharge facilities shall consist of all existing facilities of each Operating Member to the point of connection ("Point of Connection"), which shall be determined in each instance by the Board. All facilities, including monitoring and measuring equipment downstream of the Point of Connection, shall be owned and maintained by the CWC from and after the determination of the Point of Connection by the Board. Promptly, after the determination of the Point of Connection, each Operating Member shall transfer title to any facilities it may own downstream of the Point of Connection to the CWC, free and clear of all encumbrances, together with easements not less than 30 feet in width on either side of the centerline of such facilities, together with necessary access easements from public roads.

16.2 All new or additional facilities which may in the future be designed to discharge into the CWC Facilities shall be owned and maintained by the Operating Member or entity whose Effluent is being discharged, to the Point of Connection with the CWC Facilities, at (or before) which point the Discharge shall be monitored and measured. The Point of Connection shall be determined in each instance by the Board.

Section XVII
Operation and Maintenance of Facilities

17.1 The operation and maintenance of CWC Facilities and equipment shall be conducted and/or administered as designated by the Board. The Board may enter into agreements with an Operating Member or other person or entity to act as the Operating Agent for the CWC.

17.2 During the fiscal year preceding the fiscal year when it is anticipated by the General Manager that CWC Facilities will be in operation, the General Manager will submit to the Board not later than March 15, a Tentative Operating Plan. The Board shall approve an Operating Plan for the next fiscal year not later than June 1. Thereafter, Tentative Operating Plans shall be submitted by the General Manager to the Board by March 15 each year and the Board shall approve such plans for the next fiscal year not later than June 1. The Operating Plan shall include relevant provisions of the Regional Water Quality Plan, as approved by the Governing Board of the CWC, as well as relevant provisions contained in the Boulder Basin Adaptive Management Plan or other related plans.

17.3 The Operating Members shall cooperate with the CWC and its Operating Agent with respect to Discharge from their respective Treatment Facilities into the CWC Facilities or into the Las Vegas Wash. Subject to the operating constraints, if any, of the respective Treatment Facilities, it is agreed that the CWC, consistent with the approved Operating Plan, shall be responsible for determining at all times the amount of Effluent from each Operating Member's Treatment Facilities that will be discharged to the Las Vegas Wash and the amount that will be introduced into the CWC Facilities. The Operating Members shall cooperate with the CWC with respect to operation of gates, pumps, and valves and other equipment above the Point of Connection necessary to direct the flow of Effluent.

17.4 The Operating Members shall follow the Operating Plan with respect to Effluent volumes and Effluent quality from their respective Treatment Facilities as may be necessary to (a) meet water quality objectives, and (b) to maximize power production from the CWC power plant during peak power usage periods and as may be necessary for other operational needs or objectives of the CWC.

17.5 Operating Members shall implement applicable provisions of the Annual Operating Plan approved by the Board, by modifying, if necessary, their respective treatment procedures so as to ensure that such Plan is followed

17.6 To the extent that implementation of actions required by the Annual Operating Plan may cause the Member Agencies to construct facilities or expand their operations beyond their own respective capital or operating plans, the CWC may develop implementation and funding plans, which will require approval of the CWC Governing Board.

17.7 Nothing in this Amended Agreement shall prohibit or interfere with an Operating Member's right to contract for reuse of Effluent from its Treatment Facility prior to such Effluent reaching the Point of Connection.

17.8 During construction of the CWC Facilities, each Operating Member shall cooperate with the CWC as may be necessary with respect to diverting Effluent around construction sites and other necessary actions for the construction to commence and proceed efficiently and smoothly to completion, including providing temporary space for the storage of construction materials and equipment, provided that such cooperation will not interfere with the efficient operation of the Treatment Facility.

Section XVIII
Withdrawal or Termination

18.1 The CWC shall continue in existence until dissolved in accordance with terms of this Section.

18.2 A Member may withdraw from CWC on such terms and conditions as may be specified in an agreement of withdrawal executed by all Members.

18.3 This Amended Agreement may be rescinded and the CWC terminated by a written agreement of termination executed by all Members except during the term of any

outstanding indebtedness incurred by or at the request of the CWC or for which the CWC is otherwise responsible, unless such indebtedness is dealt with in a manner satisfactory to the holder or holders of such debt and satisfactory to all of the Members.

18.4 On termination of the CWC, all of the assets of the CWC shall be disposed of in accordance with the above-referenced written agreement of termination.

Section XIX
Delinquencies

19.1 In the event a Member defaults in paying when due any obligation required to be paid to the CWC by such Member under this Agreement, which default continues for more than 60 days from the time such obligation is to be paid, the Board may require the payment of such delinquency by the non-defaulting Members (a) in the same percentages set forth in Subsection 12.2.1, calculated without taking into account the percentage of the defaulting Member, if the delinquency occurs prior to the date established by the Board that Regional Fees are providing funding for CWC activities or (b) in proportion to each member's contribution to CWC funding obligations from Regional fees for the twelve (12) months prior to the month for which the delinquency has occurred, calculated without taking into account the obligations of the defaulting Member, if the deficiency occurs after the date that Regional Fees are providing funding for CWC activities as determined by the Board pursuant to Subsection 12.2.1. If the delinquency occurs before the expiration of twelve (12) months from the date established by the Board, the Member's contributions for the time period which is available shall be annualized. The Board shall send each non-defaulting Member a statement in accordance with Section XXI promptly on action of the Board pursuant to this Subsection. Each non-defaulting Member shall pay the statement within 45 days after receiving the statement. The CWC may continue to apportion delinquencies pursuant to this Subsection for so long as the defaulting Member remains in default for 60 days or more. Non-defaulting Members making payments pursuant to this Subsection shall be subrogated to the rights of the CWC and shall have a right of direct reimbursement against the defaulting Member.

19.2 **Refund of Section 19.1 Payments.** If a defaulting Member pays its delinquent amounts owed directly to the CWC instead of directly reimbursing the non-defaulting Members for their payment of the delinquent amounts owed pursuant to Subsection 19.1, the CWC shall distribute said payment to the non-defaulting Members, subject to the provisions of Subsection 19.5 in the same proportions that they made payment to the CWC of the delinquent amounts. Any accrued interest on the delinquent amounts paid by the defaulting Member shall be distributed to the non-defaulting Members in same proportion as the reimbursement payments. If a non-defaulting Member has been wholly reimbursed directly by a defaulting Member, it shall not receive any payments under this Subsection from said defaulting Member. If only partial reimbursement has been made directly by a defaulting Member, then payment under this Section to the non-defaulting Member shall be limited to the balance owed.

19.3 **Loss of Voting Rights.** If a Member is delinquent for more than 60 days in making payment to the CWC of any amount due under this Amended Agreement, during the

period of such delinquency (i) the Board Member and alternate appointed by such Member to the CWC Board shall not be entitled to vote on any matter coming before the Board, (ii) the governing board of the defaulting Member shall have no right of approval pursuant to the provisions of this Amended Agreement, and (iii) during the time of delinquency, any provision of this Amended Agreement requiring the approval of the Board Member or alternate of the defaulting Member shall be determined without reference to the required vote of such delinquent Member.

19.4 **Late Charges.** The Board shall have the right to establish late charges to be paid by any Member which is delinquent by more than 60 days in any charge or other payment due under this Agreement.

19.5 **Crediting of Delinquent Payments.** Payments to the CWC by a defaulting Member of delinquent amounts owed under this Amended Agreement shall be credited (i) first, to interest and late charges then owing, (ii) second, to the amounts then due and owing to the CWC, applying such payments first to the most recent amounts then due and owing and (iii) third, to the amounts owed to the non-defaulting Members for reimbursement of delinquent amounts paid on behalf of the defaulting Member pursuant to Subsection 19.1 and 19.2.

19.6 **Statement of Late Charges and Interest.** Each month the CWC shall send a statement of late charges and interest owed to the defaulting Member. Payment shall be due within 45 days after receipt of the statement. Receipt shall be presumed two days after mailing if sent in accordance with Section XXI; otherwise, receipt will be presumed five days after the date on the statement if sent by regular mail.

19.7 **Interest.** All delinquent payments shall bear interest from the date the payment was due at the prime rate most recently published in the Western Edition of the Wall Street Journal plus 2 two percent per annum.

Section XX
Dispute Resolution

20.1 **Dispute Resolution by Board Action.**

20.1.1 Except for delinquencies covered by Section XIX of this Amended Agreement, all disputes between the Members to this Amended Agreement or between a Member and the CWC arising out of or relating to the performance of this Amended Agreement, or the breach of this Amended Agreement, shall first be presented for resolution to the Board in accordance with this Section. The unanimous decision of the Board shall be binding on all Members.

20.1.2 **Filing**. A request to the Board for dispute resolution must be submitted in writing, setting forth the parties to the dispute, the allegations regarding the dispute, and be accompanied by any supporting documentation.

20.1.3 **Notice**. Notice of the written request for Board dispute resolution and the written request shall be served by the party seeking dispute resolution on the other party or parties within five (5) working days after the written request is filed with the Board. The requesting party shall file proof of service with the Board within three (3) days of service.

20.1.4 **Response.** The responding Party or the General Manager, if the dispute is with the CWC, may file its response with the Board and serve a copy on the requesting Member within five (5) working days of receipt of the requesting Member's allegations. The responding party or the General Manager, as the case may be, shall file proof of service with the Board within three (3) days of service.

20.1.5 **Hearing**. The Board shall schedule a dispute resolution hearing not later than fifteen (15) days after proof of service of a notice of written request for dispute resolution has been filed with it.

20.2 **Dispute Resolution by Arbitration or Mediation.**

20.2.1 **Arbitration**. Should the Board not be able to reach a unanimous decision on a dispute submitted to it for resolution pursuant to Subsection 20.1, any person who is a party to the dispute may submit the dispute for arbitration in accordance with this Section.

20.2.2 **Rules.** All disputes submitted to arbitration pursuant to Paragraph 20.2.1 shall be decided by arbitration in accordance with the Arbitration Rules of the Nevada Arbitration Association or the American Arbitration Association then existing, subject to any of the mandatory provisions of the Nevada Uniform Arbitration Act of 2000 as set forth at NRS 38.206 to NRS 38.248, inclusive or subsequent amendments thereto. Each party shall pay its own attorney fees and other costs. Unless the Arbitrator orders otherwise, the Arbitrator's fees and court reporter fees and other costs of arbitration shall be divided equally among the parties to the dispute.

20.2.3 **Right of Joinder.** Any arbitration arising out of or relating to this Amended Agreement may include, by consolidation, joinder, or in any other manner, any additional person not a Member to this Amended Agreement if so requested by a Member. Any consent to arbitration involving an additional person or persons shall not constitute consent to arbitration of any dispute not described therein.

20.2.4 **Binding.** In the event arbitration is the designated forum, such arbitration shall be binding.

20.2.5 **Notice.** In order to be able to arbitrate any dispute between the Members, or between one or more Members and the CWC, written notice thereof must be given by the Member or the CWC requesting arbitration to the other Member or the CWC within fifteen (15) days after the Board has failed, pursuant to Subsection 20.1, to reach a unanimous decision regarding such dispute.

20.2.6 **Waiver.** The filing of the aforementioned notice of claim shall preserve that Member's or the CWC's right to arbitration, but shall not obligate the Member or the CWC to proceed with arbitration. In the event that the Member or the CWC requesting arbitration desires to proceed with arbitration, a written demand for arbitration shall be filed with the American Arbitration Association or the Nevada Arbitration Association within sixty (60) days after the above notice of arbitration, and the failure to make such demand shall forever bar such dispute from being arbitrated.

20.2.7 **Mediation.** By mutual written consent, in addition to the remedy of arbitration, the Members or the CWC may endeavor to settle the dispute in question by mediation in accordance with the then current mediation rules of the Nevada Arbitration Association, the American Arbitration Association, or other mediation service agreed to by the Members and if applicable, the CWC. Such mediation may occur at any time, including prior to the date that hearing may have been scheduled for arbitration. If a written request for mediation arises prior to the expiration of the sixty (60) days notice requirement set forth above, then such time period shall be tolled (i) for a period of ten (10) days while the request is agreed to or denied, or (ii) if the request for mediation is agreed to, then until completion of the mediation.

Section XXI
Notice

21.0 All notices under this Amended Agreement shall be in writing and shall be deemed to be delivered on the earlier to occur of (i) the date of actual receipt of the Notice (regardless of how it is delivered), and (ii) whether or not actually received, two days after the notice has been deposited in the United States mail, postage paid, registered or certified mail, return receipt requested, addressed to the Members or CWC, as the case may be, at the addresses set forth below.

To Members:

City Manager
City of Las Vegas
400 Stewart Avenue
Las Vegas, Nevada 89101

City Manager
City of Henderson
240 Water Street
Henderson, Nevada 89015

General Manager
Clark County Water Reclamation District
5857 E. Flamingo Road
Las Vegas, Nevada 89122

City Manager
City of North Las Vegas
2200 Civic Center Drive
North Las Vegas, Nevada 89030

To CWC: General Manager
Clean Water Coalition
150 N. Stephanie St, #130
Henderson, Nevada 89074

21.1 Any address in this Section may be changed by furnishing to the CWC and all other Members a change of address in writing.

Section XXII
Miscellaneous Provisions

22.1 **Other Agreements Superseded.** This Amended Agreement constitutes the entire agreement and understanding of the Members hereto with respect to the subject matter contained in this Amended Agreement, and supersedes all other oral and written negotiations, agreements, and understandings of every kind. The Members understand, agree, and declare that no promise, warranty, statement, or representation of any kind whatsoever, which is not expressly stated in this Amended Agreement has been made by any Member hereto or its officers, employees, or other agents to induce execution hereof.

22.2 **Duration.** This Amended Agreement shall be effective when approved by the governing boards of all the Members and the condition of Section XXIV has been satisfied ("Effective Date") and shall continue in force and effect until this Amended Agreement is rescinded and the CWC is terminated as provided in Section XVIII.

22.3 **Applicable Law.** This Amended Agreement shall be interpreted under the laws of the State of Nevada including, but not limited to, Chapters 41 and 277 of the Nevada Revised Statutes.

22.4 **Amendment.** This Amended Agreement may be amended by prior action taken by the governing board of each Member and upon any required approval given, or deemed to be given, by the Attorney General of Nevada.

22.5 **Assignment; Binding on Successors.** Except as otherwise provided in this Amended Agreement, the rights and duties of the Members may not be assigned or delegated without the written consent of all Members. Any attempt to assign or delegate such rights or duties in contravention of this Subsection shall be null and void. Any approved assignment or delegation shall be consistent with the terms of any contracts, resolutions, indemnities, and other obligations then in effect. This Amended Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Members signing such agreement.

22.6 **Force Majeure.** Force majeure means delays or defaults due to acts of God, government (other than acts or failure to act by the Members), litigation preventing performance of obligations imposed by this Amended Agreement by any party, general strikes, or any other event beyond a party's reasonable control.

22.7 **Severability.** If one or more clauses or provisions of this Amended Agreement shall be determined by a court of competent jurisdiction to be unlawful, invalid, or unenforceable, this Amended Agreement shall nevertheless remain in full force and effect provided that the purposes of this Amended Agreement shall not be impaired thereby nor shall any inequity to one or more Members result therefrom.

22.8 **Counterparts.** This agreement may be executed in counterpart originals and each copy shall have the same force and effect as if signed by all the Members.

Section XXIII
Definitions

23.1 **Annual Capital Budget.** "Annual Capital Budget" means all obligations expected to require cash payment in a fiscal year pertaining to Capital Costs.

23.2 **Annual Operating Budget.** "Annual Operating Budget" means all obligations expected to be paid in cash in a fiscal year pertaining to operating the CWC Facilities and conducting the business of the CWC other than Capital Costs.

23.3 Annual Operating Plan. "Annual Operating Plan" means a plan, approved by the CWC Board annually, which details the requirements for management, treatment, and flow of wastewater to achieve water quality and flow goals in accordance with the Regional Water Quality Plan, the Boulder Basin Adaptive Management Plan, or other relevant plans the CWC Board may adopt.

23.4 **Board.** "Board" means the Management Board of the CWC.

23.5 **Boulder Basin Adaptive Management Plan**. (BBAMP) "Boulder Basin Adaptive Management Plan" means a plan, which is jointly developed by the National Park Service, Bureau of Reclamation, United States Fish and Wildlife Service, Southern Nevada Water Authority and the CWC. The BBAMP provides for adaptive management in the future, and contains requirements for monitoring of water quality, modeling of water quality, and for corrective actions if water quality goals are not being met.

23.6 **Capital Costs.** "Capital Costs" means the cost of constructing, financing, acquiring, planning, designing and permitting (including environmental review and any mitigation costs and filing fees) CWC Facilities, and funding of reasonable construction reserves.

23.7 **Capital Improvement Plan.** "Capital Improvement Plan" means a plan extending over a designated period of time to construct or acquire CWC Facilities, including timelines, cost estimates for various component parts of the CWC Facilities to be constructed or

acquired, including all environmental and administrative costs and allocation of such projected costs among the Members by fiscal year.

23.8 **CWC Facilities.** "CWC Facilities" means the regional system constructed by CWC for the conveyance of Effluent, together with all component parts thereof, including electrical energy generating installations.

23.9 **Discharge.** "Discharge" means any release of Effluent from treatment facilities to a conveyance or to receiving water.

23.10 **Effluent.** "Effluent" means treated wastewater.

23.11 **Equivalent Residential Unit (ERU).** "ERU" means the equivalent amount of wastewater produced by a single family residence.

23.12 **Influent.** "Influent" means untreated wastewater.

23.13 **Member.** "Member" means a party to this Agreement.

23.14 **NDEP.** "NDEP" means the Nevada Division of Environmental Protection.

23.15 **NPDES.** "NPDES" means National Pollutant Discharge Elimination System as set forth in the Clean Water Act, pursuant to which the Members' discharge permits are issued by the NDEP.

23.16 **NRS.** "NRS" means Nevada Revised Statutes.

23.17 **Operating Agent.** "Operating Agent" means an agent, other than a CWC employee, appointed by the Board to operate the CWC Facilities.

23.18 **Operating Member.** "Operating Member" means a Member who owns and operates Treatment Facilities.

23.19 **Regional Fees.** "Regional Fees" means regional sewer connection charges and/or regional sewer user charges established by the Board.

23.20 **Regional Water Quality Plan.** "Regional Water Quality Plan" means a plan approved by the Governing Board of the CWC and other implementing Governing Boards, which relates to regional goals for water quality.

23.21 **Treatment Facilities.** "Treatment Facilities" means the devices and systems used in the storage, treatment, recycling, and reclamation of sewage, or industrial waste of a liquid nature.

23.22 **Wastewater.** "Wastewater" means the spent or used water from a community or industry that contains dissolved or suspended matter.

Section XXIV
Condition to Effectiveness of this Amended Agreement

24.0 This Amended Agreement shall become effective when approved by the Attorney General of the State of Nevada pursuant to NRS 277.140.

IN WITNESS WHEREOF, the Members have caused this Second Amended Interlocal Cooperative Agreement to be executed as of the date first written above.

Attest:

CLARK COUNTY
WATER RECLAMATION DISTRICT

Shirley P. Parraguirre, Clerk

By: _____
Chip Maxfield, Chairman

Approved as to Form:

Carolyn Campbell, Deputy District Attorney

Attest:

THE CITY OF HENDERSON

_____
Monica Simmons, City Clerk

By: _____
James B. Gibson, Mayor

Approved as to Form:

_____
Shauna Hughes, City Attorney

Attest:

THE CITY OF LAS VEGAS

_____
Beverly K. Bridges, City Clerk

By: _____
Oscar B. Goodman, Mayor

Approved as to Form:

_____
Bradford R. Jerbic, City Attorney

23.21 **Treatment Facilities.** "Treatment Facilities" means the devices and systems used in the storage, treatment, recycling, and reclamation of sewage, or industrial waste of a liquid nature.

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Attest:

CLARK COUNTY
WATER RECLAMATION DISTRICT

_____
Shirley P. Parraguirre, Clerk

By:_____
Chip Maxfield, Chairman

Approved as to Form:

_____
Kimberly Phillips, Deputy District Attorney

Attest:

THE CITY OF HENDERSON

_____
Monica Simmons, City Clerk

By:_____
James B. Gibson, Mayor

COUNCIL ACTION
OCT 2 2007

Approved as to Form:

_____
for Shauna Hughes, City Attorney

Section XXIV
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WATER RECLAMATION DISTRICT

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Shirley P. Parraguirre, Clerk

By:_____
Chip Maxfield, Chairman

Approved as to Form:

_____
Kimberly Phillips, Deputy District Attorney

Attest:

THE CITY OF HENDERSON

_____
Monica Simmons, City Clerk

By:_____
James B. Gibson, Mayor

Approved as to Form:

_____
Shauna Hughes, City Attorney

Attest:

THE CITY OF LAS VEGAS

Beverly K. Bridges
Beverly K. Bridges, City Clerk

By:_____
Oscar B. Goodman, Mayor

Approved as to Form:

Thomas R. Green, Deputy
For Bradford R. Jerbic, City Attorney

Attest:

Karen Storms, City Clerk

THE CITY OF NORTH LAS VEGAS

By: _____
Michael L. Montandon , Mayor

Approved as to Form:

Carie Torrence, City Attorney

Approved this _____ day of _____, 2007 by the Clean Water Coalition

Approved as to Form:

Robert W. Marshall, Counsel

CLEAN WATER COALITION

By: _____
Chip Maxfield, Chairman of the Board

Approved as to form and legality (NRS 277.140)
this 4th day of JAN, 2008

CATHERINE CORTEZ MASTO
Attorney General of the State of Nevada

By: _____
Senior Deputy Attorney General

Attest:

THE CITY OF NORTH LAS VEGAS

_____
Karen Storms, City Clerk

By:_____
Michael L. Montandon , Mayor

Approved as to Form:

_____
Carie Torrence, City Attorney

Approved this _____ day of _____, 2007 by the Clean Water Coalition

Approved as to Form:

CLEAN WATER COALITION

_____
Robert W. Marshall, Counsel

By: _____
Chip Maxfield, Chairman of the Board

Approved as to form and legality (NRS 277.140)
this _____ day of _____, 2007.

CATHERINE CORTEZ MASTO
Attorney General of the State of Nevada

By: _____
Senior Deputy Attorney General

ATTACHMENT 1

Clean Water Coalition

REGIONAL CONNECTION CHARGES PROJECTED IMPLEMENTATION AND SEMI ANNUAL CHANGES

	ERU	10/1/06	7/1/07	1/1/08	7/1/08	1/1/09
Single Family Residence, Trailer Court (space)	1	$400	$812	$824	$836	$849
Condominium, Apartment, Townhouse (unit)	0.7	280	568	577	586	595
Senior Apartment Housing (unit)	0.5	200	406	412	418	424
Hotel/Motel (per room)	0.6	240	487	494	501	509
Casino, Hotel/Motel outside room (per fixture)	1.5	600	1,218	1,236	1,255	1,274
Recreational Vehicle Park (space)	0.7	280	568	577	586	595
Recreational Vehicle Park – other than spaces (per fixture)	0.45	180	365	370	376	382
Convalescent/Rest Home (per bed)	0.75	300	609	618	627	636
Custodial Institution (per fixture)	0.65	260	528	536	544	552
Hospital (per bed)	1.2	480	974	989	1,004	1,019
Restaurant (per fixture)	1.33	532	1,080	1,096	1,112	1,129
Food Sales – no cooking facilities (per fixture)	0.65	260	528	536	544	552
Bar/Tavern w/ Food (per fixture)	1	400	812	824	836	849
Bar/Tavern w/o Food (per fixture)	0.65	260	528	536	544	552
Community/Special Event Center (per fixture)	0.65	260	528	536	544	552
Office/Warehouse (per fixture)	0.45	180	365	370	376	382
Medical/Dental/Veterinarian (per fixture)	0.25	100	203	206	209	212
Beauty/Barber/Nail/Tanning Shop (per fixture)	0.25	100	203	206	209	212
House of Worship (per fixture)	0.5	200	406	412	418	424

Motor Vehicle Wash (per bay)/ Motor Vehicle Sales w/ auto vehicle wash (per fixture)	1	400	812	824	836	849
Vehicle Maintenance/Repair Shop (per fixture)	0.45	180	365	370	376	382
School/Child Care Center (per student - maximum)	0.1	40	81	82	83	84
Service Station (per fixture)	0.65	260	528	536	544	552
Retail Store (per fixture)	0.65	260	528	536	544	552
Dry Cleaners (per fixture)	1	400	812	824	836	849
Dry Cleaner Pick-up Station – Alterations (per fixture)	0.65	260	528	536	544	552
Laundry/Laundromat (per fixture)	0.45	180	365	370	376	382
Financial Institutions (per fixture)	0.45	180	365	370	376	382
Pet Grooming (per fixture)	0.65	260	528	536	544	552
Private Club (per fixture)	0.65	260	528	536	544	552
Theme Park/Sports Complex (per fixture)	0.65	260	528	536	544	552
Theaters (per fixture)	0.45	180	365	370	376	382
Special Events Center – Limited Use (per fixture)	0.45	180	365	370	376	382
Markets w/ Disposal (per fixture)	1	400	812	824	836	849
Large Commercial Users	*	*	*	*	*	*
All other businesses not otherwise identified (per fixture)	0.65	260	528	536	544	552

* Rates are determined by using 85% of estimated annual water usage, dividing by 90,000 gallons, and multiplying by the single family residence cost ($400 for the initial charge, $812 as of July 1, 2007, $824 as of January 1, 2008, $836 as of July 1, 2008, $849 as of January 1, 2009).

City of Las Vegas Agenda Item No.: **57.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☐ **Consent** ☒ **Discussion**

SUBJECT:
Discussion and possible action regarding a Three Month Review of a Tavern License, Red Label Bar, Inc., dba Red Label Bar & Lounge, 332 West Sahara Avenue, Nely Petkova, Pres, 100% - Ward 3 (Reese)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Discussion and possible action regarding a Six Month Review of a Tavern License.

RECOMMENDATION:
Recommendation to be provided following the discussion of this item at the City Council Meeting and subject to the following conditions:

1. Entertainment allowed will include karaoke, comedy, live bands, birthdays, weddings and wedding receptions.
2. Entertainment will be limited to Monday, Wednesday, Friday or Saturday nights from 6 PM until 2 AM for ages 21 and over for a three month period.
3. Live bands to be limited to Monday, Wednesday, Friday or Saturday nights only for a three month period.
4. Entertainment for the week will be submitted to Business Services each Monday for review and approval.
5. No outdoor events will be allowed.
6. DJ must be an employee of the Red Label Bar & Lounge. No outside DJ's or promoters will be allowed.
7. The Manager or designee may immediately suspend the entertainment venue if violations of the conditions are found pending a review of the tavern license at the next available City Council meeting.
8. Three month review.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **58.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☐ **Consent** ☒ **Discussion**

SUBJECT:
Discussion and possible action regarding a Six Month Review of a Beer/Wine/Cooler Off-sale License and a Restricted Gaming License, Bidi, Inc., dba Vegas Market 3, 6711 Alexander Road, Suites 103 & 104, Haitham Bidi, Pres, Secy, Treas, Dir, 100% - Ward 4 (Anthony)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Discussion and possible action regarding a Six Month Review of a Beer/Wine/Cooler Off-sale License and a Restricted Gaming License for 7 slots.

RECOMMENDATION:
Recommendation to be provided following the discussion of this item at the City Council Meeting and subject to the following condition.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **59.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☐ **Consent** ☒ **Discussion**

SUBJECT:
Discussion and possible action regarding a Six Month Review of a Temporary Work Card for Dustin Hill, db at Foothills Ranch, 3377 North Rancho Drive - Ward 6 (Ross)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Discussion and possible action regarding a Six Month Review of a Temporary Work Card.

RECOMMENDATION:
Recommendation to be provided following the discussion of this item at the City Council Meeting and subject to the following condition.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **60.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☐ **Consent** ☒ **Discussion**

SUBJECT:
Discussion and possible action regarding a review of a Work Card for Gina Mourning db at Buy Low Market 4, 1061 West Owens Avenue - Ward 5 (Barlow)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Discussion and possible action regarding a review of a Work Card.

RECOMMENDATION:
Recommendation to be provided following the discussion of this item at the City Council Meeting and subject to the following condition.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **61.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: OFFICE OF BUSINESS DEVELOPMENT
DIRECTOR: BILL ARENT ☐ **Consent** ☒ **Discussion**

SUBJECT:
RESOLUTIONS:

R-63-2010 - Discussion and possible action regarding a Resolution consenting to the undertakings of the City of Las Vegas Redevelopment Agency (RDA) in connection with the Entertainment Visual Improvement Program Agreement (EVIP) between the RDA and A.W. Ham, III, Trustee (Owner) and Vanguard Lounge, LLC, (Tenant and EVIP Participant) located at 516 Fremont Street (APN 139-34-611-008) to be in compliance with and in furtherance of the goals and objectives of the RDA - Ward 5 (Barlow) [NOTE: This item is related to RDA Item 5 (RA-17-2010)]

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
This is a related item to discussion and possible action regarding assisting the EVIP Participant with the cost of exterior improvements to the property located at 516 Fremont Street in the Fremont East Entertainment District. Approval will adopt findings that the EVIP Agreement is in compliance with and in furtherance of the goals and objectives of the RDA and the Redevelopment Plan.

RECOMMENDATION:
Approval.

BACKUP DOCUMENTATION:
1. Resolution No. R-63-2010
2. Before Photos and After Renderings of Project
3. Site Map

RESOLUTION NO. R-63-2010

RESOLUTION CONSENTING TO CERTAIN UNDERTAKINGS OF THE CITY OF LAS VEGAS REDEVELOPMENT AGENCY IN CONNECTION WITH THE ENTERTAINMENT VIP AGREEMENT ("EVIP") BETWEEN THE CITY OF LAS VEGAS REDEVELOPMENT AGENCY ("AGENCY") AND A. W. HAM, III TRUST ("OWNER") AND VANGUARD LOUNGE, LLC D/B/A VANGUARD LOUNGE ("TENANT" AND "EVIP PARTICIPANT") FOR THE PROJECT CONCERNING THE DEVELOPMENT OF IMPROVEMENTS TO REAL PROPERTY DESCRIBED AS APN 139-34-611-008

WHEREAS, the City of Las Vegas Redevelopment Agency (the "Agency") adopted on March 5, 1986, that plan of redevelopment entitled, to-wit: the Redevelopment Plan for the Downtown Las Vegas Redevelopment Area pursuant to Ordinance 3218, which Redevelopment Plan has been subsequently amended on February 3, 1988, by Ordinance 3339; April 11, 1992, by Ordinance 3637, on November 4, 1996, by Ordinance 4036, on December 17, 2003, by Ordinance 5652 and on May 17, 2006, by Ordinance 5830 (the "Redevelopment Plan"); and

WHEREAS, the Redevelopment Plan identifies and designates an area within the corporate boundaries of the City of Las Vegas (the "Redevelopment Area") as in need of redevelopment in order to eliminate the environmental deficiencies and blight existing therein; and

WHEREAS, the Agency approved on February 16, 2005 the reallocation of funds to fund the Entertainment District Visual Improvement Program (EVIP), in order to provide funding to participating tavern-limited businesses for the purpose of making improvements to the exterior of such commercial properties; and

WHEREAS, A. W. HAM, III TRUST (the "OWNER") the owner of real property and improvements located at 516 FREMONT STREET, and which parcel is commonly known as APN 139-34-611-008 (the "Site"); and

WHEREAS, VANGUARD LOUNGE, LLC D/B/A VANGUARD LOUNGE (the "EVIP PARTICIPANT") is the tenant of the real property located at 516 FREMONT STREET and is undertaking certain exterior improvements to the property or the redevelopment of an underdeveloped property in accordance with the Entertainment VIP Program;

WHEREAS, the City Council of the City of Las Vegas has considered the findings that the development of improvements to a building, facilities, structures or other improvements to be located at the Site are of benefit to the Redevelopment Area or the immediate neighborhood in which the Redevelopment Area is located; and

WHEREAS, the City Council of the City of Las Vegas has considered the findings that no other reasonable means of financing the building, facilities or structures or other improvements on the Site are available; and

WHEREAS, the City Council of the City of Las Vegas has considered the undertakings of the Agency in connection with the Entertainment VIP Agreement (the "Agreement" and attached hereto as Exhibit A), which provides for the contribution of funds to VANGUARD LOUNGE, LLC D/B/A VANGUARD LOUNGE for making physical, visual improvements to the building or property located on the Site, all as more fully set forth in the Agreement.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the City Council of the City of Las Vegas hereby finds and determines that the development of building, facilities, structures or other improvements on the Site are of benefit to the Redevelopment Area or the immediate neighborhood in which the Redevelopment Area is located; and

RESOLVED FURTHER, that the City Council of the City of Las Vegas hereby finds and determines there are no reasonable means of financing those building, facilities, structural or other improvements on the Site; and

RESOLVED FURTHER, that the City Council of the City of Las Vegas hereby consents to the undertakings of the Agency in connection with the Agreement with the "Owner" and "EVIP Participant" for the Project concerning the development on the Site.

THE FOREGOING RESOLUTION was passed, adopted and approved this _____ day of _____, 2010.

CITY OF LAS VEGAS

By_____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
CITY CLERK

APPROVED AS TO FORM:

_____ 8-25-10
Date

EXHIBIT A

CITY OF LAS VEGAS REDEVELOPMENT AGENCY ENTERTAINMENT VISUAL IMPROVEMENT AGREEMENT AND GRANT OF FACADE EASEMENT

THIS ENTERTAINMENT VISUAL IMPROVEMENT AGREEMENT AND GRANT OF FAÇADE EASEMENT (the "Agreement") is entered into this _____ day of _____, ____, by and between the CITY OF LAS VEGAS REDEVELOPMENT AGENCY, a public body in the State of Nevada (hereinafter referred to as the "Agency") and A. W. HAM, III TRUST ("Owner") and VANGUARD LOUNGE, LLC d/b/a VANGUARD LOUNGE ("Tenant").

Recitals

WHEREAS, the City of Las Vegas Redevelopment Agency ("Agency") administers and funds and is funded by the Agency for the purposes of improving the physical appearance of, and encouraging reinvestment in existing commercial structures; and

WHEREAS, in furtherance of the Redevelopment Plan (the "Redevelopment Plan") for the City of Las Vegas Redevelopment Area (the "Redevelopment Area"), the Agency approved an Entertainment Visual Improvement Program (the "Entertainment VIP") for the purpose of assisting property owners and their tenants in the rehabilitation of their buildings in order to revitalize and promote the economic stability of the redevelopment area; and

WHEREAS, pursuant to the implementation of the Entertainment VIP, the Agency wishes to acquire an easement in gross on and upon the exterior walls of buildings (the "Facade Easement"), and a maintenance agreement for the Façade Easement Area (the "Building Façade Maintenance Agreement") located on that certain property, as more particularly described in the "Legal Description of the Site", attached hereto as Attachment " 1 " and incorporated herein, subject to the Owner's and Tenant's agreement to rehabilitate and improve the exterior walls and faces of the building on the Property in accordance with this Agreement and the Entertainment VIP Guidelines (the "EVIP Guidelines"), incorporated herein by reference. The Property is located within or is contiguous to the boundaries of the redevelopment area; and

WHEREAS, in consideration for the acquisition of the Façade Easement, the Agency shall reimburse the Tenant for any Pre-approved Qualified Exterior Improvements to a maximum of $11,000.00 and the Tenant has provided a 100% matching cash contribution to the Agency's participation to ensure that Tenant has a vested interest in the completion of its site improvements and to ensure a high leveraging of public resources and such improvements are significant in character, as determined by the Agency; and

WHEREAS, the Owner and Tenant desires to participate in the Entertainment VIP pursuant to the terms and provisions of this Agreement and the Owner has provided their consent to the proposed exterior improvements on the property, as evidenced by Attachment " 8 " – VIP Real Property Owner Consent.

NOW, THEREFORE, in consideration of the mutual covenants and agreement contained herein, the AGENCY and OWNER and TENANT do hereby agree as follows:

SECTION 1: SCOPE OF AGREEMENT. The purpose of this agreement is to effectuate the Redevelopment Plan by contributing funds to that certain property, as more particularly described in the "Legal Description of the Site," attached hereto as Attachment " 1 " and incorporated herein by reference. Implementation of this Agreement will further the goals and objectives of the Redevelopment Plan. This Agreement is subject to the provisions of the Redevelopment Plan which the City Council of the City of Las

Vegas adopted on March 5, 1986, by Ordinance No. 3218, as amended. Said Redevelopment Plan, as it now exists and as it may be subsequently amended, is incorporated herein by reference and made a part hereof as though fully set forth herein.

SECTION 2: PARTIES TO THE AGREEMENT. The Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the Community Redevelopment Law of the State of Nevada (NRS 279.382, et seq.). The principal office of the Agency is located at 400 Stewart Avenue, Las Vegas, Nevada, 89101. "Agency", as used in this Agreement, includes the City of Las Vegas Redevelopment Agency and any assignee of or successor to its rights, powers and responsibilities. The Tenant warrants that it has a valid and binding leasehold interest for five (5) years successive to the Effective Date of this Agreement (as defined hereinafter), the Site. Such leasehold interest is demonstrated by Attachment " 2 ", "Proof of Ownership or Leasehold Interest", which is attached hereto and is incorporated herein by reference. "Owner", as used in this Agreement, includes not only the Owner but also any assignee of, or successor to, its rights, powers and responsibilities. The Agency and the Owner individually may be referred to as "party" or collectively as "parties" hereinafter.

SECTION 3: GRANT OF FAÇADE EASEMENT AND MAINTENANCE AGREEMENT. The Owner agrees to grant and convey and the Agency agrees to acquire and accept conveyance of a nonexclusive easement in gross (the "Facade Easement") on and upon that certain area described in Exhibit A of Attachment " 2 ", attached hereto and incorporated herein (the "Facade Easement Area"), subject to the following conditions:

a. The purchase price for the Facade Easement shall be an amount up to one hundred percent (100%) of the façade improvements, with a not to exceed maximum of ninety-five thousand dollars **($11,000.00)** for "Pre-approved Qualified Exterior Improvements". Pre-approved Qualified Exterior Improvements which shall be considered for reimbursement includes the following: painting, cleaning, tuck pointing, façade repair/replacement, window repair/replacement, doorways, lighting, new or substantially rehabilitated signage, window tinting, new or replacement awnings, permanent landscaping, parking lots, and rear access renovations. All Pre-approved Qualified Exterior Improvements must be seen from the public right-of-way. The final purchase price will be determined when the project improvements are completed and Tenant has submitted paid invoices from contractor(s) to the Agency.

b. Owner and Tenant shall have provided Agency with all the documents required for participation in the EVIP, as set forth in the EVIP Guidelines in a form acceptable to and approved by the Agency, including without limitation an executed Facade Easement Deed, in substantially the form attached hereto as Attachment " 3 " and a Building Façade Maintenance Agreement, in substantially the form attached hereto as Attachment " 4 ".

c. Agency shall pay Tenant the Purchase Price within forty-five (45) days after submission of paid invoices by Tenant for the Project improvements, and inspection and approval of such Improvements, in accordance with the EVIP Guidelines. Additionally, the Agency will not release any funds until the Tenant has secured a Certificate of Occupancy by the appropriate city department and has obtained the necessary approval from the Downtown Design Review Committee for the installation of signage on the property.

d. The Agency shall cause the Facade Easement Deed and the Building Façade Maintenance Agreement to be recorded against the Property promptly after completion of the Project improvements and upon payment of the Purchase Price by the Agency to the Tenant. The Facade Easement and the Building Façade Maintenance Agreement shall commence upon such recordation and shall terminate on the date five (5) years thereafter.

e. Owner and Tenant, if any, hereby agrees to maintain the Property, including without limitation the Facade Easement Area and the Project improvements to be constructed thereon, in accordance with the maintenance provisions set forth in the Building Façade Maintenance Agreement, Attachment " 4 " attached hereto. Owner and Tenant agrees that all material future changes to the exterior surfacing of the building(s) on the Property, including the Facade Easement Area, shall be subject to the approval of the Agency, which approval shall not be unreasonably withheld. No painting or exterior surfacing which, in the opinion and judgment of Agency, are inharmonious with the general surroundings shall be used on the exterior of any buildings now or to be located on the Property. This covenant shall run with the land for a period of five (5) years from the date the Facade Easement Deed is recorded against the Property. Owner and/or Tenant shall be in default of this Agreement if Owner breaches any of the obligations under this Section 3 or Attachment " 4 ".

f. The Agency shall not use or exercise any right granted by the Facade Easement or do anything in a manner that will damage or impair the Facade Easement Area or the structural integrity of the building.

SECTION 4: OWNER'S AND/OR TENANT'S REPURCHASE OPTION. The Agency hereby grants the Owner and/or Tenant the option to repurchase the Facade Easement (the "Option") from the Agency pursuant to the following terms and conditions:

a. Option Term. The term of the Option (the "Option Term" or "Option") shall commence upon recordation of the Facade Easement Deed and shall continue until the termination of the Facade Easement. In order to exercise the Option, the Owner and/or Tenant must give sixty (60) days written notice to the Agency that it wishes to exercise the Option.

b. Repurchase Price. If the Owner exercises the Option, the Agency agrees to sell and the Owner agrees to repurchase the Facade Easement in an amount equal to the unamortized portion of the Purchase Price amortized on a straight-line basis over five (5) years. The Amortization Schedule is set out in Exhibit C of Attachment " 3 ", attached hereto and incorporated herein (the "Amortization Schedule").

c. Title, Escrow and Closing Costs. The Owner and/or Tenant shall pay for all title, escrow and closing costs and fees associated with the repurchase of the Facade Easement. The Owner and/or Tenant shall execute such documents and take such actions as may be necessary to effectuate such repurchase.

d. The Owner's and/or Tenant's right to this Option and the terms and conditions of this Option shall be contained in the Facade Easement Deed to be recorded on the Property.

SECTION 5: IMPROVEMENTS TO THE SITE AND PROJECT BUDGET. The Tenant shall make improvements to the Site, or to the buildings, fixtures or appurtenances thereon, according to the Scope of Work and Tentative Schedule of Improvements, which is attached hereto as Attachment " 5 " and by this reference is made a part hereof. The Scope of Work and Tentative Schedule of Improvements shall provide a line item budget, acceptable to the Agency, for all work to be performed. Within 30 days of execution of this Agreement by the Agency, Tenant agrees to commence, or cause the commencement of, rehabilitation and improvement of the Site, including the Façade Easement Area, pursuant to the plans and other documents submitted by Owner and/or Tenant and approved by Agency in accordance with the EVIP Guidelines. Tenant shall complete the improvements within 90 days of commencement of work. Additional time may be given upon approval of the Agency, which approval shall not be unreasonably withheld. The

improvements to the site also shall be referred to as the "Project" hereinafter. The Agency shall maintain a right of access to the Site, provided that the Agency gives the Owner and/or Tenant a minimum of twenty-four (24) hours written, advance notice prior to entering the Site.

SECTION 6: CONTRACTOR SELECTION REQUIREMENTS. If the Project exceeds $10,000, then the Tenant in compliance with NRS 279.478 must obtain three (3) or more competitive bids from properly licensed contractors. If the Tenant is unable to obtain (3) or more competitive bids, the Tenant shall provide the Agency, upon request, with documentation detailing when and which licensed contractor(s) were contacted.

SECTION 7: DESIGN REVIEW COMMITTEE. For reviewing the architectural and engineering design of the Project, the Agency has appointed a Design Review Committee comprised of one or more staff members from the following City of Las Vegas municipal departments: Office of Business Development; Planning and Development Department; Land Development, Public Works; Development Coordination, Public Works; and City of Las Vegas Department of Building & Safety. At its discretion, the Agency may solicit input from additional City staff depending on the individual needs of the Project. The Design Review Committee shall meet on an ad hoc basis. The Design Review Committee shall recommend approval or disapproval of the Project Scope of Work. If the Project is disapproved, the Agency shall retain the right to ask the Owner and/or Tenant to make changes to the proposed Scope of Work.

SECTION 8: COMPLIANCE WITH APPLICABLE DEVELOPMENT STANDARDS. The Tenant must comply with all development standards applicable to the Scope of Work, including but not limited to, the Zoning Code of the City of Las Vegas, the Building Code of the City of Las Vegas, and the Fire Code of the City of Las Vegas. Additional development standards may apply depending on the specific location of the Site.

SECTION 9: FAILURE TO COMPLETE WORK. If the contractor selected by the Tenant fails to complete all of the work specified in the Scope of Work, then the Agency may pursue any and all equitable remedies available under this Agreement, as more specifically described in Section 13 hereinafter.

SECTION 10: UNRELATED IMPROVEMENTS. Nothing herein is intended to limit, restrict or prohibit the Owner and/or Tenant from undertaking any other work in or about the subject premises which is unrelated to Entertainment VIP provided for in this Agreement.

SECTION 11: COMPLIANCE WITH THE REDEVELOPMENT PLAN AND EMPLOYMENT PLAN. The Agency finds that the Project as contemplated by this Agreement complies with the Entertainment VIP Guidelines and therefore would be deemed a substantial benefit to the Redevelopment Area. The Agency finds that the Project, upon completion, would achieve one or more of the following:

1. Encourage new commercial development;
2. Create or retain jobs for nearby residents;
3. Increase local revenues from private revenue sources;
4. Increase levels of human activity in the Redevelopment Area;
5. Possess attributes that are unique, either as to type of use or level of quality and design;
6. Require for their construction, installation or operation the use of qualified and trained labor; or
7. Demonstrate greater social or financial benefits to the community that would a similar set of buildings, facilities, structures or other improvements not paid for by the Agency.

The Agency has also considered the opinions of persons who reside in the Redevelopment Area or the immediate vicinity of the Redevelopment Area. In addition, the Agency has compared the level of spending

proposed by the Agency and the projections of future revenue made on the buildings, facilities, structures or other improvements.

The Tenant has declared that no other reasonable means of financing are available to undertake the improvements to the Property because the return on investment is not reasonable and the improvements are being financed through cash on hand and/or debt financing through a private lender. Furthermore, the Tenant would not undertake the full set of improvements contemplated in the Agreement through resources reasonably available to the Tenant pursuant to the Participant Affidavit and Employment Plan, attached hereto as Attachment " 7 " and by this reference made a part hereof.

The Tenant has also declared and provided the Agency with an Employment Plan, which is attached hereto as Attachment " 7 " and by this reference is made a part hereof. The Tenant, for itself and its successors and assigns, represents that in the construction of improvements on the Site provided for in this Agreement, the Tenant shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, ancestry or national origin.

SECTION 12: CONFLICTS OF INTEREST AND DISCLOSURE REQUIREMENTS. No member, official or employee of the Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested. The Owner and/or Tenant warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement. No member, official or employee of the Agency shall be personally liable to the Owner and/or Tenant in the event of any default or breach by the Agency or for any amount which may become due to the Participant or on any obligations under the terms of this Agreement. Pursuant to Resolution RA-4-99 adopted by the governing board of the Agency effective October 1, 1999, Owner and/or Tenant warrants that it has disclosed, on the Disclosure of Principals form attached hereto as Attachment " 6-A " and Attachment "6-B" and incorporated herein by reference, all persons and entities holding more than 1% (one percent) interest in Owner and/or Tenant or any principal member of Owner and/or Tenant. Throughout the term hereof, Owner and/or Tenant shall notify City in writing of any material change in the above disclosure within 15 (fifteen) days of any such change.

SECTION 13: DEFAULTS AND REMEDIES. Failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The nondefaulting party shall notify the defaulting party that a default exists and that the defaulting party must cure same within thirty (30) days of receipt of the notice of default. The party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with reasonable diligence and during any period of curing shall not be in default. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the District Court, County of Clark State of Nevada, in any other appropriate court in that county, or in the Federal District Court in the appropriate district of Nevada. The nondefaulting party may also, at its option, cure the breach and sue in any court of proper jurisdiction to collect the reasonable costs incurred by virtue of curing or correcting the defaulting party's breach. Further, the nondefaulting party may file legal action to require the defaulting party to specifically perform the terms and conditions of this Agreement. Upon occurrence of an Event of Default by either the Participant or the Agency during the existence of this Agreement, the non-defaulting party, at its option, may institute an action for specific performance of the terms and obligations (including the payment of any monetary obligation) of this Agreement. During the existence of this Agreement and upon the occurrence of a Owner and/or Tenant Event of Default, the Agency shall have the right to terminate, and this Agreement shall so terminate, the date that the written notice of termination is received by the Owner and/or Tenant or such other date as may

be specified in the written notice. In the event of termination of this Agreement by the Agency, the Owner and/or Tenant agrees to return any and all Agency Funds heretofore paid to the Owner and/or Tenant pursuant to the provisions of this Agreement within ten (10) calendar days after the termination date. Failure to return any and all Agency Funds paid to the Owner and/or Tenant shall entitle the Agency to sue the Owner and/or Tenant for specific performance as provided in this Section and to pursue the Agency's remedies, legal and equitable, for such damages as permitted by law.

SECTION 14: SUBSEQUENT AGENCY APPROVALS. Any approvals of the Agency required and permitted by the terms of this Agreement may be given by the Executive Director of the Agency or such other person that the Agency designates in writing.

SECTION 15: TERM. The term of this Agreement shall end upon the completion of all duties and obligations to be performed by each of the parties hereto.

SECTION 16: SEVERABILITY. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision shall be invalidated, it shall be deemed to be severed from this Agreement and the remaining provisions shall remain in full force and effect.

SECTION 17: GOVERNING LAW. The interpretation and enforcement of this Agreement shall be governed in all respects by the laws of the State of Nevada.

SECTION 18: NOTICES. Notices shall be in writing and shall be given by personal delivery, by deposit in the United States mail, certified mail, return receipt requested, postage prepaid, or by express delivery service, freight prepaid, in each case by delivery to the Owner and Tenant and the Agency at the addresses set forth in this Agreement or at such other address as a party may designate in writing. The date notice given shall be the date on which the notice is delivered, if notice is given by personal deliver, or five (5) calendar days after the date of deposit in the mail or with an express delivery service, if the notice is sent through the United States mail.

SECTION 19: CAPTIONS. The captions contained in this Agreement are for the convenience of the parties and shall not be construed so as to alter the meaning of the provisions of the Agreement.

SECTION 20: ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS. This Agreement is executed in three duplicate originals, each of which is deemed to be an original. This includes Attachment " 1 " through Attachment " 8 " inclusive, attached hereto and incorporated herein by reference, all of which constitute the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of Agency and the Owner and Tenant and no waiver of one provision shall be construed as a waiver of that provision in the future or as a waiver of any other provision. All amendments hereto must be in writing and signed by the appropriate authorities of Agency and the Owner and Tenant.

SECTION 21: TIME FOR AGENCY TO ACCEPT AGREEMENT. This Agreement has been approved on _____, 2010 by the Las Vegas Redevelopment Agency. The effective date of this Agreement shall be the date when this Agreement has been signed by the Agency ("Effective Date").

Date of Agency Approval:

_____, 2010

CITY OF LAS VEGAS REDEVELOPMENT AGENCY

By: _____
OSCAR B. GOODMAN, CHAIRMAN
"Agency"

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
SECRETARY

APPROVED AS TO FORM:

_____ 8-25-10
Counsel to the Agency Date

Print Name: Michael Natale

OWNER

A. W. HAM, III TRUST

By: _____
Name: Artemus W. Ham, III
Its: Trustee

TENANT

VANGUARD LOUNGE, LLC

By: _____
Name: Andrew Wheatley
Its: Principal

By: _____
Name: Jennifer Wheatley
Its: Principal

LIST OF ATTACHMENTS

ATTACHMENT " 1 "	LEGAL DESCRIPTION OF THE PROPERTY
ATTACHMENT " 2 "	PROOF OF OWNERSHIP OR LEASEHOLD INTEREST
ATTACHMENT " 3 "	FORM OF FAÇADE EASEMENT DEED
ATTACHMENT " 4 "	FORM OF BUILDING FAÇADE MAINTENANCE AGREEMENT
ATTACHMENT " 5 "	SCOPE OF WORK AND TENTATIVE SCHEDULE OF IMPROVEMENTS
ATTACHMENT "6-A "	DISCLOSURE OF PRINCIPALS – PROPERTY OWNER
ATTACHMENT "6-B"	DISCLOSURE OF PRINCIPALS - TENANT
ATTACHMENT " 7 "	PARTICIPANT AFFIDAVIT & EMPLOYMENT PLAN
ATTACHMENT "8"	VIP REAL PROPERTY OWNER CONSENT

ATTACHMENT 1

LEGAL DESCRIPTION OF THE PROPERTY

LOTS EIGHTEEN (18) AND THE SOUTH 100 FEET OF LOT NINETEEN (19) IN BLOCK TWO (2) OF HAWKINS ADDITION TO THE CITY OF LAS VEGAS, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 40, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

ATTACHMENT 2

LEASEHOLD INTEREST

Copy of Lease By and Between

A.W. Ham, III Trust (Landlord)

and

Vanguard Lounge, LLC (Tenant)

is on file with the City of Las Vegas - Office of Business Development

EXHIBIT A

DESCRIPTION OF THE FAÇADE EASEMENT AREA

Facade Easement Area: The area consisting of the building face adjoining the Fremont Street right-of-way and northerly abutting alley right-of-way, or other public areas, including all exterior wall planes, window, doors, fascias, awnings, signage and other architectural projections.

The Façade Easement granted herein shall terminate five (5) years from the date of execution of the recordation of this Façade Easement Deed without further action upon the City of Las Vegas Redevelopment Agency.

ATTACHMENT 3

FORM OF FACADE EASEMENT DEED

RECORDING REQUESTED BY

CITY OF LAS VEGAS
REDEVELOPMENT AGENCY

AND WHEN RECORDED RETURN TO:

City of Las Vegas Redevelopment Agency
400 Stewart Avenue, 2nd Floor
Las Vegas, NV 89101
ATTN: Operations Officer

FACADE EASEMENT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, A. W. HAM, III TRUST ("Grantor"), does hereby grant to the CITY OF LAS VEGAS REDEVELOPMENT AGENCY, a public body, corporate and politic ("Grantee"), a nonexclusive facade easement (the "Facade Easement") in gross on and upon a portion of the real property described in Exhibit A, attached hereto and incorporated herein by this reference (the "Property"). The precise description of the area of the facade easement is described in Exhibit B attached hereto and incorporated hereby by reference (the "Facade Easement Area").

1. Grantee is responsible for carrying out the Redevelopment Plan for the City of Las Vegas Redevelopment Area (the "Redevelopment Area"). In furtherance of the Redevelopment Plan, Grantor and Grantee entered into an Entertainment Visual Improvement Agreement and Grant of Facade Easement dated _____ (the "EVIP Agreement") which required the Grantor to improve the facades(s) of the building(s) on the Property in accordance with the EVIP Agreement and Grantee's Entertainment Visual Improvement Guidelines.

2. Grantor shall maintain the Property and the Facade Easement Area in accordance with the Facade Easement Agreement, including without limitation, the provisions set forth in the Building Façade Maintenance Agreement, recorded against the Property by separate instrument. Grantor agrees that all material future changes to the exterior surface of the facades of the building that has been improved on the Property shall be subject to the approval of the Grantee, which approval shall not be unreasonably withheld. This covenant shall run with the land until five (5) years from the date this Facade Easement Deed is recorded against the Property.

3. Grantee may use the Facade Easement for the purpose of ensuring the repair and maintenance of the Facade Easement Area, including the Facade Improvements to be constructed thereon, in accordance with the Facade Easement Agreement.

4. The Facade Easement shall include ancillary rights of ingress and egress over any portion of the Property that is necessary in order to repair and maintain the Facade Improvements located on and within the Facade Easement Area.

5. Grantor covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry, age, sexual preference, physical handicap or medical condition in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall Grantor or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, subleases, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.

6. The Grantee shall not use or exercise any right granted by the Facade Easement or do anything in a manner that will damage or impair the Facade Easement Area or the structural integrity of the building.

7. In the event of a violation of this Agreement by Grantor, the Grantee may, following reasonable notice to Grantor and after allowing thirty (30) days to correct said violation, institute a suit to enjoin such violation and to require the restoration of the Facade Improvements to their prior condition. In the alternative, the Grantee may enter upon the Property, correct any such violation and hold the Grantor and, his or her heirs, successors and assigns, responsible for the costs thereof in accordance with the Facade Easement Agreement and Building Facade Maintenance Agreement.

8. The Facade Easement granted herein shall terminate on the date which is five (5) years from the date of recordation of this Facade Easement Deed.

9. Grantor shall have the option to repurchase the Facade Easement granted herein (the "Option") from the Grantee pursuant to the terms and conditions set forth hereunder.

a. Option Term. The term of the Option (the "Option Term") shall commence thirty (30) days after recordation of the Facade Easement Deed and shall continue until five (5) years from the date of the recordation of this Façade Easement Deed. In order to exercise the Option, the Grantor must give sixty (60) days written notice to the Grantee that it wishes to exercise the Option.

b. Repurchase Price. If the Grantor exercises the Option, the Grantee agrees to sell and the Grantor agrees to repurchase the Facade Easement in an amount equal to the unamortized portion of the Purchase Price amortized on a straight-line basis over five (5) years. The Amortization Schedule is set out in Exhibit C, attached hereto and incorporated herein (the "Amortization Schedule").

c. Title, Escrow and Closing Costs. The Owner shall pay for all title, escrow and closing costs and fees associated with the repurchase of the Facade Easement. The Owner and Agency shall cooperate in good faith and execute such documents and take such actions as may be necessary to effectuate such repurchase.

10. The obligations and benefits imposed and granted in this Facade Easement Deed shall be binding on Grantor and all successor owners of the Property and inure to the benefit of the Grantee, its successors and assigns and are intended to run with the land.

11. The provisions of this Facade Easement Deed may be amended or terminated in full only by a written agreement between the Grantor and Grantee.

12. Nothing contained in this Facade Easement Deed shall be deemed to be a gift or dedication of any portion of Property to the general public or for the general public for any public purpose whatsoever, it being the intention of the parties to this Facade Easement Deed that the Facade Easement shall be strictly limited to and for the purposes expressed in this Facade Easement Deed.

13. This declaration shall be governed by and construed in accordance with the laws of the State of Nevada.

14. The Facade Easement granted herein shall be binding on and inure to the benefit of the successors and assigns of the parties and are intended to bind and burden the Property described in Exhibit A.

...

...

...

IN WITNESS WHEREOF, Grantor has executed this Facade Easement Deed as of this ____ day of _____, _____.

A.W. HAM III TRUST
By:_____
ARTEMUS W. HAM III

Its: TRUSTEE
"GRANTOR"

ACCEPTED AND AGREED TO:

CITY OF LAS VEGAS REDEVELOPMENT AGENCY

By:_____
OSCAR B. GOODMAN

Its: CHAIRMAN
"GRANTEE"

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
Secretary

APPROVED AS TO FORM

_____
Counsel to the Agency Date

Print Name:_____

ACKNOWLEDGMENTS

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

This instrument was acknowledged before me on the ____ day of _____, 2010 by ARTEMUS W. HAM III, TRUSTEE FOR A. W. HAM III TRUST as GRANTOR.

_____
Notary Public in and for said County and State

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

This instrument was acknowledged before me on the ____ day of _____, 2010 by Oscar B. Goodman as Chairman of the City of Las Vegas Redevelopment Agency.

_____
Notary Public in and for said County and State

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS EIGHTEEN (18) AND THE SOUTH 100 FEET OF LOT NINETEEN (19) IN BLOCK TWO (2) OF HAWKINS ADDITION TO THE CITY OF LAS VEGAS, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 40, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

EXHIBIT B

DESCRIPTION OF THE FACADE EASEMENT AREA

Facade Easement Area: The area consisting of the building face adjoining the Fremont Street right-of-way and northerly abutting alley right-of-way, or other public areas, including all exterior wall planes, window, doors, fascias, awnings, signage and other architectural projections.

The Façade Easement granted herein shall terminate five (5) years from the date of execution of the recordation of this Façade Easement Deed without further action upon the City of Las Vegas Redevelopment Agency.

EXHIBIT C

FORM OF FAÇADE EASEMENT REPURCHASE PRICE AMORTIZATION SCHEDULE

1. Amount of Purchase Price: $11,000.00 (Maximum)

2. Repurchase Price based on unamortized portion of Purchase Price amortized on straight-line basis over five (5) years as follows:

Anytime during first year:	$11,000.00
Anytime during second year:	$8,800.00
Anytime during third year:	$6,600.00
Anytime during fourth year:	$4,400.00
Anytime during fifth year:	$2,200.00
After five full years from recordation of the Façade Easement Deed:	$0.00

ATTACHMENT 4

FORM OF BUILDING FAÇADE MAINTENANCE AGREEMENT

RECORDING REQUESTED BY

CITY OF LAS VEGAS
REDEVELOPMENT AGENCY

AND WHEN RECORDED RETURN TO:

City of Las Vegas Redevelopment Agency
400 Stewart Avenue, 2nd Floor
Las Vegas, NV 89101
ATTN: Operations Officer

BUILDING FACADE MAINTENANCE AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 20___, between ARTEMUS W. HAM III, hereinafter referred to as "Owner" and the CITY of LAS VEGAS REDEVELOPMENT AGENCY, a public body, corporate and politic, hereinafter referred to as "Agency" with reference to the following facts:

WHEREAS, Owner is the owner of that real property ("the Property") in the City of Las Vegas, County of Clark, State of Nevada, legally described in Exhibit " A " attached hereto by this reference, commonly known as 516 Fremont Street, Las Vegas, Nevada and currently designated as Assessor's Parcel Nos.139-34-611-008; and

WHEREAS, the Property is located within the City of Las Vegas Redevelopment Area (the "Redevelopment Area"), and in furtherance of the Redevelopment Plan for the Redevelopment Area, the Agency approved an Entertainment Visual Improvement Program (the "Entertainment VIP") for the purpose of revitalization and elimination of blighting influences in the Redevelopment Area; and

WHEREAS, Owner and/or tenant has rehabilitated the facades of the property: the area consisting of the building face adjoining the Fremont Street right-of-way and northerly abutting alley right-of-way, or other public areas, including all exterior wall planes, window, doors, fascias, awnings, signage and other architectural projections.

Agency purchased a Facade Easement for the Property (hereinafter "the Facade Easement") which ensures that the building facades on the Property will be preserved in a manner consistent with the Entertainment Visual Improvement Agreement and Grant of Facade Easement dated _____ (the "EVIP Agreement"); and

WHEREAS, by the terms of said Façade Easement, Owner is required to enter into an agreement for a period of five (5) years giving the Agency authority to lien the Property to ensure that the façade(s) covered by the Façade Easement, legally described in Exhibit " B " attached hereto (the "Façade Easement Area"), will be diligently maintained and that violations will be corrected promptly; and

WHEREAS, this agreement is entered into to ensure that the Property is maintained because both parties recognize that diligent maintenance is an integral part of preservation of the Property and one of the considerations for Agency's purchase of the Façade Easement;

NOW, THEREFORE, IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. Purpose. The purpose of this agreement is to ensure diligent maintenance of the building facades on the Property facing public streets and/or alleys, the Façade Easement Area, in accordance with the plans approved by the City of Las Vegas Office of Business Development and any other city department that may have issued approvals and/or permits as of the date of this agreement, or as may be otherwise approved by City during the term of this agreement. Copies of the plans for the Façade Easement Area required to be maintained under this agreement and which are incorporated herein by this reference, are on file with the City of Las Vegas in the Office of Business Development, 400 Stewart Avenue, Las Vegas, NV 89101.

2. Duty to Maintain Property. Owner covenants and agrees, for itself, its lessees, successors and assigns during the term of this agreement to diligently maintain and care for the Façade Easement Area in accordance with the plans approved by City. "Diligent maintenance" is persistent upkeep which employs the standard of care necessary to meet all requirements of applicable local ordinances and regulations and standards of workmanship in accordance with the generally accepted standards for maintenance observed by comparable uses located within the City of Las Vegas. In particular, Owner covenants that:

    a) All exterior building facades shall be maintained, repaired, or used in accordance with the City of Las Vegas Building Code and the plans approved by, any and all, appropriate City of Las Vegas department(s) as of the date of this agreement, or as may be otherwise approved by City during the term of this agreement.

    b) The exterior of the buildings and structures shall have effective weatherproofing and waterproofing, including non-deteriorated paint, uncracked or unbroken plaster, sound siding, sealing of doors and windows and adequate and approved roof covering.

    c) All exterior doors, door hardware, handles, locksets and latch sets shall be in safe and operable condition, free of cracks, splits, holes, inadequate fastening and warpage.

d) All windows shall be secure, well sealed, unbroken, and with undamaged frames. No window bars, grills or grates of any kind shall be installed without the express approval of the City of Las Vegas Department of Building and Safety.

e) All exterior lighting, including but not limited to security, carport, stairway or balcony, and building lighting, must be operable at all times as required by the City of Las Vegas Building Code.

3. Agency's Right to Cure Owner's Default. Owner shall be in default of this agreement if Owner breaches any of the Owner's obligations under Paragraph 2 above, and the breach is not cured within thirty (30) days (or such longer period as may be specified in the Notice of Breach) after the Agency gives notice ("Notice of Breach") to the Owner of the failure to perform, which Notice of Breach shall specify in reasonable detail the conditions constituting the breach. The City's Director of the Office of Business Development ("Director") (or, if that position no longer exists, an Agency official with comparable duties) or the Director's designee may impose conditions on any extension of time to cure the breach, which conditions may include but are not limited to (i) requiring Owner to post a cash deposit or surety bond in the amount of the estimated cost of curing the breach or default, and (ii) requiring that Owner commence curing the breach or default by a specified date and thereafter diligently and in good faith continue to cure the breach until completion of the cure.

In the event of default, in addition to any other remedies available to Agency at law or in equity, Agency in its sole and absolute discretion may enter the Property and cure the default at Owner's cost at any time after giving not less than thirty (30) days' notice ("Notice of Default") to Owner, which Notice of Default shall state the Agency's intent to enter the Property and shall specify in reasonable detail the work or correction the Agency intends to perform.

4. Hold Harmless. Owner shall waive any and all claims for damage or loss as a result of Agency's entry onto the Property. Owner shall defend, indemnify and hold harmless Agency, its employees, officers, agents and contractors from and against any and all liability, loss, expense, including reasonable attorney's fees or claims for injury or damage caused by or as a result of the Agency, its employees, officers, agents or contractors entry onto the Property. Notwithstanding the foregoing, the above waiver and indemnity shall not apply with respect to any negligent acts or omissions or willful misconduct by the Agency, its employees, officers, agents and/or contractors.

5. Agency's Cost of Cure. If Agency, acting through its own employees or through its contractors, enters the Property and cures the breach or default, Agency shall perform the work in a reasonably efficient, cost effective and competitively priced manner. The cost of curing the default shall be due and payable within ten (10) days after delivery of an invoice to Owner, and if paid at a later date shall bear interest at the rate of 10% per annum from the date of the invoice until Agency is reimbursed by Owner. Any warranties provided by Agency's contractors shall be assigned to Owner upon Owner's payment in full of the amounts due hereunder.

6. Additional Remedies. The Agency, in addition to the collection procedure set forth above in paragraph 4, may make the cost incurred in maintaining the Property a lien upon the Property by recording a notice with the Clark County Recorder. The lien may also include any and all costs incurred in recording the lien. The notice shall state that the Agency has incurred maintenance costs under the terms of this agreement and shall state the amount, together with the fact that it is unpaid. Such lien shall be immediately released upon Owner's payment of said costs.

7. Notices. Notices required or permitted to be given under the terms of this agreement shall be served personally, or by certified mail, return receipt requested, or by overnight courier, addressed as follows:

AGENCY: City of Las Vegas Redevelopment Agency
400 Stewart Avenue, 2nd Floor
Las Vegas, NV 89101
Attn: Operations Manager

OWNER: 2008 Gray Eagle Way
Las Vegas, NV 89117
Attn: Artemus W. Ham III

and, in the event that Owner hereafter conveys Property, to each successive Owner as shown on the tax rolls for Clark County.

8. Property Owner. If Owner conveys, grants or transfers the Property or a portion thereof to another, such grantee or transferee shall be responsible for complying with the terms and conditions of this agreement as to the Property or as to that portion thereof so conveyed and Owner shall have no further obligation hereunder as to said Property or that portion thereof. If Owner leases the Property or any portion thereof to another, the lease shall provide for Owner's right of entry to perform Owner's obligations under this agreement. The lease also shall provide for Agency's right of entry to inspect the Property for compliance with this agreement and in the event of breach to perform required maintenance in accordance with the procedure set forth in Paragraph 3. Owner shall advise the Director of the Office of Business Development in writing of any changes in address of Owner and of the names and addresses of any subsequent owners of the property or any portion thereof.

9. Miscellaneous Terms and Provisions.

a) If any provision of this agreement is adjudged invalid, the remaining provisions of it are not affected.

b) Notice to Agency or Owner shall be considered to have been given when sent in the manner and to the addresses stated in Paragraph 6 above.

c) This writing contains a full, final and exclusive statement of the agreement of the parties.

d) By executing this agreement Owner, on its behalf and on behalf of any successor in interest, authorizes and grants to Agency or to Agency's agent, permission with 48 hours advance notice to enter upon the Property subject to this agreement to perform inspections of the façade improvements or to perform any work authorized by this agreement in the event of breach by Owner of any covenant set forth in Paragraphs 2 above. However, the Agency shall coordinate the time of such inspections with the Owner in order to minimize the disruption of business or inconvenience to the Owner's customers.

10. Recordation: Covenant Running With the Land for Five Years. Upon recordation of the Façade Easement Deed and execution of this agreement by both parties, the Agency shall record this agreement with the Clark County Recorder's Office. Agency shall provide Owner a copy of the agreement showing the Recorder's stamp.

This agreement pertains to that area of the Property covered by the Façade Easement, and shall run with the land for a period of five (5) years from the date first stated above, including a period of time after the expiration of the Façade Easement. This agreement binds the successors in interest of each of the parties to it.

11. Priority of Mortgage Lien. No breach of the covenants, conditions or restrictions of this agreement shall defeat or render invalid the lien or charge or any first mortgage or deed of trust made in good faith and for value encumbering the Property, but all of said covenants, conditions and restrictions shall be binding upon and effective against any successor to the Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to the Property.

12. Attorneys' Fees. If any party to this agreement resorts to a legal action to enforce any provision of this agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to any other relief to which it may be entitled. This provision applies to the entire agreement.

13. Estoppel Certificate. Upon written request by Owner or a subsequent owner, Agency shall promptly execute and deliver an estoppel certificate, in a form reasonably approved by the Agency, addressed as indicated in the request, stating that the property is in compliance with this agreement, or not, and stating the amount of any outstanding fees or charges.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year set forth above.

A. W. HAM III TRUST

By: _____ Date: _____
Name: ARTEMUS W. HAM, III
Title: TRUSTEE

CITY OF LAS VEGAS REDEVELOPMENT AGENCY,
a public body, corporate and politic

By: _____ Date: _____
Name: OSCAR B. GOODMAN
Title: CHAIRMAN

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
Secretary

APPROVED AS TO FORM:

_____
Counsel to the Agency Date

_____
Print Name

ACKNOWLEDGMENTS

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

This instrument was acknowledged before me on the ____ day of _____, 2010 by ARTEMUS W. HAM III, TRUSTEE FOR A. W. HAM III TRUST as GRANTEE

_____
Notary Public in and for said County and State

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

This instrument was acknowledged before me on the ____ day of _____, 2010 by Oscar B. Goodman as Chairman of the City of Las Vegas Redevelopment Agency.

_____
Notary Public in and for said County and State

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS EIGHTEEN (18) AND THE SOUTH 100 FEET OF LOT NINETEEN (19) IN BLOCK TWO (2) OF HAWKINS ADDITION TO THE CITY OF LAS VEGAS, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 40, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

EXHIBIT B

DESCRIPTION OF THE FACADE EASEMENT AREA

Facade Easement Area: The area consisting of the building face adjoining the Fremont Street right-of-way and northerly abutting alley right-of-way, or other public areas, including all exterior wall planes, window, doors, fascias, awnings, signage and other architectural projections.

The Façade Easement granted herein shall terminate five (5) years from the date of execution of the recordation of this Façade Easement Deed without further action upon the City of Las Vegas Redevelopment Agency.

ATTACHMENT 5

SCOPE OF WORK AND TENTATIVE SCHEDULE OF IMPROVEMENTS

1.	**Installation of doors and windows**	**$6,570.00**
2.	**Installation of new Neon Sign**	**$6,142.00**
3.	**Demo, repair and paint exterior**	**$5,750.00**
4.	**Outdoor Lighting**	**$2,801.00**
	TOTAL ESTIMATED PROJECT COSTS	**$21,263.00**

Estimated EVIP Grant $10,632.00

Note – Items in bold are "Pre-approved Qualified Exterior Improvements".

Schedule of Improvements

Work will begin 30 days after approval of Agreement and should be complete within 90 days, depending on contractor's work schedule/work load.

ATTACHMENT 6-A

AH
Please Print Legibly

VIP Disclosure of Ownership/Principals

Real Property - Page 1 of 2

VIP Contracting Entity Information

Name A.W. Ham III Trust

Mailing Address 2008 Gray ~~Eagle~~ Eagle Way, LV, NV 89117

Business Phone _____

Tax ID or Social Security Number _____

Ownership Interest

Estate in Severalty X Tenancy in Common _____ Joint Tenancy _____

Disclosure of Ownership/Principals

In the space below, the Contracting Entity must disclose all persons or entities holding more than one percent ownership interest in the real property.

Full Name & Title	Business Address	Business Phone
A.W. Ham III Trust	2008 Gray Eagle Way, LV, NV	

Additional Ownership/Principals

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

AH

Please Print Legibly

VIP Disclosure of Ownership/Principals

Alternative Disclosure of Ownership/Principal

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

Name of Attached Document _____

Date of Attached Document _____

Number of Pages _____

Certification of Disclosure of Ownership/Principal - Real Property

I certify, under penalty of perjury, that all the information provided in this certificate is current, complete and accurate.

A.W. HAM III TRUST

Signature BY: A.W. Ham III, Trustee

Date August 09th, 200

State of Nevada
County of Clark

This instrument was acknowledged before me on

August 9, 2010 (date) by

A.W. Ham III (name of person)

Candice R. Salerno
Notary Public

CANDICE R. SALERNO
Notary Public State of Nevada
No. 94-2734-1
My appt. exp. April 8, 2012

CANDICE R. SALERNO
Notary Public State of Nevada
No. 94-2734-1
My appt. exp. April 8, 2012

ATTACHMENT 6-B

VL
Please Print Legibly

VIP Disclosure of Ownership/Principals

VIP Contracting Entity Information

Name Vanguard Lounge, LLC

Mailing Address 516 Fremont St., Las Vegas, NV 89101

Business Phone 686-7800

Tax ID or Social Security Number 10 09 / 89158

Type of Business

Sole Proprietor____ Partnership____ Limited Liability Company X Corporation____

Disclosure of Ownership/Principals

In the space below, the Contracting Entity must disclose all persons or entities holding more than one percent ownership interest in the business.

Full Name & Title	Business Address	Business Phone
Andrew Wheatley (25%)	516 Fremont	686-7800
Jennifer Wheatley (25%)	516 Fremont	686-7800
Peter Barnet (50%)	516 Fremont	323-630-5960

Additional Ownership/Principals

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

~~AH~~ VL
Please Print Legibly

VIP Disclosure of Ownership/Principals

Alternative Disclosure of Ownership/Principal

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

Name of Attached Document _____

Date of Attached Document _____

Number of Pages _____

Certification of Disclosure of Ownership/Principal - Business

I certify, under penalty of perjury, that all the information provided in this certificate is current, complete, and accurate.

Signature _____

Date 8-11-10

State of Nevada
County of Clark

This instrument was acknowledged before me on

8/11/10 (date) by

Andrew J. Wheatley (name of person)

_____

Notary Public

CHRISTOPHER J. PERRY
Notary Public, State of Nevada
Appointment No. 08-6488-1
My Appt. Expires Mar 14, 2012

CHRISTOPHER J. PERRY
Notary Public, State of Nevada
Appointment No. 08-6488-1
My Appt. Expires Mar 14 '01

ATTACHMENT 7

VL

Please Print Legibly

VIP Participant Affidavit and Employment Plan

STATE OF NEVADA }
} ss:
COUNTY OF CLARK }

I, Andrew Wheatley, being first duly sworn, depose and state under penalty of perjury as follows:

1. I am a corporate officer, managing member, or sole proprietor of the Vanguard Lounge, LLC, a company duly organized in the State of Nevada as a LLC, (Corporation/LLC/Sole Proprietorship). The Participant is seeking the assistance of the city of Las Vegas Redevelopment Agency ("Agency") for making improvements to the property at 516 Fremont ("Site"), as more particularly described by the VIP agreement ("Agreement") being contemplated by the city of Las Vegas Redevelopment Agency at its public hearing to be held on _____.

2. I hereby warrant that I either own the site, or have a leasehold interest in the site for a minimum of five years subsequent to the effective date of this agreement.

   Assistance from the Agency will allow me to make improvements to the site which I could not otherwise do. This will result in substantial benefit to the Redevelopment Plan Area and the neighborhood adjacent to the Site because of one or more of the following reasons (check one or more):

   a. Encourage the creation of new business or other appropriate development; ☑
   b. Create jobs or other business opportunities for nearby residents; ☑
   c. Increase local revenues from desirable sources; ☑
   d. Increase levels of human activity in the redevelopment area or the immediate neighborhood in which the redevelopment area is located; ☑
   e. Possess attributes that are unique, either as to type of use or level of quality and design; ☐
   f. Require for their construction, installation or operation the use of qualified and trained labor; ☐ and
   g. Demonstrate greater social or financial benefits to the community than would a similar set of buildings, facilities, structures or other improvements not paid for by the agency. ☐

3. No other reasonable means of financing those buildings, facilities, structures or other improvements are available, because of one or more of the following reason(s) as checked by the Participant:

   a. An inducement for new businesses to locate or existing businesses to remain within the redevelopment area in which the business would ordinarily choose to locate outside the redevelopment area if the grant were not provided. Evidenced by a "but for" letter or statement from the business owner.; ☐ or
   b. There is a public objective and/or requirement that is more stringent and/or costly to undertake than a business would ordinarily embark upon. Evidenced by state or city ordinance. ☑ or
   c. There has been a lack of rehabilitation in the area and it is deemed unreasonable for the business to invest in improving the area unless the grant is provided. Evidenced by photographs of the immediate surrounding area displaying the slum and blight. ☑ or
   d. The exterior improvements to the property or business do not have a direct affect on revenues therefore making such an investment is not deemed acceptable by a customary financial institution. Evidenced by a denial letter from a financial institution. ☐ or

e. The visual improvement of the property or addition of the business to the area is so dramatic that it is a catalyst for economic development in the area. Evidenced by a positive economic impact analysis. ☐

Participant agrees to submit to the Agency its documentation which evidences that no reasonable means of financing are available to the Participant.

4. Participant hereby warrants the following:

a. The property on which the project is situated is free of all Mechanic's Liens at the time of application. _____(initial)

b. The applicant has no current bankruptcy proceedings, or past bankruptcy proceedings, whether corporate or personal, within the past five years. _____(initial)

c. The applicant has no past-due federal, state, county or city of Las Vegas tax bills at the time of application. _____(initial)

d. The applicant has no past-due bills or debts payable to the city of Las Vegas or the Redevelopment Agency. _____(initial)

5. Participant hereby acknowledges that existing opportunities for employment within the surrounding neighborhood of the redevelopment project are limited for neighborhood residents. Most residents must travel outside the neighborhood to find employment opportunities outside the redevelopment area, via public transportation or personal vehicles. Of the existing businesses within the neighborhood, many are family owned and have been in business for a long time. These existing businesses are not in an expansion mode and are not likely to employee neighborhood residents.

Furthermore, the project will help facilitate the continued expansion of employment opportunities by setting an example to other property/business owners to renovate their property/business and help create more employment opportunities through an expansion of business and renovation of vacant storefronts. The Project will allow neighborhood residents to apply for those positions (when available) for which they are qualified for as an employment opportunity. Appropriate measures will be taken to ensure that the neighborhood is aware of any job opportunities available from the business.

DATED this 11 day of August, 2010.

Authorized Signature: _____

SIGNED AND SWORN TO before

me this 11th day of August, 2010, by Andrew J. Wheatley.

NOTARY PUBLIC

My Commission Expires: 3/14/12

CHRISTOPHER J. PERRY
Notary Public, State of Nevada
Appointment No. 08-6486-1
My Appt. Expires Mar 14, 2012

ATTACHMENT 8

AH
Please Print Legibly

VIP Real Property Owner Consent

STATE OF NEVADA }
} ss:
COUNTY OF CLARK }

I, Artemus Ham, owner and/or authorized representative of APN# 139-34-611-008 also commonly known as 516 Fremont hereby consent to the proposed exterior improvements on the above listed property **and** consent to the participation in the Visual Improvement Program which are to be undertaken by Vanguard Lounge, LLC, the tenant and/or business owner.

I also, hereby agree to and understand that in conjunction with participation in the Visual Improvement Program, the city of Las Vegas will record a non-exclusive façade easement deed and building maintenance agreement to the above listed property, at the completion of the pre-qualified improvements. The documents will be recorded in the Office of the County Recorder of Clark County, Nevada Records for a period of five years. The property owner and/or business owner will have the option to repurchase the façade easement and building maintenance agreement from the Agency during the five year period.

DATED this 9th day of August, 2010.

A.W. HAM III TRUST
Authorized Representative: BY: A.W. Ham III, Trustee

SIGNED AND SWORN TO before
me this 9th day of August 2010, by A.W. Ham III

Candice R. Salerno
NOTARY PUBLIC
My Commission Expires: april 8, 2012

CANDICE R. SALERNO
Notary Public State of Nevada
No. 94-2734-1
My appt. exp. April 8, 2012

Before Photos – Vanguard Lounge
(516 Fremont Street)



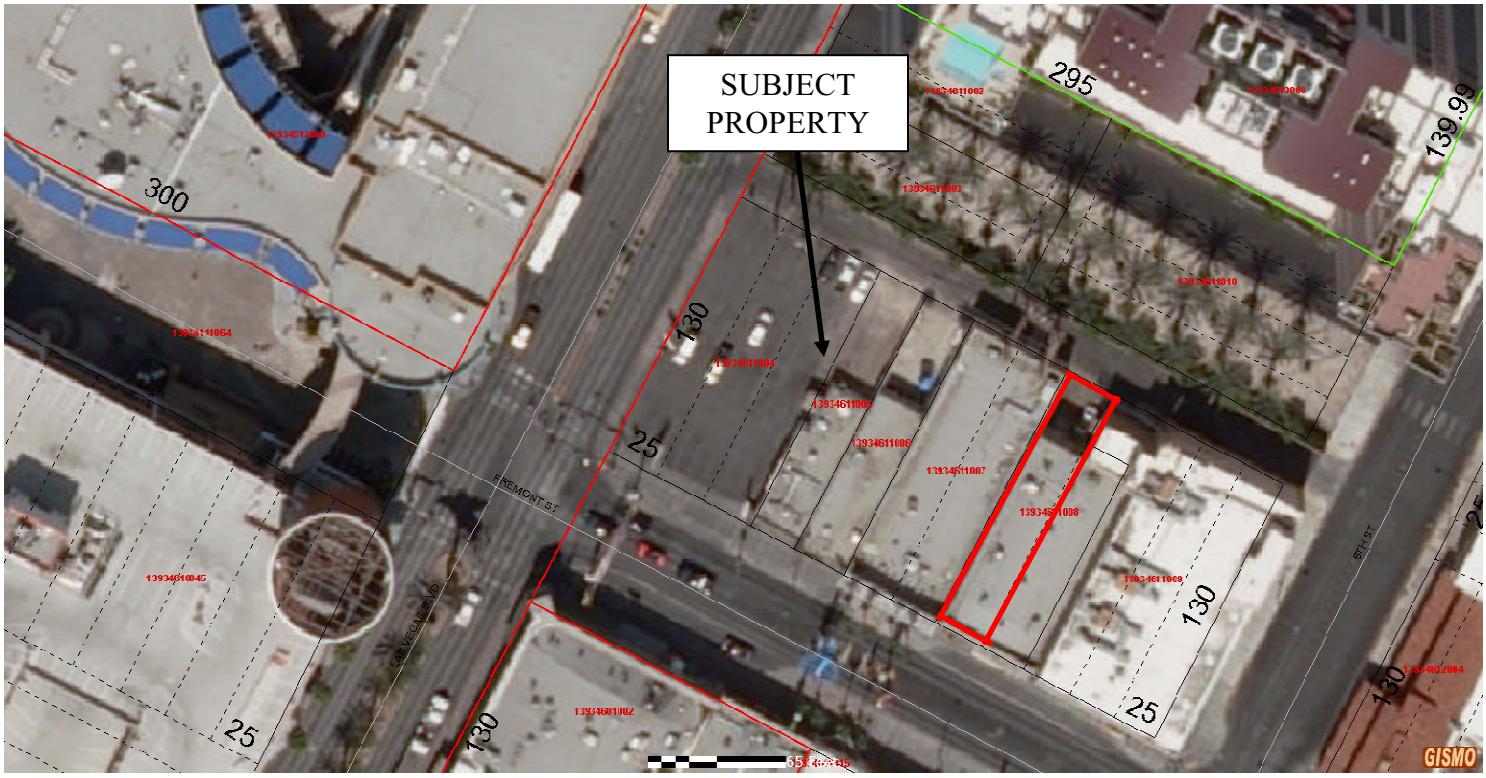
After Rendering/Photo – Vanguard Lounge
(516 Fremont Street)



After Rendering/Photo – Vanguard Lounge
(516 Fremont Street)



SITE MAP – VANGUARD LOUNGE
(516 FREMONT STREET)



City of Las Vegas Agenda Item No.: **62.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: CITY CLERK
DIRECTOR: BEVERLY K. BRIDGES ☐ **Consent** ☒ **Discussion**

SUBJECT:
BOARDS & COMMISSIONS:

Discussion and possible action on appointments of Council members to various City of Las Vegas and other jurisdictional Boards, Commissions and Authorities – Southern Nevada Enterprise Community Advisory Board

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:

RECOMMENDATION:

BACKUP DOCUMENTATION:
City Council Appointment Listing

8-16-2010

CITY COUNCIL APPOINTMENTS

BOARD NAME	APPT(S)	TERM	CURRENT REPRESENTATION	ORIGINAL APPT. DATE	EXPIRATION/NOTES
Chief Local Elected Officials Consortium (Formerly Nevada Business Services [NBS] Job Training Board)	1	Until replaced	Councilman Steven D. Ross	8-19-2009	
CLV Audit Oversight Committee *(These board appointments may not fall during the Election " cycle appointment process for Council members)*	2	2 yrs.	Councilman S. Wolfson	3-21-2007	Exp. 3-21-2011
			Councilwoman L. Tarkanian	1-21-2009 Must fill unexpired term	Exp. 1/21/2011
Clean Water Coalition		Until replaced	Councilman Steven D. Ross	7-15-2009	
		"	Councilwoman L. Tarkanian (Alternate)	3-4-2009	
Criminal Justice Advisory Council (Formerly Regional Jail Commission) (Change to Primary & Alternate on 10/2/96)		Until replaced (1 Primary, 1 Alternate)	Councilman S. Wolfson (Pri)	7-21-2004	
			Councilman Gary Reese (Alt)	9-21-2005	
Debt Management Commission (Formerly General Obligation Bond Comm.)	1	2 yrs.	Councilwoman L. Tarkanian	7-20-2005	Exp. June 2011
Emergency Operations, Mgmt. Comm.	1	Until replaced	Mayor O. Goodman	6-20-2001	
		"	Councilman R. Barlow	7-11-2007	
Las Vegas Convention and	2	Term of Office	Mayor O. Goodman	6-28-1999	Exp. June 2011
and Visitors Authority		"	Councilman G. Reese	1-21-2009	Exp. June 2011
Las Vegas Springs Preserve- Board of Trustees	1	Term of Office	Mayor O. Goodman	8-20-2003	Exp. June 2011
Local Law Enforcement Advisory Committee	1	Until replaced	Councilman S. Wolfson	5-2-2007	
Mayor Pro Tem	1	Until replaced	Councilman G. Reese	11-16-2000	Council elects
Metropolitan Police Committee	2	Until replaced	Councilman G. Reese	7-14-1997	
on Fiscal Affairs		"	Councilman S. Wolfson	1-21-2009	
Nellis Civilian Military Council	2	Until Replaced	Mayor O. Goodman	8-4-2004	
Executive Board		(Mayor and Alt.)	Alt.- Councilman R. Barlow	7-11-2007	
Nevada Development Authority	1	2 yrs.	Mayor O. Goodman	6-28-1999	Exp. June 2011
Nevada League of Cities	1	2 yrs.	Councilman R. Barlow	1-21-2009	Exp. Jan 21, 2011
Oversight Panel for School Facilities	1	2 yrs.	Councilman S. Wolfson	1-7-2009	Exp. 12-31-2011
Regional Flood Control District *(Members are the same as those appointed to RTC and terms should coincide.)*	2	2 yrs.	Mayor O. Goodman	7-20-2005	Exp. 6-30-2011
		"	Councilman S. Ross	1-21-2009	Exp. 1/21/2011
Regional Transportation Commission (Expiration date set by NRS)	2	2 yrs.	Mayor O. Goodman	7-20-2005	Exp. 6-30-2011
		"	Councilman S. Ross	1-21-2009	Exp. 6-30-2011
So. Nev. Enterprise Community Board		3 yrs.	Councilman R. Barlow	10-3-2007	Exp. 10-3-2010
So. Nev. Health District (formerly Cl. Co. District Bd. of Health) (Membership changed to 2 Council Elected Officials per AB380-2005) (By-Laws Sec. 4.1(e) allows for designation of an Alternate)		2 yrs.	Councilman S. Anthony	7-1-2009	Exp. June 2011
			Councilman R. Barlow	7-11-2007	Exp. June 2011
			Councilman S. Ross (Alt)	11-1-2006	Exp. June 2011
So. Nev. Regional Planning Coalition (Formerly So. Nev. Gov't Efficiency Committee)	2	Until replaced	Mayor O. Goodman	6-28-1999	
		"	Councilwoman L. Tarkanian	3-21-2007	
		Alternate -	Councilman S. Wolfson	2-16-2005	
So. Nev. Water Authority	2	Until replaced (1 Member, 1 Alternate)	Councilwoman L. Tarkanian	9-06-2006	
			Councilman Stavros Anthony (Alternate)	7-15-2009	
Yucca Mnt. Nuclear Repository Com.	2	Until replaced	Councilman S. Wolfson	7-21-2004	City Mgr. or designee
		"	Councilwoman L. Tarkanian	3-4-2009	also serves

City of Las Vegas Agenda Item No.: **63.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: CITY CLERK
DIRECTOR: BEVERLY K. BRIDGES ☐ **Consent** ☒ **Discussion**

SUBJECT:
BOARDS & COMMISSIONS:

PLANNING COMMISSION – Keen Ellsworth, Term Expires 6/2013 (resigned)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
The Mayor and each member of City Council appoint one member to this committee subject to ratification by the Council. Terms are concurrent with the term of the appointing City Council member. All members of this board must be City residents but are not required to reside in the specific Ward of the Councilmember making the appointment. Terms are for four years with a limit of two full terms, and unexpired terms must be filled. Additionally, this is a compensatory board. Mr. Ellsworth was appointed by Councilman Ross and was a resident of Ward 6. He has resigned and the unexpired term must be filled..

RECOMMENDATION:
Procedure for this Board is a recommendation by Councilman Ross to appoint a new member representing Ward 6 with the ratification of the City Council.

BACKUP DOCUMENTATION:
1. Current Listing and Authority
2. Board Interest Forms from Audrey Asselin, Trevor Hayes and Jennifer L. Taylor

Per Senate Bill 147, effective June 11, 2003, compensated boards meeting certain criteria are no longer required to file State Financial Disclosure Statements. This board meets that established criteria.

Planning Commission

	Name	Appointment Date	Expiration Date	Recommended By:
1	**Ric Truesdell - Chair** Mayor's Appointment Ward 2 Resident	7 /7 /2004 **Reapp: 6/20/2007**	6/1/2011	Mayor
2	**Vicki Quinn** Ward 1 Appointment Ward 1 Resident	12/19/2007 **Reapp: N/A**	6/1/2011	Tarkanian
3	**Glenn Trowbridge** Ward 2 Appointment Ward 4 Resident	7 /5 /2005 **Reapp: 7/1/2009**	6/1/2013	Wolfson
4	**Steven Evans** Ward 3 Appointment Ward 3 Resident	8 /1 /2001 **Reapp: 6/18/2003** **6/20/2007**	6/1/2011	Reese
5	**Gus Flangas** Ward 4 Appointment Ward 4 Resident	7 /15/2009 **Reapp: N/A**	6/1/2013	Anthony
6	**Byron A. Goynes** Ward 5 Appointment Ward 6 Resident	2 /16/2000 **Reapp: 5/16/2001** **6/18/2003** **6/20/2007**	6/1/2011	Barlow
7	**Keen Ellsworth - Vice Chair** Ward 6 Appointment Ward 6 Resident	10/15/2008 **Reapp: 7/1/2009**	6/1/2013	Ross

AUTHORITY: NRS 278 - L.V.M.C. 2.44

Per L.V.M.C. 2.49.010, a person is not eligible to serve on this board unless he or she is a resident of the City of Las Vegas.

(11-15-95 Ord. 3940, Bill 95-73, removed restriction that PC members could hold no other public office - this restriction was previously removed by the Legislature from NRS.)
(Amended per Bill 2001-70, Ordinance 5346, adopted 8-1-2001, to indicate financial disclosure requirement)
(Amended per Bill 2001-145, Ordinance 5409 - First Amendment, adopted 1-2-2002, to increase compensation for members from $50.00 to $80.00 per meeting attended, effective October 1, 2001 per SB554)

TERM: 4 years (limited to 2 full terms; no former member who has completed two full terms will be eligible for appointment until at least two years from term expiration have elapsed.) **(LVMC 2.44.020; 1-19-2000 Ord. 5193, Revised the expiration of members' terms to run concurrent with the term of the elected official recommending their appointment)**
Must fill unexpired terms.

COMPENSATION: $80.00 per meeting attended

APPOINTED: 7 Members-each member of the City Council recommends one person for appointment w/approval of Council. Terms are coterminous with the member making the recommendation **(Appointees may not be members of the elected governing body - NRS 278.040)**

NOTES: **MUST BE CITY OF LAS VEGAS RESIDENT.**

Per Senate Bill 147, effective June 11, 2003, compensated boards meeting certain criteria are no longer required to file State Financial Disclosure Statements. This board meets that established criteria.

MEETINGS: Meets 4th Thursday of each month, 6:00 PM, Council Chambers, January through October, and 3rd Thursday, November and December.

PURPOSE: The Planning Commission is advisory to the City Council on matters related to zoning and other related issues and serves as a final action board for Tentative and Final Maps.

City of Las Vegas
Board, Commission, or Committee Interest Form

Name: Audrey Asselin

Home Street Address: 7921 Aviano Pines

City: LV **NV** **ZIP Code:** 89129

Work Street Address: 1009 Whitney Ranch

City: Henderson **ZIP Code:** 89014

Employer: TRC **Occupation:** Civil Engineer

Home Phone Number: 702.655.1002 **Work Phone Number:** 702.248.6415

Other Phone Number: 702.499.2958 (cell) **Email Address:** aasselin@trcsolutions.com

Please list the boards, commissions, or committees that you are interested in serving on:

① Community Development Recommending Board,
② Conservation District of Southern Nevada, ③ Historic Preservation Commission, ④ Neon Museum Board,
⑤ Parks & Rec Advisory Commission
⑥ Planning Commission
⑦ Redevelopment Agency
⑧ Regional Flood Control District
⑨ Traffic & Parking Commission
⑩ Bus Bench/Shelter Constr. & Maint.

For office use only

CLV Y ✓ N ___

Ward 4

Date 2/9/09

Please list any boards, commissions, or committees that you serve on, or have served on in the past (Use additional pages, if necessary):

APWA Conference Committee

Please discuss your qualifications to serve on any boards, commissions, or committees (Use additional pages, if necessary):

(See Attached as well)

I have lived in the LV area for over 30 years and I have been a part of the growth & development of this town as a Civil Engineer for over 25 years. I care & I want to help.

Please list any of your relatives or friends that work for the entity in which you would be serving:

NA

Feel free to attach a resume to this form. Upon submitting this form, all information will be considered public information. This form will be kept on file for 6 months from date of submittal. It is the applicant's responsibility to submit a new form after that time. This form does not constitute an application for employment. Please do not to submit this form electronically. It should be printed, completed and mailed along with a letter and resume.

Please submit to:

City Clerk
City of Las Vegas
400 Stewart Avenue
Las Vegas, NV 89101

Fax: (702) 382-4803

**You may be required to be resident of the City of Las Vegas to serve certain boards, committees, or commissions.*

July 8, 2009

Attachment:

Qualifications to Serve on Boards, Commissions and or Committees:

I have lived in Las Vegas for 33 years and have been involved in the growth and development of the Las Vegas Valley Area with my career of over 25 years in the Civil Engineering and Land Development Industry.

I have been intimately involved in the Entitlement, Design and Construction Management aspects of Private Development as well as numerous Public Facilities here in the valley area.

I can bring the experience of working with Developers and Public Entities to the Boards, Commissions and Committees that I will serve on. My experience has taught me that positive, calculated growth within any entity, whether private business or community development or even personal goals, is paramount, not to just the survival of that entity, but is necessary to the well being and good health of that entity. I can hit the ground running, so to speak, with an understanding of development codes and planning experience and the understanding of what is an appropriate growth direction.

My goal of serving my community is to bring experience and leadership to a position that serves the City Council Members, my community and the greater good of the Las Vegas Valley.

I am in a position personally to be able to dedicate time and effort to the needs of my community, so I'm asking to be placed on any Board, Commission or Committee that may benefit from my experience.

Audrey Asselin, P.E.

7921 Aviano Pines Avenue
Las Vegas, Nevada 89129
702-499-2958

Experience

TRC (formerly V-Point)

Engineering Director ***4/2007 through present***

- Business Development
- Oversee of Project Entitlements, Project Design and Coordination
- Oversee of Production Group implementing Improvement Plans and all relevant reports and calculations
- Project Scheduling and Client Liaison
- Contract Negotiation, Extra Origination, Contract Management and Billing

Subdivision Acceptance LLC

Vice President of Operations ***8/2006 through 4/2007***

- Management of Company Start up and Client Base Marketing and Sales
- Business Development
- Oversee of Estimates and Cost Analysis
- General Management / Hiring

Centex Homes

Land Development Manager ***4/2004 through 7/2006***

- Oversight of Construction Management
- Management of Project Entitlements, Land Construction Budgets, Construction Schedules, Cash Flows and Contractor Performance
- Land Acquisition Analysis, Budgets, Schedules and Pro formas
- Responsibilities included:
  - Land Acquisition research and analysis to help determine profit potential
  - Land Acquisition Pro formas
  - Coordination and Management of Engineering Documents, Entitlements and schedules
  - Value Engineering of each facet of construction for Land Development
  - Contract Negotiation, Budget Management and Management of Cash Flow projections for Land Development
  - Management of Land Construction Schedule to meet the Master Schedule for Vertical Starts and Sales
  - Quarterly analysis of Budgets and the Costs to Complete the project to insure Land Costs were projected correctly through home sales
  - Bond exoneration and utility refund analysis in order to close out jobs and budgets
  - Bi-party and Tri-party contract and budget management
  - Training and protocol development for Forward Planning, Land Development Management and Field Operations

CVL Consultants, Inc

Senior Project Manager ***6/2002 through 4/2004***

- Oversee of Project Entitlements, Project Design and Coordination
- Oversee of Improvement Plans Production and all relevant reports as well as Final Maps
- Project Scheduling and Client Liaison
- Contract and Extra Origination and Contract Management

Civiltec, Inc

Project Manager ***3/1996 through 6/2002***

- Project Design and Coordination
- Tentative Map, Site Planning and Layout, Site Calc'ing and Zoning
- Field Note Reduction
- Sewer / Water Analysis with Report
- Coordination with Hydrology
- Storm Drain Calcs
- Computer Department Manager; Acad, Softdesk Standards
- Client/Architect Coordination and correspondence
- Final Mapping

At Home Mom ***2/1993 through 3/1996***

L.R. Nelson, Inc

Project Manager ***2/1991 through 2/1993***

- Project Design and Coordination
- Site Layout, Planning and Calculating
- Field Note Reduction
- Sewer / Water Analysis with Report
- Coordination with Hydrology and some Storm Drain Calcs
- Computer Department Manager; Acad, Softdesk Standards
- Construction Management in conjunction with Architect for 2 High Schools
- Client/Architect Coordination and correspondence

E. S. I.

Project Designer ***2/1989 through 2/1991***

- Project Design and Coordination
- Field Note Reduction
- Sewer / Water Analysis with Report
- Coordination with Hydrology, some Storm Drain Calcs

L.R. Nelson, Inc

Designer ***7/1987 through 2/1989***

S. E. A.
Drafter ***9/1985 through 7/1987***

J. M. Montgomery Engineers
Drafter and Runner ***9/1983 through 9/1985***

Relevant Construction Management Projects

- *Santa Bella 3 and 4 Single Family Residential (SFR) Development*
- *Tropical and Lawrence SFR*
- *Robindale Lindale North and South SFR*
- *Nelson Ranch and Nelson Ranch Pump Station SFR*
- *Edna Van Allen SFR*
- *Mesa Verde (Finished Lot Acquisition) SFR*

Relevant Design Projects

- *Mountain Falls South Master plan Residential Community, Pahrump*
- *First International Bank, Pahrump*
- *Spring Mt. Motorsports Park, Microtel, Pahrump*
- *Wheeler Pass RV Park, Pahrump*
- *Sanders Winery, Pahrump*
- *Gateway Master plan, Pahrump*
- *Duck Creek Apts*
- *Santa Bella 3 and 4 SFR*
- *Tesoro, Terracina, Terrasol Subdivisions*
- *La Cresenta and La Ventina Subdivisions*
- *Grand View Apartments*
- *Martinez Elementary School*
- *Black Mountain, Towncenter LDS Churches*
- *Copper Canyon, Willows At Sunrise, Willows At Lone Mountain Apartments Sites*
- *Edna Garden, Cottonwood At Sunrise, Cottonwood North, Horizon Heights, Fairway Pointe At Queensridge Subdivisions*
- *Horizon Marketplace, Green Valley Business Center, Simmons Market Place Commercial Sites*
- *Las Vegas, Durango, Silverado High Schools*
- *Tate and Snyder Office Building*
- *Valle Verde / Pittman Wash Bridge - Civil Design*
- *Buckingham Estates, South Shore Villas, Copper Ridge Subdivisions*
- *Pecos Road, Windmill Road, Pebble Road*

Education

University of Nevada, Las Vegas
Civil Engineering Major

Certifications / License

State Of Nevada
Professional Engineering License 18277

RECEIVED
CITY CLERK

2010 MAY 10 A 11:35

City of Las Vegas
Board, Commission, or Committee Interest Form

Name: Trevor Hayes

Home Street Address: 3108 Sonia Drive

City: Las Vegas **ZIP Code:** 89107

Work Street Address: 6060 Elton Ave, Suite A

City: Las Vegas **ZIP Code:** 89107

Employer: Cooper Levinson **Occupation:** Attorney

Home Phone Number: 308-9993 **Work Phone Number:** 366-1125

Other Phone Number: _____ **Email Address:** thayes@hayeslawnevada.com

Please list the boards, commissions, or committees that you are interested in serving on:

Planning Commission, Redevelopment Agency, CPAC, Downtown Design Review, Historic Preservation, Parks & Rec, Traffic & Parking, Community Development Recommending, Neon museum, Neighborhood Partners Fund Arts

For office use only
CLV Y ✓ N ___
Ward 1
Date 5/10/2010

Please list any boards, commissions, or committees that you serve on, or have served on in the past (Use additional pages, if necessary):

City of Las Vegas Collaborative Team for Value Assessment Program Review

Please discuss your qualifications to serve on any boards, commissions, or committees (Use additional pages, if necessary):

Please list any of your relatives or friends that work for the entity in which you would be serving:

Feel free to attach a resume to this form. Upon submitting this form, all information will be considered public information. This form will be kept on file for 6 months from date of submittal. It is the applicant's responsibility to submit a new form after that time. This form does not constitute an application for employment. Please do not to submit this form electronically. It should be printed, completed and mailed along with a letter and resume.

Please submit to:

City Clerk
City of Las Vegas
400 Stewart Avenue
Las Vegas, NV 89101

Fax: (702) 382-4803

**You may be required to be resident of the City of Las Vegas to serve certain boards, committees, or commissions.*

Trevor Hayes
Addendum to Application

Please discuss your qualifications to serve on any boards, commissions, or committees:

I have been a Southern Nevada resident since 1992 and have always been interested in bettering the community. Many of my professional jobs have allowed me to take such a role (see attached résumé). After college, I worked as a newspaper reporter for the Associated Press and the Las Vegas Review-Journal before attending law school. After law school I began working for Lionel Sawyer & Collins as an administrative attorney, with a significant focus on local land use and state legislative matters.

The experience I gained representing the private sector before local governments has provided me with experience that would help me to serve the City of Las Vegas in a number of areas. I also represented another Southern Nevada city before the Nevada Legislature, providing me greater insight into city government. While my experience would assist me best on the Planning Commission, I am interested in serving on any of a number of boards.

Additionally, I am a 2005 graduate of the Las Vegas Citizens Leadership Academy. This program was run by the City of Las Vegas and introduced a group of citizens to a wide range of city departments.

Trevor Hayes

3108 Sonia Drive
Las Vegas, Nevada 89107
thayes@hayeslawnevada.com
(702) 308-9993

PROFESSIONAL EXPERIENCE:

Hayes Law — Las Vegas, NV
Attorney — September 2009 – Present

- Owner of a firm practicing administrative law, regulatory law, and legislative advocacy
- Representative clients include a $13 billion international technology company, a real estate developer, and a statewide trade association

Lionel Sawyer & Collins — Las Vegas, NV
Administrative Law Attorney/ Government Affairs Manager — May 2005 – September 2009

- Managed the state Legislative practice and Carson City office for the state's largest private law firm
- Represented more than 25 clients during two regular and three special sessions of the Legislature
- Drafted proposed legislation, testify before legislative committees, and work with legislators
- Advocated for clients in their interactions with state government entities, such as the Nevada Gaming Commission, Tax Commission, Transportation Authority, etc.
- Obtained permits, licenses, and entitlements from local governments
- Developed and implemented marketing strategies for the firm
- Teaching assistant to Bob Faiss in Boyd School of Law gaming law course
- *Super Lawyers* Rising Star, 2008, 2010, awarded to less than 2.5 percent of attorneys under age 40
- *Las Vegas Business Press* Rising Star of Business, 2007, one of 12 recipients
- Named a legislative standout by the Las Vegas Review-Journal, 2007

Meetings Media — San Francisco, CA
News/Features Editor — September 2001 – August 2002

- Wrote and edited stories, and managed a team of 20 freelance writers for travel industry magazines

Las Vegas Review-Journal — Las Vegas, NV
Staff Writer — January 2000 - August 2001

- As a business reporter, covered gaming, labor unions, technology, tourism, retail, and development
- As a suburban government reporter, covered Nevada's second and fourth largest cities
- Received Nevada Press Association, Honorable Mention for best business story

Associated Press — Las Vegas, NV
Reporter — October 1999 - January 2000

- Wrote breaking news and enterprise stories in Las Vegas for the world's largest news organization

The Resort at Summerlin — Las Vegas, NV
Public Relations Manager — *April 1999 – October 1999*

- Developed communication strategies, wrote press releases, and served as media contact

R & R Advertising — Las Vegas, NV
Assistant Account Executive — September 1998 – March 1999

- Wrote press releases, developed communications plans, and garnered media coverage for clients
- Received Association of Business Communicators Award of Merit for work on youth violence campaign

Freelance Writer — September 1997 - June 2003

- Wrote feature and news stories for local, regional and international publications
- Wrote a column of my experiences as a law student for vault.com

LEGAL INTERNSHIPS:

United States Attorney, Northern District of Illinois — **Chicago, IL**
Student Intern — Spring 2005
- Assisted attorneys in trial preparation through legal research and writing
- Prosecuted petty offense cases

Northwestern University School of Law — **Chicago, IL**
Bluhm Legal Clinic — Fall 2004
- Drafted motions, conducted investigations, and interviewed witnesses and clients
- Served as rapporteur at a legal aid conference in Africa, which resulted in a UN resolution

New York County (Manhattan) District Attorney — **New York, NY**
Intern — Summer 2004
- Sat second seat at a felony jury trial
- Assisted with and observed suspect interrogations, witness interviews, expert interviews, and trials
- Conducted research on substantive and procedural legal issues in preparation for trials

United States District Court, District of Nevada — **Las Vegas, NV**
Judicial Extern for Hon. James C. Mahan — Summer 2003
- Briefed the judge on civil and criminal cases and wrote bench memoranda and orders

Cook County State's Attorney — **Chicago, IL**
Legal Clerk — Summer 2003
- Honed legal research, writing and analysis by writing appellate briefs for the criminal appeals division

EDUCATION:

Northwestern University School of Law — **Chicago, IL**
Juris Doctor — May 2005
- International Team Project, visited Cuba, Thailand, and Cambodia as part of a comparative law course
- Elected by student body to serve as the Student Bar Association representative to the ABA
- Student Admissions Committee: Interviewed prospective students and planned admitted students' day
- Co-founder Media and Entertainment Law Society
- Illinois Bar Foundation scholarship recipient for Northwestern University School of Law
- Received ABA scholarship to attend the Forum on Communications Law annual conference

University of Nevada, Las Vegas — **Las Vegas, NV**
Bachelor of Arts, Communication Studies – Print Journalism
- Dean's Honor List
- President, Tau Kappa Epsilon social fraternity, named Brother of the Year and Most Inspirational
- Section-editor and staff writer for Rebel Yell student newspaper serving a student body of 20,000

PROFESSIONAL AND CIVIC AFFILIATIONS:
- Board Member, UNLV Alumni Association
- Founding Board Member, UNLV Greenspun School of Journalism Alumni Association
- Nevada Supreme Court Commission on Access to Justice, Subcommittee for Public Awareness
- Pro bono Volunteer, Children's Attorney Project at the Legal Aid Center of Southern Nevada
- Founding Board Member, Nevada Freedom of Information Coalition
- Founder and chairman, UNLV's Runnin' Rebel Ambassadors
- Co-chair of the State Bar of Nevada Young Lawyers Division Charity Golf Tournament
- Graduate, Las Vegas Citizens Leadership Academy
- Member, State Bar of Nevada

Please find attached a City of Las Vegas, board, commission, or committee interest form.

--
Trevor Hayes
3108 Sonia Drive
Las Vegas, NV 89107

Ph: 702-308-9993
Fax: 702-924-2573

City of Las Vegas
Board, Commission, or Committee Interest Form

2010 AUG 23 A 10:16
RECEIVED
CITY CLERK

Name: Jennifer L. Taylor

Home Street Address: 8158 Hawk Clan Court

City: Las Vegas **ZIP Code:** 89131

Work Street Address: 401 N. Buffalo Drive, Ste. 202

City: Las Vegas **ZIP Code:** 89145

Employer: Robertson & Vick, LLP **Occupation:** Attorney

Home Phone Number: _____ **Work Phone Number:** 247-4661

Other Phone Number: — **Email Address:** jtaylor@rvcdlaw.com

Please list the boards, commissions, or committees that you are interested in serving on:

Planning

For office use only
CLV (Y) N ___
Ward 6
Date 8/23/2010

Please list any boards, commissions, or committees that you serve on, or have served on in the past (Use additional pages, if necessary):

None

Please discuss your qualifications to serve on any boards, commissions, or committees (Use additional pages, if necessary):

See attached resume

Please list any of your relatives or friends that work for the entity in which you would be serving:

None

Feel free to attach a resume to this form. Upon submitting this form, all information will be considered public information. This form will be kept on file for 6 months from date of submittal. It is the applicant's responsibility to submit a new form after that time. This form does not constitute an application for employment. Please do not to submit this form electronically. It should be printed, completed and mailed along with a letter and resume.

Please submit to:

City Clerk
City of Las Vegas
400 Stewart Avenue
Las Vegas, NV 89101

Fax: (702) 382-4803

**You may be required to be resident of the City of Las Vegas to serve certain boards, committees, or commissions.*

JENNIFER L. TAYLOR

E-MAIL: JTAYLOR@RVCDLAW.COM
8158 HAWK CLAN COURT • LAS VEGAS, NV • 89131
(702) 247-4661

COMMUNITY ACTIVITIES

- Leadership Las Vegas, Las Vegas Chamber of Commerce – Class of 2010
- Nevada Conservation League – Board of Directors
- Northwest Residents for Responsible Growth: Co-founder, 2007. Currently reaching out to at least 2000 Northwest residents, homeowners associations and conservation groups.
- Suncrest Trails Community Association Board of Directors: President 2002 – 2005; Vice President: 2001 – 2002.
- Ms. Taylor assists her husband, Yale Yeandel, on numerous community, community college and high school theater projects where Mr. Yeandel serves as the scenic designer.
- Ms. Taylor assists her husband, Yale Yeandel, with fundraising, publicity and organizational activities for the Vicente Rodriquez Memorial Scholarship, established at both the College of Southern Nevada and UNLV in memory of Vicente Rodriquez, a stage hand who died in 2009 in a work related rigging accident.
- Poppy Foundation – volunteer

EXPERIENCE

1995 – Present
Attorney and Judicial Clerk

- Ms. Taylor moved to Nevada in 1995 to clerk for the Honorable Robert E. Rose, then Chief Justice of the Nevada Supreme Court. In 1996, Ms. Taylor became the law clerk to the Honorable Janet J. Berry, Washoe County District Court, upon Judge Berry's initial appointment to the bench. Ms. Taylor moved to Las Vegas in 1997. Since then, she has practiced complex civil litigation, in areas including environmental law, toxic torts, construction, construction defect, business litigation, personal injury and bankruptcy. Ms. Taylor has a full knowledge of Title 19, and has appeared on behalf of herself and neighbors on numerous items before City Council and Planning Commission.

POLITICAL ACTIVITY

- Ran for Las Vegas City Council Ward 6 in the 2009 Municipal Elections
  - Received 45.19 % of votes; received the Las Vegas Sun's endorsement in the race.

EDUCATION

- University of Houston Law Center
  - Juris Doctorate Cum Laude – 1995
  - Honors & Activities: Houston Law Review - Associate Editor; Dean's Scholarship Recipient; Woodard, Hall & Primam Award - Most Outstanding Associate Editor
- Southern Methodist University
  - Bachelor of Arts, English/Creative Writing - 1991
  - Honors & Activities: Dean's List 1989 -1991; Recipient of SMU Fiction Writing Award, 1991; Sigma Tau Delta - National English Honor Society

City of Las Vegas Agenda Item No.: **64.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: CITY ATTORNEY
DIRECTOR: BRADFORD R. JERBIC ☐ **Consent** ☒ **Discussion**

SUBJECT:
RECOMMENDING COMMITTEE: BILL ELIGIBLE FOR ADOPTION AT THIS MEETING:

ABEYANCE ITEM – Bill No. 2010-31 – Updates the regulations governing certain commercial, entertainment and solicitation activities within the Pedestrian Mall. Proposed by: Bradford R. Jerbic, City Attorney and Councilman Gary Reese

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
This bill will update the regulations governing certain commercial, entertainment and solicitation activities within the Pedestrian Mall. The bill is intended to address the results of litigation regarding the Pedestrian Mall, allowing for protected expression subject to reasonable "time, place and manner" regulations.

RECOMMENDATION:
ADOPTION as a First Amendment at 8/18/2010 City Council meeting pursuant to the 8/3/2010 Recommending Committee.

First Reading - 7/7/2010; First Publication - 8/6/2010

BACKUP DOCUMENTATION:
1. Bill No. 2010-31
2. Business Impact Statement
3. Letter and Copy of Santa Monica Municipal Code by Allen Lichtenstein
4. PowerPoint Presentation, DVD with PowerPoint, Videos and Photographs and Exhibits 1-9 by Staff
5.. Berger caselaw by Maggie McLetchie
6. Verbatim Transcript from 8/3/2010 Recommending Committee meeting
7. Bill No. 2010-31 First Amendment

BILL NO. 2010-31

ORDINANCE NO. _____

AN ORDINANCE TO UPDATE THE REGULATIONS GOVERNING CERTAIN COMMERCIAL, ENTERTAINMENT AND SOLICITATION ACTIVITIES WITHIN THE PEDESTRIAN MALL, AND TO PROVIDE FOR OTHER RELATED MATTERS.

Proposed by:
Bradford R. Jerbic, City Attorney
Councilman Gary Reese

Summary: Updates the regulations governing certain commercial, entertainment and solicitation activities within the Pedestrian Mall.

THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Title 10, Chapter 44, Section 10, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

10.44.010: For purposes of this Chapter:

(A) "Solicitation" means the act of solicitation, including asking, begging, soliciting or pleading, for the purpose of [immediately] obtaining money, charity, business or patronage, or gifts of items of value for oneself or another person or organization.

(B) "Coercion" means to wilfully and knowingly:

(1) Approach or speak to a person in such a manner as would cause a reasonable person to believe that the person is being threatened with:

(a) Imminent bodily injury, or

(b) The commission of a criminal act upon the person or another person, or upon property in the person's immediate possession;

(2) Persist in a solicitation after the person solicited has given a negative response;

(3) Block, either individually or as part of a group of persons, the passage of a solicited person[;] , including by means of the use of physical objects; or

(4) Engage in conduct that would reasonably be construed as intended to compel or force a solicited person to accede to demands.

SECTION 2: Title 11, Chapter 68, Section 20, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

11.68.020: As used in this Chapter:

[(A)] "Celestial vault lightshow" is the display of computer-generated electronic images on the ceiling of the celestial vault constructed above Fremont Street and the various light and sound effect accompanying such images.

[(B)] "Display vehicles" are those vehicles brought into the Pedestrian Mall for purposes of display to the public, and not for the primary purpose of transporting persons or property.

[(C)] "Emergency vehicles" are those motorized devices in, upon or by which any person or property is or may be transported or drawn upon a street or sidewalk, including, without limitation, automobiles, motorcycles and mopeds.

[(D)] "Exterior building improvements" means the building facades, marquees, overhangs, recessed entries, adjoining mall area paving materials, signage and graphics, adjoining landscaping, building illumination and audible effects or devices.

"Free expression zones" means those areas within the Pedestrian Mall that have been specifically designated by the City of Las Vegas to be used for solicitation, leafleting and mall entertainment in accordance with LVMC 11.68.103. The boundaries of the free expression zones shall be as set forth in Exhibit A of this Ordinance (Ordinance No. ____), which ordinance is codified in this Chapter and Exhibit A of which is adopted herein by this reference.

"Leafleting" means the act of distributing to any passersby in a continuous or repetitive manner any printed, written or graphic materials.

[(E)] "Motorized vehicles" are those motorized devices in, upon or by which any person or property is or may be transported or drawn upon a street or sidewalk, including, without limitation, automobiles, motorcycles and mopeds.

[(F)] "Maintenance vehicles" are those vehicles owned or operated by the City of Las Vegas, as well as vehicles owned and operated by utilities and other vehicles requiring access onto the Pedestrian Mall for the purpose of the repair and maintenance of the Pedestrian Mall or facilities and structures contained therein.

"Mall advertising" includes all advertising within or in connection with the Pedestrian Mall including, without limitation, any means of marketing or promoting the Pedestrian Mall, special

events, or any other commercial activity, and the display of consumer goods, products, or services to the users of the Pedestrian Mall for the purpose of encouraging the sale and purchase thereof, including, without limitation, signs, pictures, or other displays.

"Mall entertainment" is the conduct on the part of any person intended to provide entertainment, recreation, relaxation or enjoyment to the users of the Pedestrian Mall.

"Mall vending" is the distribution, display or sale, or any combination thereof, of consumer goods or services (including food, drink or merchandise) from a pushcart, concession stand, kiosk or other similar structure designed for such purpose.

[(G)] "Management agreement" means that agreement executed between The Fremont Street Experience Limited Liability Company and the City of Las Vegas for the purpose of acquisition, construction, operation, management or maintenance of the Pedestrian Mall.

[(H)] "Parade" is a group of persons with or without animals or vehicles in a public procession or march and does not include a procession or march in connection with a special event or mall entertainment.

[(I)] "Pedestrian Mall Act" refers to NRS 268.810 through 268.823.

[(J)] "Special events" include festivals, sporting events, exhibitions, entertainment and similar activities which are not offered on a continuous basis, whether or not members of the public pay an admission or entrance fee to be spectators or participants.

[(K)] "Special permit vehicles" are those vehicles authorized by The Fremont Street Limited Experience Liability Company in accordance with Section 11.68.080 to enter upon the Pedestrian Mall.

[(L) "Mall advertising" includes all advertising within or in connection with the Pedestrian Mall including, without limitation, any means of marketing or promoting the Pedestrian Mall, special events, or any other commercial activity, and the display of consumer goods, products, or services to the users of the Pedestrian Mall for the purpose of encouraging the sale and purchase thereof, including, without limitation, signs, pictures, or other displays.

(M) "Mall entertainment" is the conduct on the part of any person intended to provide entertainment, recreation, relaxation and enjoyment to the users of the Pedestrian Mall.

(N) "Mall vending" is the distribution, display or sale, or any combination thereof, of consumer goods or services (including food, drink or merchandise) from a pushcart, concession stand, kiosk or other similar structure designed for such purpose.]

SECTION 3: Title 11, Chapter 68, Section 100, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

11.68.100: The following are prohibited within the Pedestrian Mall:

(A) Animals unless used in connection with a mall activity authorized by The Fremont Street Experience Limited Liability Company or used for the purpose of assisting the visually or aurally impaired;

(B) Mall vending, mall advertising, [mall entertainment] special events or other commercial activities unless conducted or authorized by The Fremont Street Experience Limited Liability Company[;] or permitted by LVMC 11.68.103;

(C) Parades;

(D) Unicycles, bicycles and other types of cycles, skateboards, roller skates, in-line skates and shopping carts except as authorized by The Fremont Street Experience Limited Liability Company in connection with special events and mall entertainment;

(E) Sleeping or camping;

(F) Littering;

(G) Sexually oriented businesses as described in Section 19.04.040; [of the Las Vegas Municipal Code;]

(H) Notwithstanding LVMC 11.68.103, [The] the placement of any table, rack, chair, box, cloth, stand, booth, container, structure or other object within the Pedestrian Mall, [for purposes of solicitation,] except:

(1) As [as] necessary for emergency purposes, or the maintenance or repair of the Pedestrian Mall; [, or as authorized]

(2) As authorized by The Fremont Street Experience Limited Liability Company for special events, mall advertising, mall entertainment or mall vending or other commercial and entertainment activities; or

(3) As permitted by LVMC 11.68.103.

(I) Glass and metal beverage containers including, but not limited to, bottles, jugs, drinking glasses, aluminum cans and steel cans, during the hours of ten a.m. to 11:59 p.m. on December 31st, and the hours of twelve a.m. to eight a.m. on January 1st of each year;

(J) Feeding birds; [and]

(K) Amplified sound which originates from within the Pedestrian Mall or from properties or businesses abutting the boundaries of the Pedestrian Mall, except where expressly approved by The Fremont Street Experience Limited Liability Company in conjunction with special events, mall entertainment or venue rental;

(L) The launching or throwing of projectiles or other objects into or through the air, except in connection with special events and mall entertainment conducted or authorized by The Fremont Street Experience Limited Liability Company;

(M) The twirling of hoops (such as hula hoops) around the human body or portions thereof, or the use of such hoops for recreation or entertainment, except in connection with special events and mall entertainment conducted or authorized by The Fremont Street Experience Limited Liability Company; and

[(K)] (N) Except as otherwise permitted by LVMC 11.68.103, [Solicitation, as defined in LVMC 10.44.010.] solicitation (as defined in LVMC 10.44.010), leafleting and mall entertainment.

SECTION 4: Title 11, Chapter 68, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended by adding thereto a new section, designated as Section 103, reading as follows:

11.68.103: (A) The following expressive conduct is permitted in any free expression zone:

(1) Solicitation, as defined in LVMC 10.44.010;

(2) Leafleting; and

(3) Mall entertainment.

(B) If any person or organization wishes to use a table in conjunction with activity described in Subsection (A), such table must be provided by The Fremont Street Experience Limited Liability Company. Tables will be provided on a first-come-first-serve basis and subject to available

space within the free expression zones.

SECTION 5: Title 11, Chapter 68, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended by adding thereto a new section, designated as Section 140, reading as follows:

11.68.140: By virtue of its standing and authority under LVMC 11.68.060 and 11.68.070, The Fremont Street Limited Liability Company may commence a civil action to enforce any of the provisions contained in LVMC 11.68.100. This remedy shall supplement, and exist in addition to, those contained in LVMC 11.68.130.

SECTION 6: If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the City of Las Vegas hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

SECTION 7: Whenever in this ordinance any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or whenever in this ordinance the doing of any act is required or the failure to do any act is made or declared to be unlawful or an offense or a misdemeanor, the doing of such prohibited act or the failure to do any such required act shall constitute a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than $1,000.00 or by imprisonment for a term of not more than six months, or by any combination of such fine and imprisonment. Any day of any violation of this ordinance shall constitute a separate offense.

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SECTION 8: All ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2010.

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM:

Val Steed 6-28-10
Date

The above and foregoing ordinance was first proposed and read by title to the City Council on the _____ day of _____, 2010, and referred to the following committee composed of _____ and _____ for recommendation; thereafter the said committee reported favorably on said ordinance on the _____ day of _____, 2010, which was a _____ meeting of said Council; that at said _____ meeting, the proposed ordinance was read by title to the City Council as first introduced and adopted by the following vote:

VOTING "AYE": _____

VOTING "NAY": _____

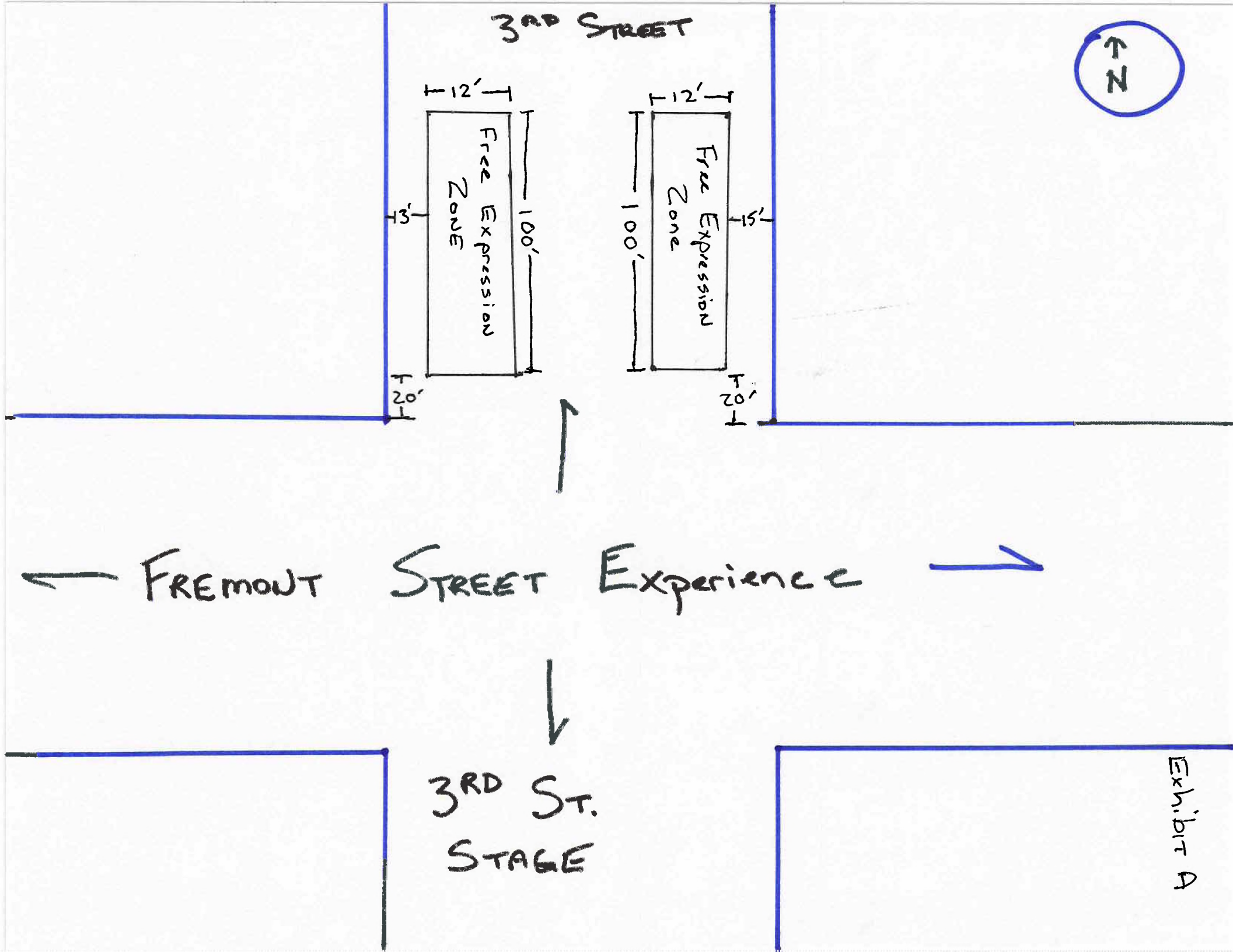
ABSENT: _____

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk


3RD STREET
N
12'
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Free Expression Zone
Free Expression Zone
43'
100'
100'
15'
20'
20'
← FREMONT STREET Experience →
3RD ST.
STAGE
Exhibit A

BUSINESS IMPACT STATEMENT
BILL NO. 2010-31
(Updates the regulations governing certain commercial, entertainment and solicitation activities within the Pedestrian Mall)

This business impact statement was prepared pursuant to NRS 237.090 to address the impact of a proposed ordinance, Bill No. 2010-31, that would update the regulations governing certain commercial, entertainment and solicitation activities within the Pedestrian Mall.

1. The following constitutes a description of the number of the manner in which comment was solicited from affected businesses, a summary of their responses and an explanation of the manner in which other interested persons may obtain a copy of the summary.

Not applicable

2. The estimated economic effect of the proposed rule on businesses, including, without limitation, both adverse and beneficial effects, and both direct and indirect effects:

Adverse effects:

None identified

Beneficial effects:

The addition of more certainty and structure and enforceability in the ordinance provisions

Direct effects:

None identified

Indirect effects:

None identified

3. The following constitutes a description of the methods the local government considered to reduce the impact of the proposed rule on businesses and a statement regarding whether any, and if so which, of these methods were used:

Not applicable. The ordinance is intended to address the results of litigation regarding the Pedestrian Mall, allowing for protected expression subject to reasonable "time, place and manner" regulations.

4. The governing body estimates the annual cost to the local government for enforcement of the proposed rule is:

No additional cost

5. If the proposed rule provides for a new fee or increases an existing fee, the total annual amount expected to be collected is:

Not applicable

6. If the proposed rule provides for a new fee or increases an existing fee, the money generated by the new fee or increase in existing fee will be used by the local government to:

Not applicable

7. If the proposed rule includes provisions that duplicate or are more stringent than federal, state or local standards regulating the same activity, the following explains when such duplicative or more stringent provisions are necessary:

Not applicable

Date: June 28, 2010

ACLU
AMERICAN CIVIL LIBERTIES UNION of NEVADA

July 20, 2010

City of Las Vegas Recommending Committee
Attn: Councilman Ricki Barlow, Councilman Stavros Anthony
400 Stewart Avenue
Las Vegas, NV 89101

Re: Bill No. 2010-31, Regulation of Expression within the Pedestrian Mall

Dear Recommending Committee:

The ACLU of Nevada strongly opposes the passage of Bill No. 2010-31, which amends Titles 10 and 11 of the Municipal Code of the City of Las Vegas to restrict expressive activity on the Fremont Street Pedestrian Mall. We are extremely disturbed by this bill's provisions, which plainly violate mall-goers' First Amendment rights to free speech and assembly. Passage of Bill No. 2010-31 would not merely infringe upon the constitutional rights of the thousands of individuals who visit the Pedestrian Mall daily; indeed, it would all but guarantee another round of costly, time-consuming litigation for the City of Las Vegas. In these tight times, Las Vegas taxpayers deserve better than to have their elected officials drag their city into a protracted, quixotic legal battle.

The ACLU of Nevada has been litigating against similar laws for over a decade, and the courts have repeatedly held both that Fremont Street is a public forum and that similar attempts to curb speech do not pass constitutional muster. *See A.C.L.U. of Nevada v. City of Las Vegas*, 33 F.3d 1092, 1106 (9th Cir. 2003) ("The Fremont Street Experience is a traditional public forum: its public forum status was not destroyed by its transformation, and its current characteristics are those of a public forum."). Because the Fremont Street Experience is a public forum, "the government must bear an extraordinarily heavy burden to regulate speech" in it. *Id.* at 1098. This is a burden that Bill 2010-31 cannot hope to meet.

Just like the prior iterations of free speech restrictions, Bill 2010-31 violates the First Amendment. The proponents of Bill 2010-31 claim that it imposes "reasonable time, place and manner" restrictions on protected expression. *See* Business Impact Statement Bill No. 2010-31. It is true that, "[t]he government may place reasonable time, place and manner restricts on speech" in public fora. *A.C.L.U. of Nevada v. City of Las Vegas*, 466 F.3d 784, 792 (9th Cir. 2006). However, merely calling an ordinance a "reasonable time, place and manner" restriction does not make it so. To satisfy the First Amendment, such a restriction must "meet three criteria: (1) it must be content-neutral; (2) it must be narrowly tailored to serve a significant governmental interest; and (3) it must leave open ample alternative channels for communication of the information." *Berger v. City of Seattle*, 569 F.3d 1029, 1036 (9th Cir. 2009) (en banc).

Bill 2010-31 may be content-neutral on its face, as it indiscriminately bans all solicitation, leafleting and performance in the vast majority of the Fremont Street Experience. However, this only illustrates its fatal overbreadth, and why it cannot be sufficiently narrowly tailored to pass constitutional muster.

Submitted At Meeting
Date 7/20/10 Item 8

"To be narrowly tailored ... the restriction may not burden substantially more speech than necessary." *A.C.L.U. of Nevada*, 466 F.3d at 796, n.13. Just as previous iterations of free speech restrictions targeted "a substantial amount of constitutionally protected speech that is not the source of the 'evils' it purports to combat," Bill 2010-31 targets so much speech on so much of the Fremont Street Experience that it cannot be considered "narrowly tailored." *Id.* Given Bill 2010-31's broad proscription of expressive activities, it could be said that the only "evil" it purports to combat is speech itself.

Additionally, Bill 2010-31 does not leave ample alternative channels for communication. It merely adds two side-by-side 12 by 100 foot "free expression zones" to the Pedestrian Mall, while prohibiting solicitation, leafleting and mall entertainment everywhere else. Given that the Fremont Street Experience space frame encompasses "an area of nearly 200,000 square feet,"[1] Bill 2010-31 bans protected expression in over 98% of the Pedestrian Mall. In fact, speakers who utilize the "free expression zone" will only reach an audience who happens to congregate near one side of 3rd Street. This falls well short of leaving "ample alternative channels for communication," as "the speaker is not permitted to reach the intended audience." *Berger*, 569 F.3d at 1049.

Proponents of Bill 2010-31 might compare it favorably to a provision in the Santa Monica Municipal Code that places various "time, place, and manner" restrictions on street performers throughout the city. *Compare* Santa Monica Municipal Code Chapter 6.112.[2] However, Chapter 6.112 is far less restrictive of speech than Bill 2010-31. First, the Santa Monica ordinance is silent on restricting solicitation and leafleting, while Bill 2010-31 would almost completely ban those two protected forms of speech. Additionally, the Santa Monica ordinance sets ten foot perimeters around bus stops, street corners, and business entrances around which street performers may not perform. *See* Santa Monica Municipal Code Chapter 6.112.030(a). These restrictions are specifically related to the significant government interests in maintaining public safety and access to businesses. As mentioned above, the restrictions found in Bill 2010-31 are not narrowly tailored toward any such end; they simply force those who wish to engage in speech into a tiny, out-of-the-way space.

We are currently in mediation over free speech issues on Fremont Street, supervised by U.S. Magistrate Judge Leavitt. While we cannot discuss the confidential settlement, passing new and unconstitutional codes to govern Fremont Street would unquestionably lead to renewed litigation.

Make no mistake; the ACLU of Nevada will fight tooth and nail to protect the constitutional rights of everyone who visits the Fremont Street Experience. When the courts inevitably hold Bill 2010-31 unconstitutional, the City will be obligated to pay not only its own attorney's fees, but the potential plaintiffs' attorney's fees as well.

For all these reasons, we urge that you do not recommend the passage of Bill 2010-31.

Sincerely,

Allen Lichtenstein
General Counsel

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1 *See* A2Z Las Vegas, *Fremont Street Experience Brings Downtown Las Vegas Into Next Century*, http://www.a2zlasvegas.com/fse/fse01.html (last visited July 17, 2010).

2 Santa Monica Municipal Code Chapter 6.112 may also fail to pass constitutional muster. It, unlike the numerous attempts to restrict speech on Fremont Street, has never been tested in court.

6.112.020 Definitions.

For purposes of this Chapter, the following words or phrases shall have the following meanings:

(a) **Charge.** To require someone to pay a fee or to set, negotiate or establish a fee for a performance. Seeking voluntary contributions through passing around a hat, leaving open an instrument case or other receptacle, or soliciting donations after a performance is not a charge.

(b) **Handcrafts.** Objects made either by hand or with the help of devices used to shape or produce the objects through such methods as weaving, carving, stitching, sewing, lacing, and beading including, but not limited to, objects such as jewelry, pottery, silver work, leather goods, and trinkets. Handcrafts are not likely to communicate a message, idea, or concept to others, are often mass produced or produced with limited variation, and often have functional utility apart from any communicative value they might have. Handcrafts do not include visual art.

(c) **Performer.** An individual who performs in a public area, for the purpose of providing public entertainment.

(d) **Perform.** To engage in a performance including, but not limited to, the following activities: playing musical instruments, singing, dancing, acting, pantomiming, puppeteering, juggling, reciting, or creating visual art in its entirety. "Perform" shall not include: (1) the provision of personal services such as hair weaving or massage; (2) the application of substances to others' skin, including, but not limited to, paints, dyes, and inks; (3) the completion or other partial creation of visual art; (4) the creation of visual art which is mass produced or produced with limited variation or (5) the creation of handcrafts. This list of exclusions is not intended to be exhaustive.

(e) **Public Areas.** Sidewalks, parkways, playgrounds and all other public spaces located in the City.

(f) **The Pier.** The Santa Monica Pier, consisting of both the Newcomb Pier and the Municipal Pier, protruding from the Santa Monica State Beach at the southwesterly terminus of Colorado Avenue, and extending for approximately two thousand one hundred thirty-five feet into the Santa Monica Bay. The Pier is divided into three performance areas: the

Center Performance area, the Breezeway Performance area, and the General Performance area. The boundaries of each of these performance areas are delineated in Exhibit A to Resolution Number 9704 (CCS).

(g) **Sculpture.** A three dimensional work of art which is created through shaping solid material such as wood, stone, clay or metal by carving, modeling, or similar methods.

(h) **Third Street Promenade.** Third Street between the southeasterly line of Wilshire Boulevard and the northwesterly line of Arizona Avenue, and between the southeasterly line of Arizona Avenue and the northwesterly line of Santa Monica Boulevard and between the southeasterly line of Santa Monica Boulevard and the northwesterly line of Broadway.

(i) **Transit Mall.** The sidewalks on Santa Monica Boulevard and Broadway from the east side of Ocean Avenue to the west side of Fifth Street.

(j) **Visual Art.** Drawings and paintings, applied to paper, cardboard, canvas, or other similar medium

through the use of brush, pastel, crayon, pencil, or other similar object, and sculptures. (Added by Ord. No. 1888CCS § 1 (part), adopted 10/28/97; amended by Ord. No. 1949CCS § 4, adopted 7/20/99; Ord. No. 1959 CCS § 1, adopted 10/12/99; Ord. No. 1982CCS § 1, adopted 8/8/00; Ord. No. 2009CCS § 1, adopted 5/22/01; amended by Ord. No. 2028CCS § 1, adopted 11/13/01; Ord. No. 2047CCS § 1, adopted 7/9/02)

6.112.010 Purpose.

The City Council finds that the existence in the City of street performers provides a public amenity that enhances the character of the City and seeks to encourage such performances in a manner consistent with the overall public interest. The City Council also recognizes that street performers seek to and do draw crowds to their performance. This can create serious safety problems by impacting the ability of pedestrians to move safely on sidewalks and through cross walks and impeding the response time of safety personnel. It can also impact access to and egress from businesses. Cognizant that street performers are engaged in First Amendment activities, this chapter imposes reasonable time, place, and manner restrictions on street performers to the extent necessary to ensure the safety of performers, their audience, and the general public and to prevent unreasonable interference with residents' enjoyment of peace and quiet in their homes or the ability of businesses to operate and conduct their business. (Added by Ord. No. 1888CCS, § 1 (part), adopted 10/28/97)

6.112.050 Special regulations for Third Street Promenade and Transit Mall.

In addition to the requirements of Sections 6.112.030 and 6.112.040, no performer shall perform in the Third Street Promenade or the Transit Mall outside of an enclosed building in violation of the following requirements:

(a) Except as provided in subsection (q) of Section 6.112.030, no performer shall perform except during the following time periods:

(1) Nine a.m. to eleven p.m. daily.

(2) Eleven p.m. on Friday and Saturday to one-thirty a.m. of the following day.

(b) No performer shall perform within sixty feet of any special event authorized by the City unless the special event encompasses one or more City blocks in which case the performance shall be conducted according to any administrative guidelines which shall be adopted by the City.

(c) No performer shall:

(1) Perform on the Third Street Promenade in any specific location or within one hundred twenty feet of that location as measured in a north/south direction, for more than two hours in any six hour period. The time required to set up and to remove any instruments, props, equipment, or other items shall be considered part of the performance for purposes of this subdivision and subdivision (2) of this subsection (c).

(2) Perform on the Third Street Promenade on an even hour at the same location that he/she was performing on the preceding hour, or within one hundred twenty feet of that location as measured in a north/south direction.

(3) Perform on the Transit Mall in any specific location or within one hundred twenty feet of that location as measured in an east/west direction, for more than two hours in any six hour period. The time required to set up and to remove any instruments, props, equipment, or other items shall be considered part of the performance for purposes of this subdivision and subdivision (4) of this subsection (c).

(4) Perform on the Transit Mall on an even hour at the same location that he/she was performing on the preceding hour, or within one hundred twenty feet of that location as measured in an east/west direction.

(5) Perform within ten feet of a vendor operating pursuant to or under the authority of an approved license agreement or within forty feet of any other vendor or performance.

(6) Perform on the Transit Mall at a distance greater than five feet from the outer wall of any building or any permanent extension of the building such as a planter box.

(7) Perform on the Santa Monica Boulevard segment of the Transit Mall within twenty feet of the Third Street Promenade. (Added by Ord. No. 1888CCS § 1 (part), adopted 10/28/97; amended by Ord. No. 1949CCS § 7, adopted 7/20/99; Ord. No. 1959CCS § 3, adopted 10/12/99; Ord. No. 2009CCS § 2, adopted 5/22/01; amended by Ord. No. 2028CCS § 2, adopted 11/13/01; Ord. No. 2047CCS § 4, adopted 7/9/02; Ord. No. 2075CCS § 2, adopted 5-13-03)

6.112.040 Performance permit.

(a) To receive a performance permit, a person must complete and file with the City a performance permit application on a form approved by the City. The applicant must provide the following information:

(1) The applicant's name;

(2) The applicant's address;

(3) Proof of the identity of the applicant. This identification must contain a photograph of the applicant. Acceptable forms of identifications shall include, but not be limited to, a driver's license, student identification card, or passport;

(4) A detailed description of the nature of the act to be performed;

(5) A detailed description of any instrument(s) or prop(s) which will be used by the performer(s);

(6) A minor under the age of sixteen shall provide a copy of an entertainment work permit issued to the minor by the Department of Industrial Relations of the State of California and shall identify the responsible adult(s) who will be with the minor at all times that the minor is performing;

(b) The performance permit will be issued annually commencing on January 1st of each calendar year;

(c) Upon receipt of a written application for a performance permit, a performance permit shall be approved within three business days of the filing of a fully completed application, unless one of the following findings is made:

(1) The applicant has knowingly made a false, misleading, or fraudulent statement of fact to the City in the application process;

(2) The application does not contain the information required by this Chapter;

(3) The applicant has not satisfied the requirements of this Chapter.

(d) In addition to requiring compliance with all provisions of this Chapter, the City may condition the approval of a performance permit on the applicant's compliance with other provisions of the City's Municipal Code which are applicable to the performance.

(e) The City may revoke or suspend a performance permit upon the commission of the second violation either of this Chapter or of permit conditions within a six-month period. In any such case, the permit holder shall have the right to appeal from a decision of the City to revoke or suspend any permit in accordance with Chapter 6.16 of this Code. A performer's permit may be suspended for up to four months. If the performance permit of any performer is suspended, no new permit shall be issued during the period of suspension. Any revocation of a performer's permit shall be for six months unless the performer previously had a performance permit revoked and the new violations of this Chapter or permit conditions relate to public safety, in which case, the permit shall be revoked for twelve months. No new permit shall be issued during a revocation period. The City shall establish administrative guidelines to assist in the implementation of this Section.

(f) No application for a performance permit or the renewal thereof shall be accepted unless the application is accompanied by a payment of a nonrefundable annual fee in an amount to be set by resolution adopted by the City Council.

(g) The performance permit shall include a photograph of the performer, shall not be assignable or

transferable, and shall contain the permit number of the applicant and the year in which the permit expires. Each performer in a group shall obtain his/her own separate performance permit.

(h) A replacement performance permit may be obtained upon payment of a nonrefundable fee in an amount to be set by resolution adopted by the City Council.

(i) A performer shall clearly display his or her permit while performing, and shall allow inspection of the permit by any City police or fire official on request.

(j) The City Council may by resolution adjust the noise limitations established in this Chapter during public holidays.

(k) When an applicant requests a performance permit application, the City shall also give the applicant a document which summarizes the rules and regulations concerning street performances in the City. This document may be, but is not required to be, a copy of this Chapter. (Added by Ord. No. 1888CCS § 1 (part), adopted 10/28/97; amended by Ord. No. 1949CCS § 6, adopted 7/20/99; Ord. No. 2047CCS § 3, adopted 7/9/02; Ord. No. 2145CCS § 1, adopted 11/23/04)

6.112.030 Rules and regulations.

CodeAlert: This item has been affected by 2304. Please refer to the CodeAlert Ordinance List for the most current provisions.

(a) Subject also to Sections 6.112.050 and 6.112.060, no performer may perform:

(1) Within ten feet of any bus stop;

(2) Within ten feet of any street corner or a marked pedestrian crosswalk;

(3) Within ten feet of the outer edge of any entrance of any business, including, but not limited to, doors; vestibules; driveways; outdoor dining area entries; and emergency exits, during the hours that any business on the premises is open to the public or to persons having or conducting lawful business within those premises.

(b) No person may perform on the Third Street Promenade, the Pier, the Transit Mall, or any public sidewalk without first obtaining a performance permit issued by the City pursuant to Section 6.112.040.

(c) A performer and the performer's equipment may not block or obstruct the free and safe movement of pedestrians. If a sufficient crowd gathers to observe a performer such that the passage of the public through a public area is blocked or obstructed, a police officer or fire official may disperse that portion of the crowd that is blocking or obstructing the passage of the public. If a performer cannot conduct a performance in a location without blocking or obstructing the passage of the public, a police officer or fire official may cause the performer to leave the location or require that the performer relocate his/her equipment, but shall not prevent the performer from occupying another location in compliance with this Chapter.

(d) A performer who performs for a charge shall obtain a business license and be subject to all applicable provisions of Chapter 6.36. A performer who performs without charge shall not be required to obtain a vendor permit pursuant to Chapter 6.36 or a business license pursuant to Chapter 6.04.

(e) No performer shall construct, erect, or maintain any stage, platform, or similar structure for use during any performance unless the stage or platform:

(1) Is integral to the performance and the performance only takes place on the stage;

(2) Does not exceed four feet by four feet and one-quarter inch in height;

(3) Is removed from the public way when the performer is not performing;

(4) Has beveled edges.

(f) No performer shall use any knife, sword, torch, flame, axe, saw, or other object that can cause serious bodily injury to any person, or engage in any activity, including but not limited to, acrobatics, tumbling, or cycling, that can cause serious bodily injury to any person.

(g) No performer shall use any generator, wet cell battery with removable fill caps, or any other power source that poses a fire or public safety hazard. No performer shall connect or maintain an electrical cord to an adjacent building or to a City power source.

(h) No performer may litter his or her performance site.

(i) No performer shall utilize or prevent the public from utilizing any public benches, waste receptacles, or other street furniture during the performance.

(j) No minor under the age of sixteen can perform unless the minor is at all times accompanied by a responsible adult eighteen years of age or older, has obtained an entertainment work permit issued by the Department of Industrial Relations of the State of California and maintains the permit in his/her possession at the time of the performance.

(k) No performer shall place any object on a public sidewalk which causes less than a four-foot contiguous sidewalk width being kept clear for pedestrian passage.

(l) No performer shall perform with more instruments, props, equipment, merchandise, or other items than the performer can reasonably transport or remove at one time.

(m) No performer shall place his/her instruments, props, equipment, merchandise, or other items on a public sidewalk, public street, or public right-of-way for more than two hours without performing in accordance with the provisions of this Chapter.

(n) No performer shall leave his/her instruments, props, equipment, merchandise, or other items unattended.

(o) No performer shall perform in contravention of the allowable noise levels established by Chapter 4.12 and Chapter 6.116 of this Code.

(p) No performer shall block or obstruct a curb cut.

(q) The following formula establishes the special performance hours that apply during specified holidays on the Third Street Promenade, the Transit Mall, and the Pier:

(1) If the holiday follows a weekend and the next day is a workday, then the holiday shall be treated as if it were Sunday and the day preceding the holiday shall be treated as if it were Saturday.

(2) If the holiday precedes a weekend, then the holiday shall be treated as if it were Saturday and the preceding day shall be treated as if it were Friday.

(3) If the holiday occurs during midweek, and is surrounded by workdays, then the holiday shall be treated as if it were Sunday and the day preceding the holiday shall be treated as if it were Friday.

The following is a list of holidays which trigger the application of this subsection: New Year's Day, President's Day, Memorial Day, Independence Day, Columbus Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day. The City Council may by resolution add to this list of holidays.

(r) No performer shall perform outside designated performance zones on the Third Street Promenade and the Pier, as established by resolution of the City Council. (Added by Ord. No. 1888CCS § 1 (part), adopted 10/28/97; amended by Ord. No. 1949CCS § 5, adopted 7/20/99; Ord. No. 1959CCS § 2, adopted 10/12/99; Ord. No. 2047CCS § 2, adopted 7/9/02; Ord. No. 2075CCS § 1, adopted 5-13-03)

6.116.060 Special regulations for vendors on the Third Street Promenade and Transit Mall.

No person authorized to vend pursuant to Sections 6.36.030(f) and 6.36.030(g), or any successor legislation, may on the Third Street Promenade or the Transit Mall:

(a) Vend on the Third Street Promenade in any specific location, or within one hundred twenty feet of that location as measured in a north/south direction, for more than a two-hour period in any six-hour period. The time required to set up and to remove equipment and material for vending shall be considered part of the time limit established by this subsection and subsection (b) of this Section;

(b) Vend on the Third Street Promenade on an even hour at the same location that he/she was vending on the preceding hour, or within one hundred twenty feet of that location as measured in a north/south direction;

(c) Vend on the Transit Mall in any specific location, or within one hundred twenty feet of that location as measured in an east/west direction, for more than a two-hour period in any six-hour period. The time required to set up and to remove equipment and material for vending shall be considered part of the time limit established by this subsection and subsection (d) of this Section;

(d) Vend on the Transit Mall on an even hour at the same location that he/she was vending on the preceding hour, or within one hundred twenty feet of that location as measured in an east/west direction;

(e) Vend within ten feet of a vendor operating pursuant to or under the authority of an approved license agreement or within forty feet of any other vendor or performer;

(f) Vend those items authorized by Section 6.36.030(g), or any successor legislation, unless that person is also performing pursuant to Chapter 6.112, the item vended is representative of the work being created during the performance, and no more than five such items are displayed at any one time. A performer/vendor may display these items from a table or cart, the performer/vendor's instrument case, or attached to an easel which is used as part of the performance. If a performer/vendor displays items from a table or cart, all other requirements specified in Section 6.116.010 shall apply except that the performer/vendor shall be limited to utilizing one table or cart of a size not larger than four feet in width by four feet in length by three feet in height.

(g) Vend on the Transit Mall at a distance greater than five feet from the outer wall of any building or any permanent extension of the building such as a planter box. (Added by Ord. No. 1949CCS § 12, adopted 7/20/99; amended by Ord. No. 1959CCS § 6, adopted 10/12/99; amended by Ord. No. 2028CCS § 7, adopted 11/13/02; Ord. No. 2047CCS § 9, adopted 7/9/02; Ord. No. 2075CCS § 7, adopted 5-13-03; Ord. No. 2145CCS § 6, adopted 11/23/04)

I. History of the Fremont Street Experience Project

Submitted At Meeting
Date 8/3/10
Item 3

- Conceived in the early 1990s as a way to draw more people to the ailing downtown gambling area.
- Fremont Street was closed permanently to vehicular traffic in 1994.
- Construction began in 1994 and the Fremont Street Experience (FSE) opened in 1995.
- The FSE is a cooperative venture, owned and operated by a group of downtown hotel/casino companies, with the ongoing involvement of the City of Las Vegas.

- The elements of the project were:
  - Fremont Street Experience canopy.
  - Removal of streets and sidewalks to be replaced by pedestrian mall.
  - Construction of parking garage at the Fremont Street Experience between 4th Street and Las Vegas Blvd.
  - Before the project, the sidewalks had always been open to speech.
  - The former Fremont Street had been reserved for vehicular traffic and not open to free speech.

A. Development Agreement

- October 1993-A four party Development Agreement to construct the FSE is executed between:
  - City of Las Vegas
  - City of Las Vegas Redevelopment Agency
  - Fremont Street Experience LLC
  - Fremont Street Experience Parking Garage LLC

- September 1995-Four party Development Agreement is amended and restated to reflect the final version of the Fremont Street Experience Project and parking garage.

- FSE LLC is responsible for operation and maintenance of the FSE including, but not limited to, operation and maintenance of the pedestrian mall and operation and maintenance of the canopy and light show.
- FSE Parking Garage LLC is responsible for repaying taxpayers for cost overruns in acquiring property for parking garage.
- FSE LLC derives all profits from commercial use of pedestrian mall to offset costs of operation and maintenance including, the leasing of retail space in the mall, special events and any other commercial use permitted by the development agreement.

How was the pedestrian mall funded?

- Room tax bond
- Tax increment bond
- Contribution from Fremont Street Experience LLC
- Six million dollar grant from LVCVA

Who owns the pedestrian mall?

- NRS 268.812(5) allowed the conversion of right of way to pedestrian mall without government losing its interest in controlling the underlying real property.

Is Fremont Street Experience funded using park money and is it a park?

- LVCVA is organized under NRS 244A.599(The County Fair and Recreation Boards).
- Unclear if LVCVA could fund a pedestrian mall under NRS 244A.599.
- NRS 268.816 (3) was amended in 1993 to make clear that a pedestrian mall is a recreational facility eligible for funding under NRS 244A.599.
- No park money was used to construct the Fremont Street Experience nor has FSE been a park.

B. Pedestrian Mall Ordinance

- October 1993-City adopts Ordinance 3747 establishing the FSE pedestrian mall, setting its boundaries, charges FSE LLC with managing and operating the mall. (LVMC 11.68)

C. Solicitation Ordinance

- January 1995-City adopts Ordinance 3862 creating new definitions of solicitation and coercion, limiting the places a person can solicit and prohibiting solicitation in the pedestrian mall. (LVMC 10.44)

Fremont Street Experience Today

- Currently a pedestrian mall and a major tourist attraction in Downtown Las Vegas.
- Occupies the westernmost five blocks of Fremont Street.
- Main attraction is a barrel vault canopy 90 ft. high and four blocks (app. 1,500 feet) in length.
- More than 12 million LED lamps illuminate the overhead canopy.
- Primary focus is to create an environment of entertainment, retail, and outdoor dining opportunities.
- FSE is also home to the Neon Museum which displays historic neon signs.

Conclusion

- FSE was conceived as a privately operated and managed public attraction.
- Revenue derived from the commercial operation of the mall would be used to operate the light show and maintain the mall.
- No tax payer money would ever be used to operate and maintain FSE.

II. History of Litigation

ACLU v. City of Las Vegas

U.S. District Court

Case No. 97-01419

1. ACLU filed first lawsuit in 1997.
   - ACLU alleged that the solicitation and pedestrian mall ordinances were unconstitutional by prohibiting solicitation, leafleting, unauthorized vending, and the unauthorized erection of tables and structures in the Mall.
   - Federal District Court upheld the solicitation ban and tabling restriction, but enjoined enforcement of the leafleting and vending restrictions. Each side appealed the decision, but the 9th Circuit dismissed these appeals.
   - April 2001- Federal District Court granted summary judgment for the City with regard to the solicitation and tabling ordinances and summary judgment for the ACLU with regard to their challenge to the leafleting and vending ordinances.

II. 2001-ACLU again challenges the constitutionality of provisions of the pedestrian mall ordinance relating to prohibitions involving free speech.

- Federal District Court of Nevada upholds most provisions of the ordinance. Federal District Court finds FSE is not a public forum.
- ACLU appeals to the 9th Circuit.

- 9th Circuit determined that the Pedestrian Mall should be classified as a traditional public forum for the purposes of a First Amendment analysis.
- Evaluating the ordinances under the more demanding standard applicable in a traditional public forum, the 9th Circuit upheld the injunction against the leafleting and vending ordinances and remanded the case to determine whether the solicitation ban and tabling restriction were narrowly tailored to serve significant government interest.
- The 9th Circuit recognized that all of the ordinances, including the vending restriction, were content-neutral time, place or manner restrictions.

- Back again in Federal District Court, the case re-analyzed the solicitation and tabling ordinances and upheld the solicitation ban as a valid content-neutral time, place and manner restriction, even as a public forum.
- Additionally, the Court granted summary judgment for the ACLU on its claim against the tabling ordinance.

- On appeal a third time, the 9th Circuit overturned the district court's ruling and invalidated prohibitions against solicitation, leafleting, tabling and vending in the pedestrian mall.

New Legislation

- To comply with the decision of the 9th Circuit, the City eliminated the ban on leafleting found at LVMC §11.68.100(1) and removed the exception for labor-related activities from the tabling restriction codified at LVMC §11.68.100(H).
- The City also adjusted the definition of solicitation.
- ACLU files a challenge to the new pedestrian mall ordinance.

- A Federal District Court judge grants summary judgment in March 2009.
- Result:
  - The definition of solicitation was declared unconstitutional.
  - The prohibitions against mall vending, advertising and entertainment were declared unconstitutional.
  - The prohibition against erection of tables and other structures was declared unconstitutional.
  - The prohibition against solicitation was declared unconstitutional.

III. Why are regulations necessary?

- No regulation means .. .
  - 1. No viable commercial opportunity can exist.
  - 2. Unregulated speech competes with primary purpose of pedestrian mall.
    - Light show
    - Stage shows
    - Special events
    - Retail kiosks
    - Outdoor cafes


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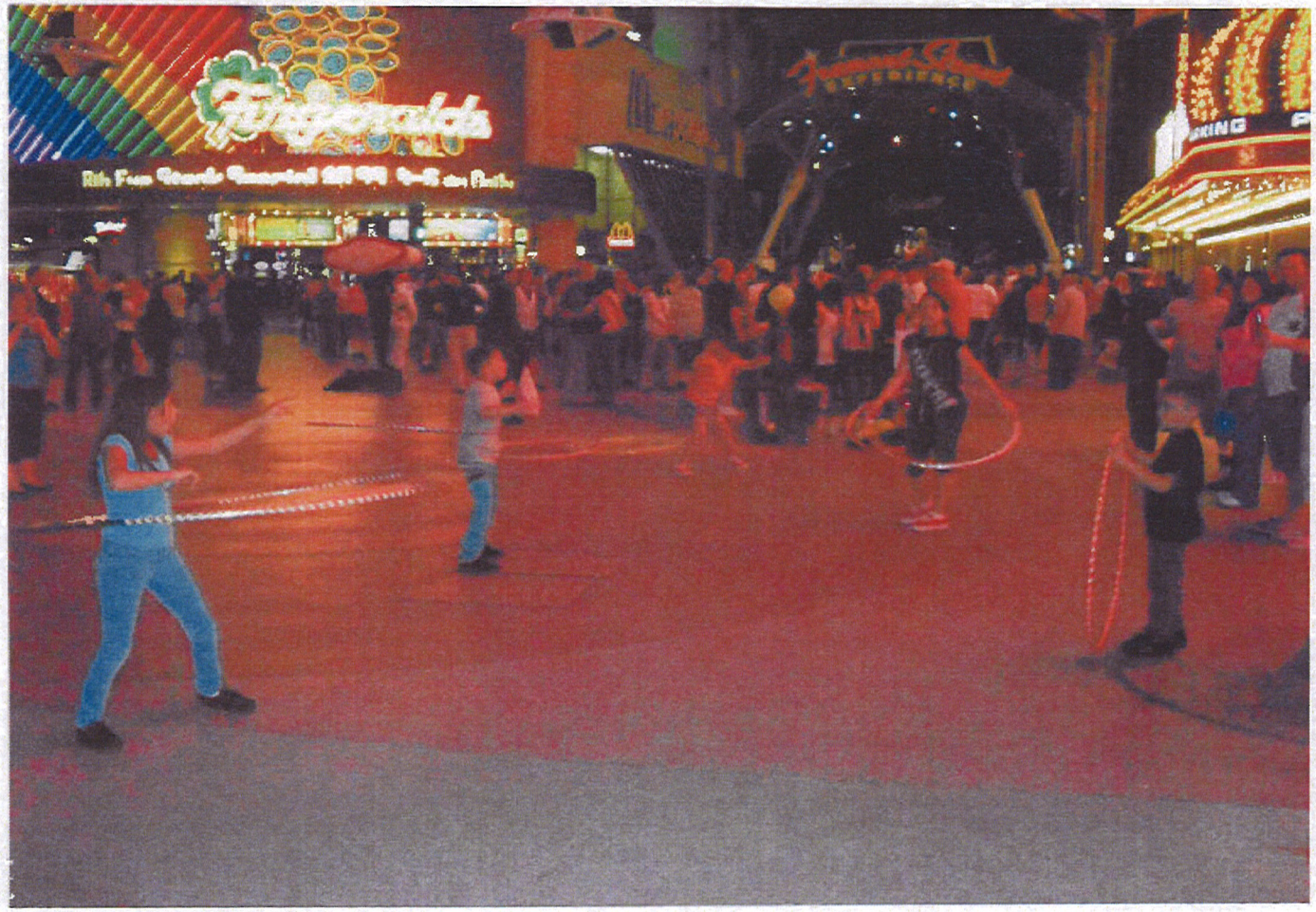
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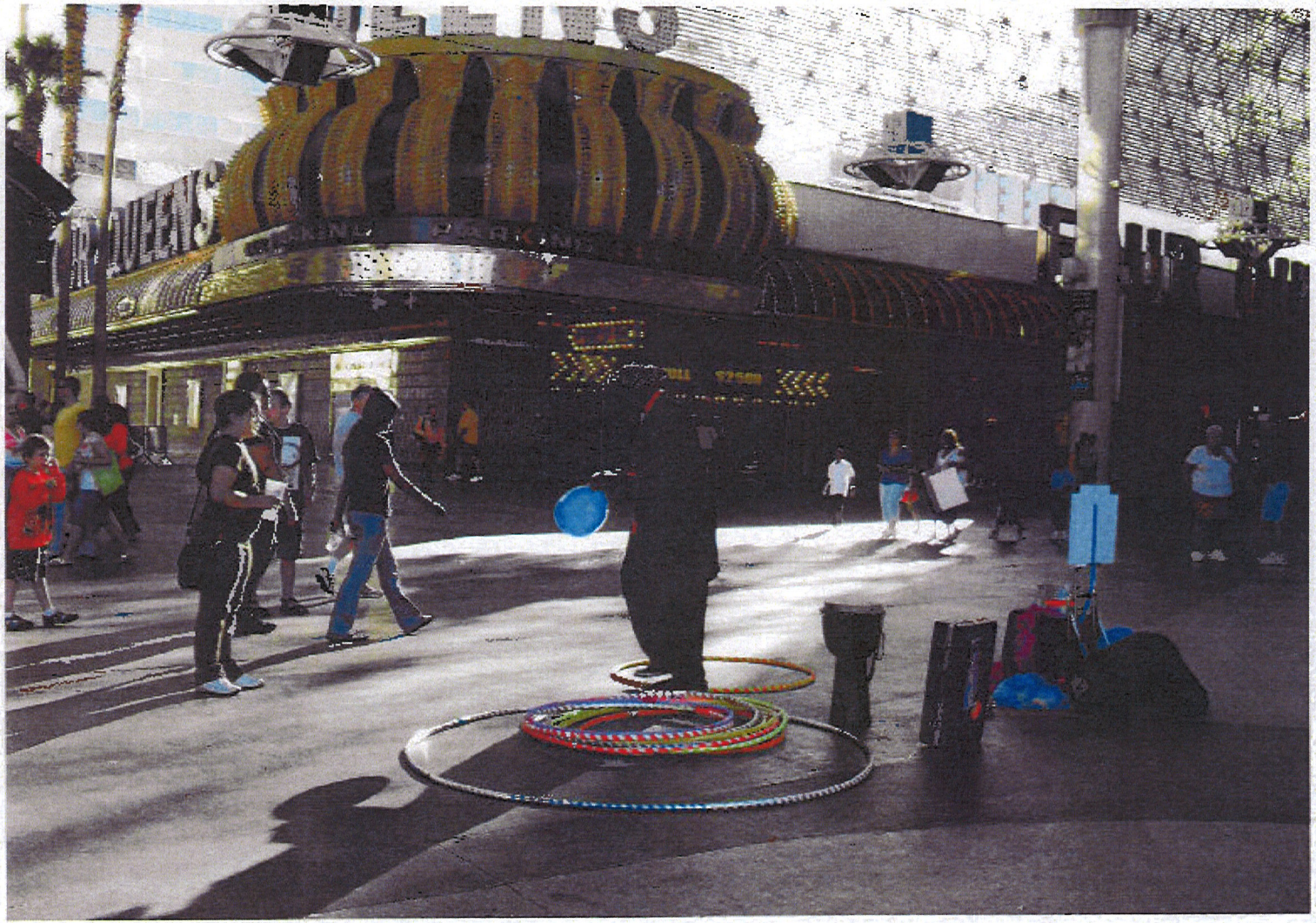


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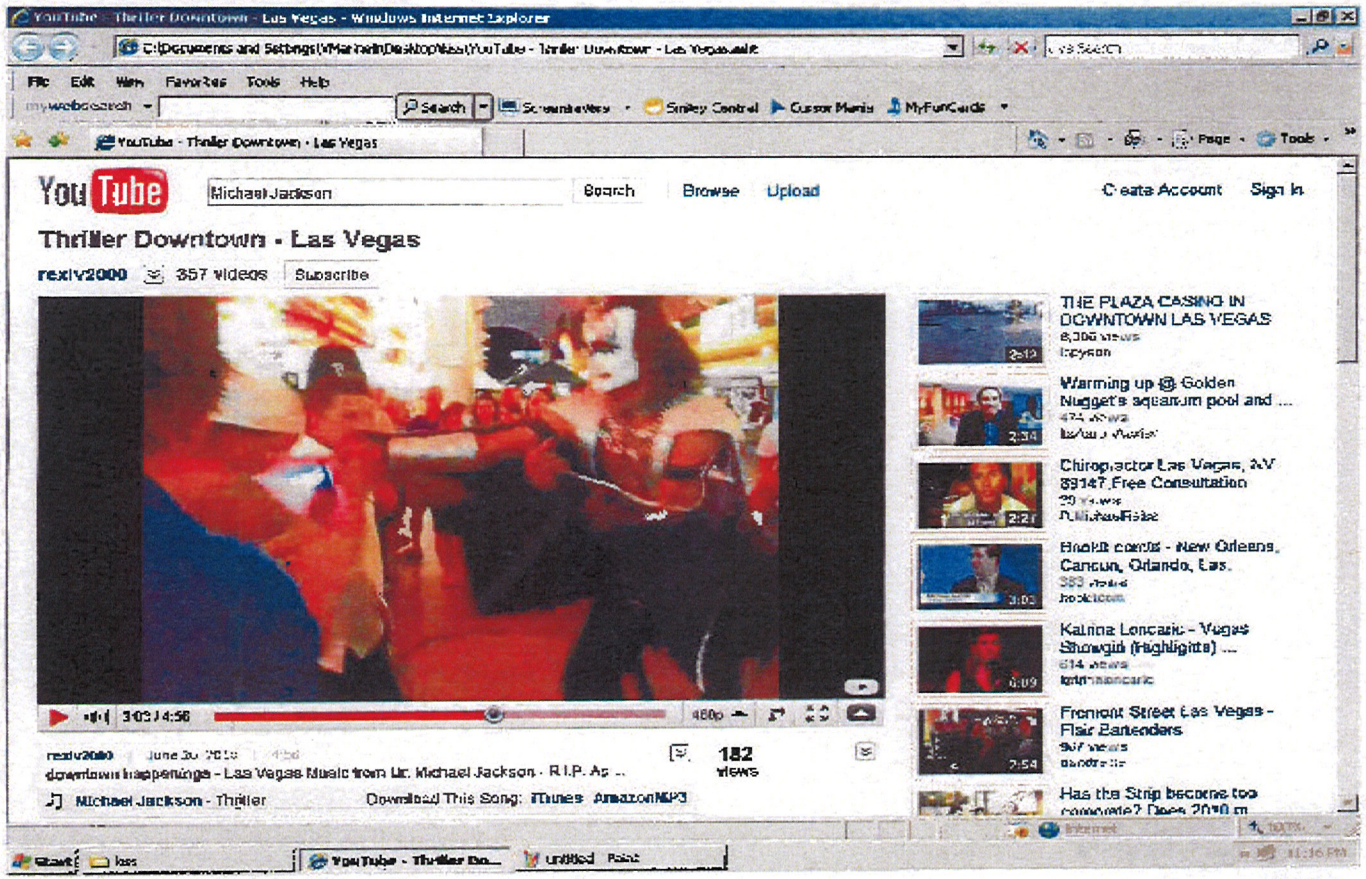
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Fremont Street Las Vegas - Flair Bartenders
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IV. The New Ordinance

Bill No. 2010-31

- Bill recognizes that the pedestrian mall is a traditional public forum subject to reasonable time, place and manner restrictions.
- Government must demonstrate a significant interest in such regulation.
- Restrictions must be narrowly tailored leaving alternatives available.

What can be prohibited as a matter of law

- Coercive solicitation-blocking, threatening, compelling or forcing
- Solicitation within 20 feet of an ATM or 10 feet of the entrance of a commercial building. LVMC 10.44.030 (see map)
- Solicitation in convention centers during trade shows (*Hampton International Comm. v. LVCVA*)
- Convention protesters *(Menotti v. City of Seattle)*
- Solicitors at public fairground (*Heffron v. Inter. Soc. For Krishna Consciousness*)
- Beach vendors *(One Word One Family Now v. City and County of Honolulu)*

SECTION 1

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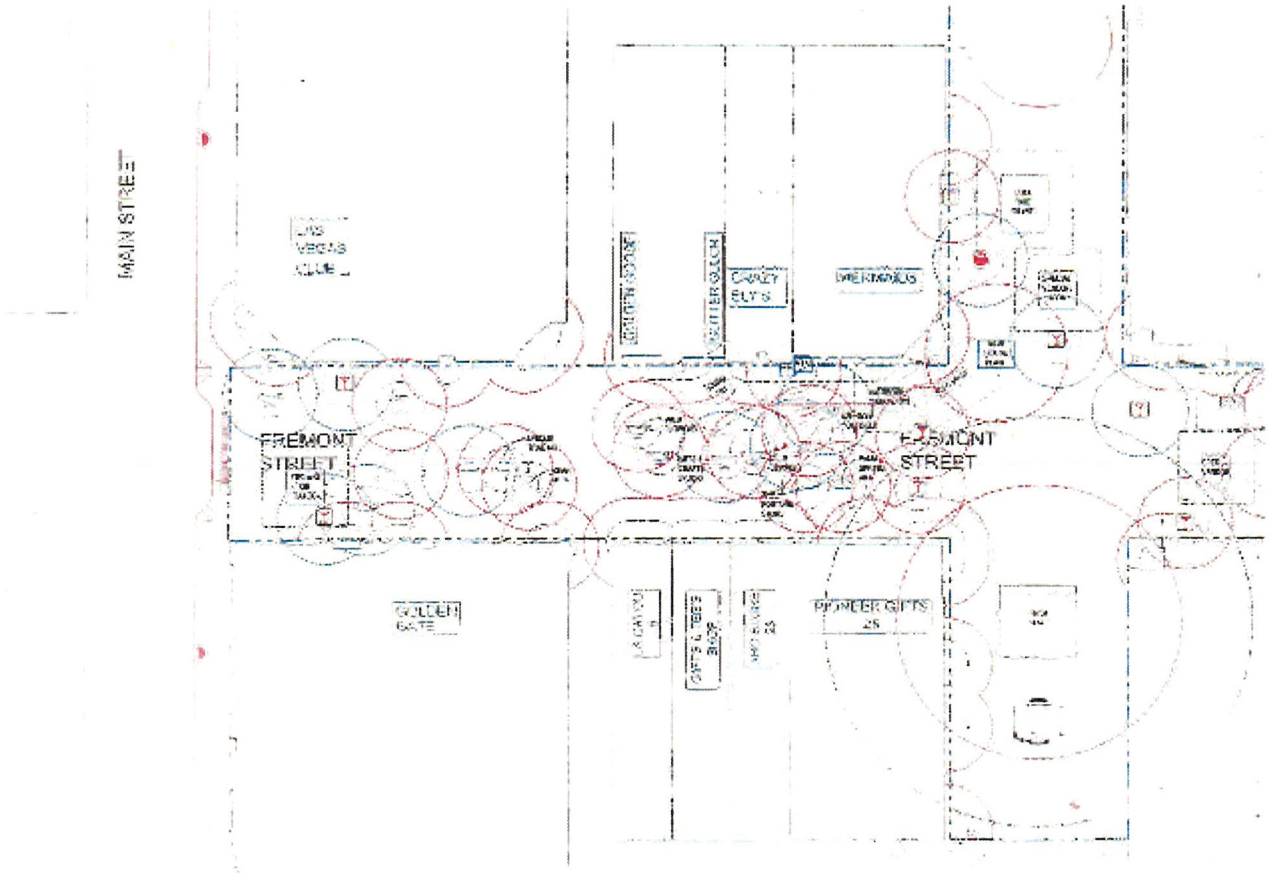

SECTION 2

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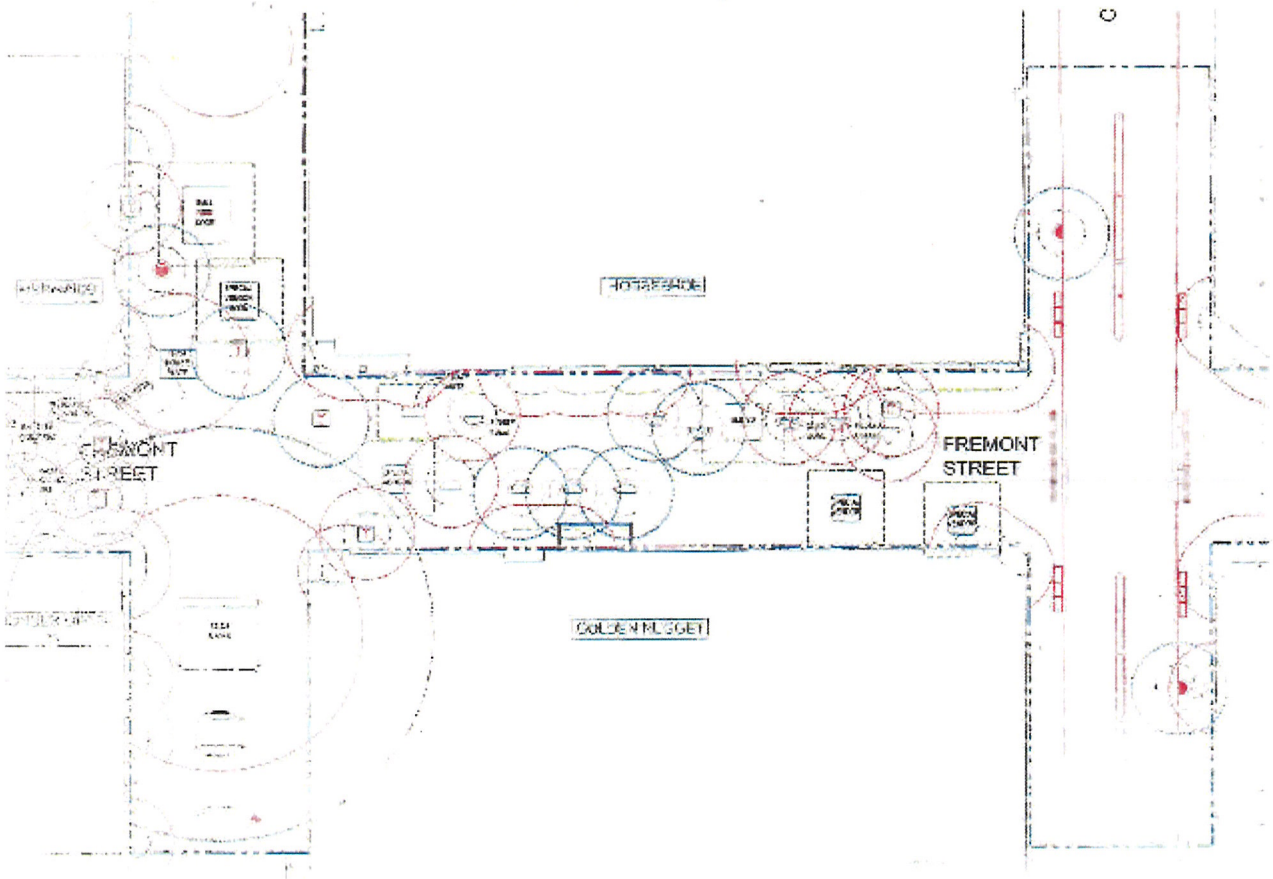

SECTION 3

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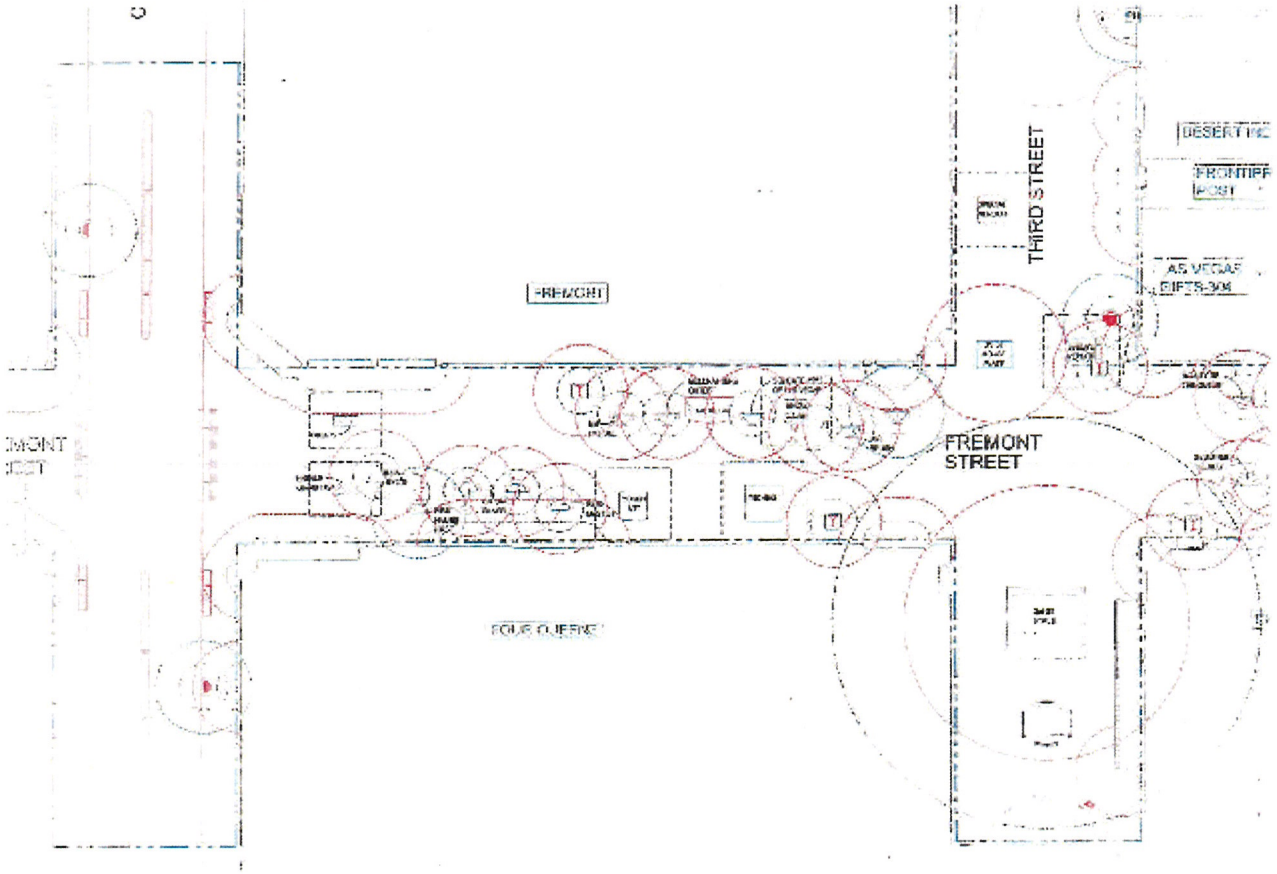

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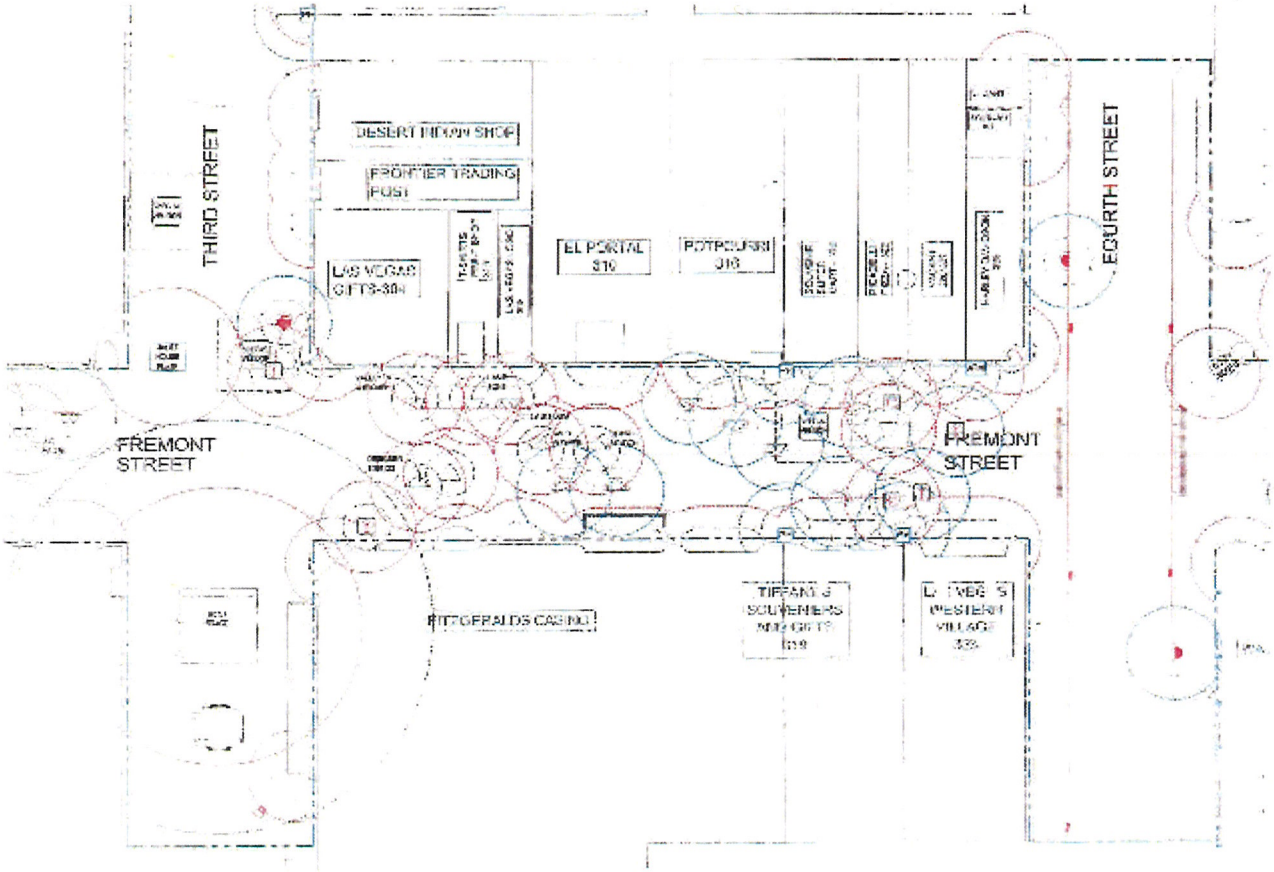

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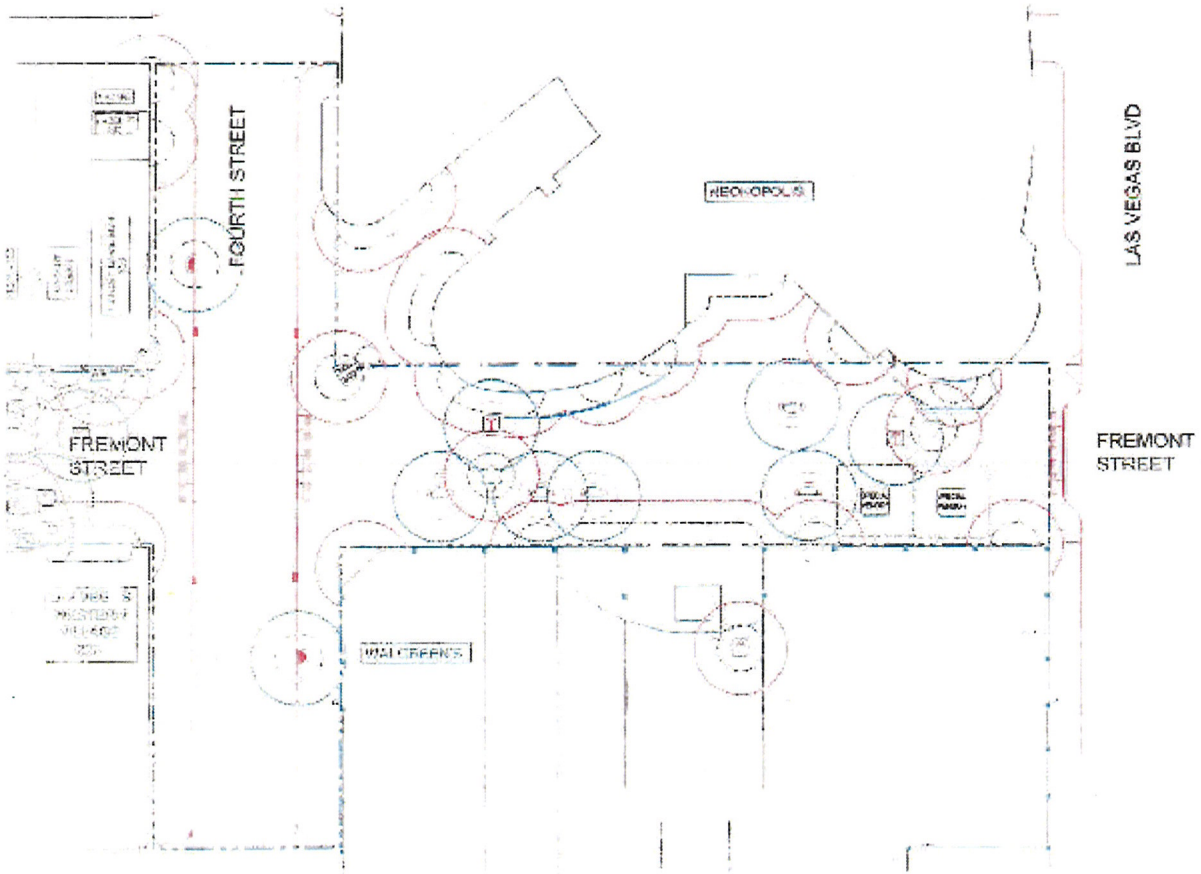

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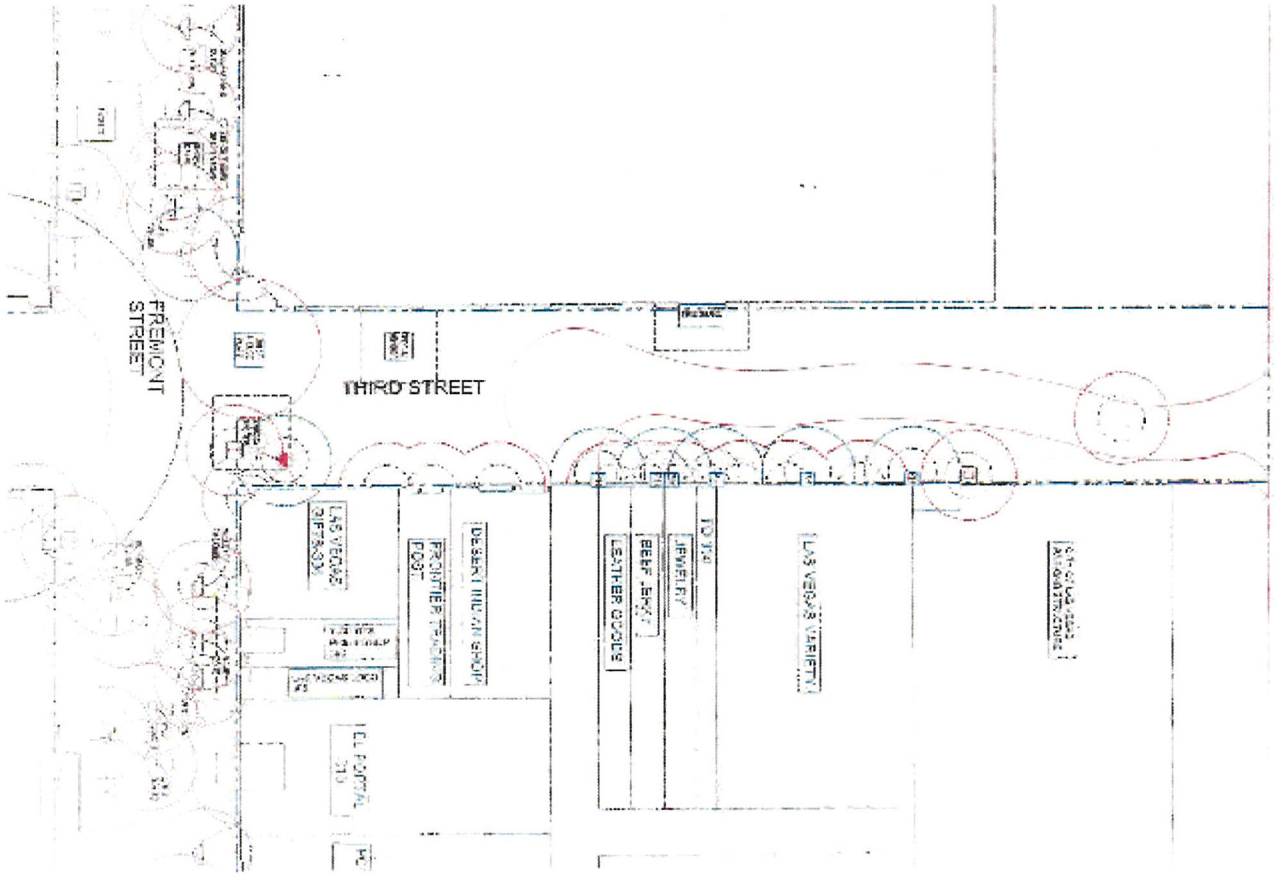

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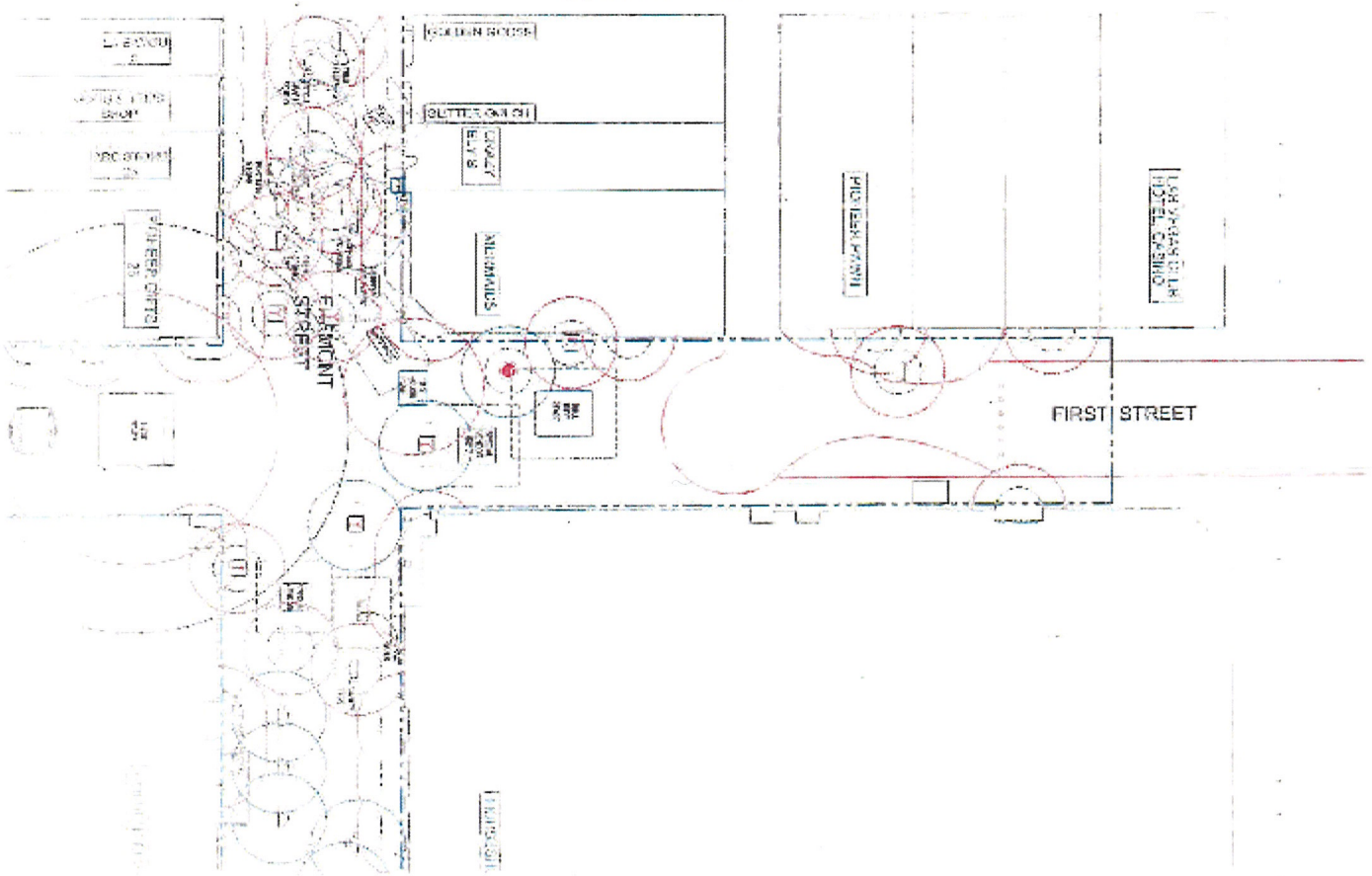
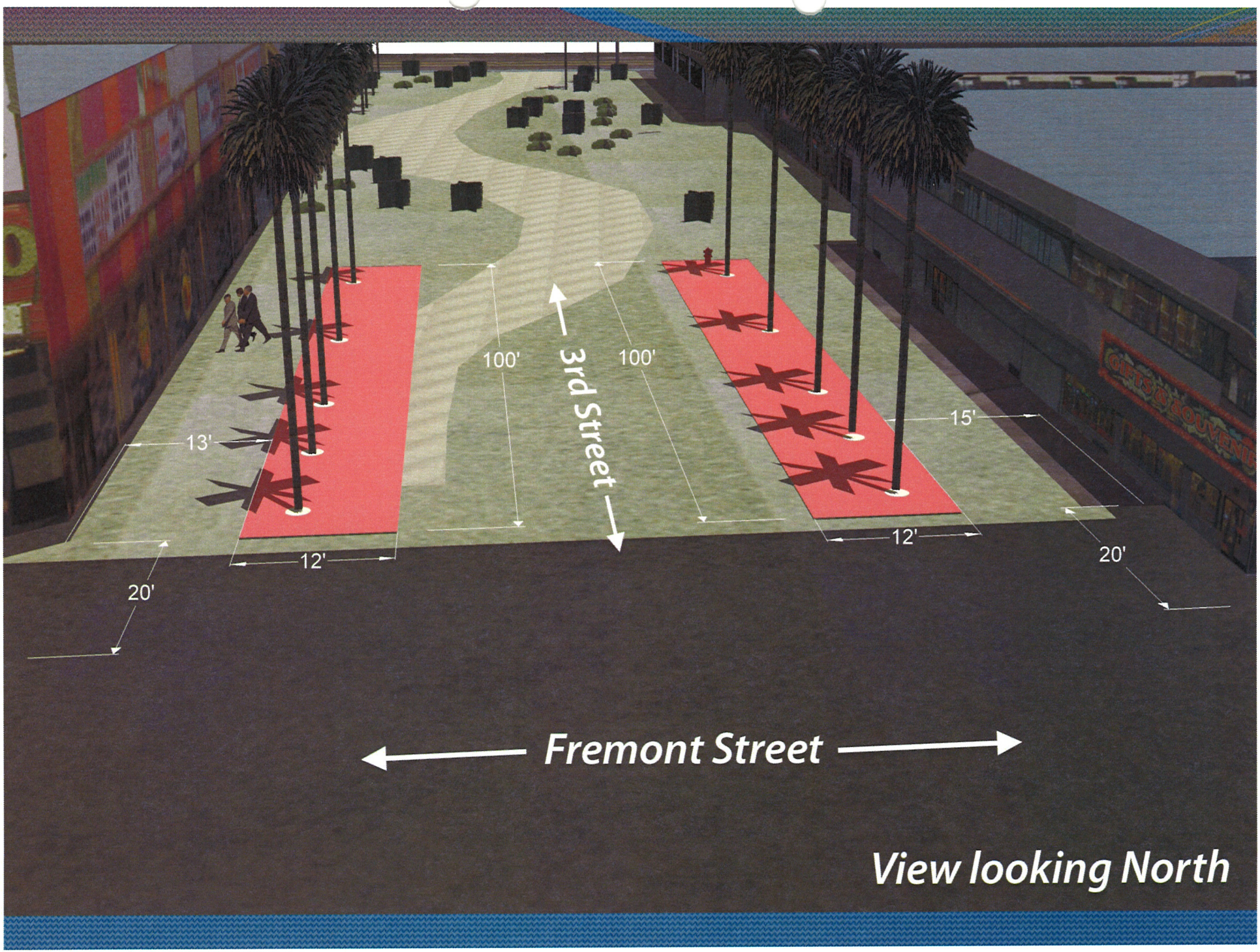


- Court decisions concerning the FSE have recognized:
  - Restrictions upon the act of solicitation are content neutral.
  - The City and FSE LLC have a significant interest in assuring safe, efficient, and orderly movement of pedestrians.
  - The City and FSE LLC have a significant interest in protecting the local merchant economy from unfair competition.
  - The City and FSE LLC have a significant interest in protecting visitors from solicitors in an environment where freedom of movement is restricted.
  - The City and FSE LLC have a significant interest in preventing the disruption of Mall entertainment and in disrupting visitors' enjoyment of the Mall experience.
  - The City and FSE LLC have a significant interest in protecting the aesthetic appearance of the Mall by eliminating visual blight caused by an unsightly vendor.

Free Expression Zones

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View looking North


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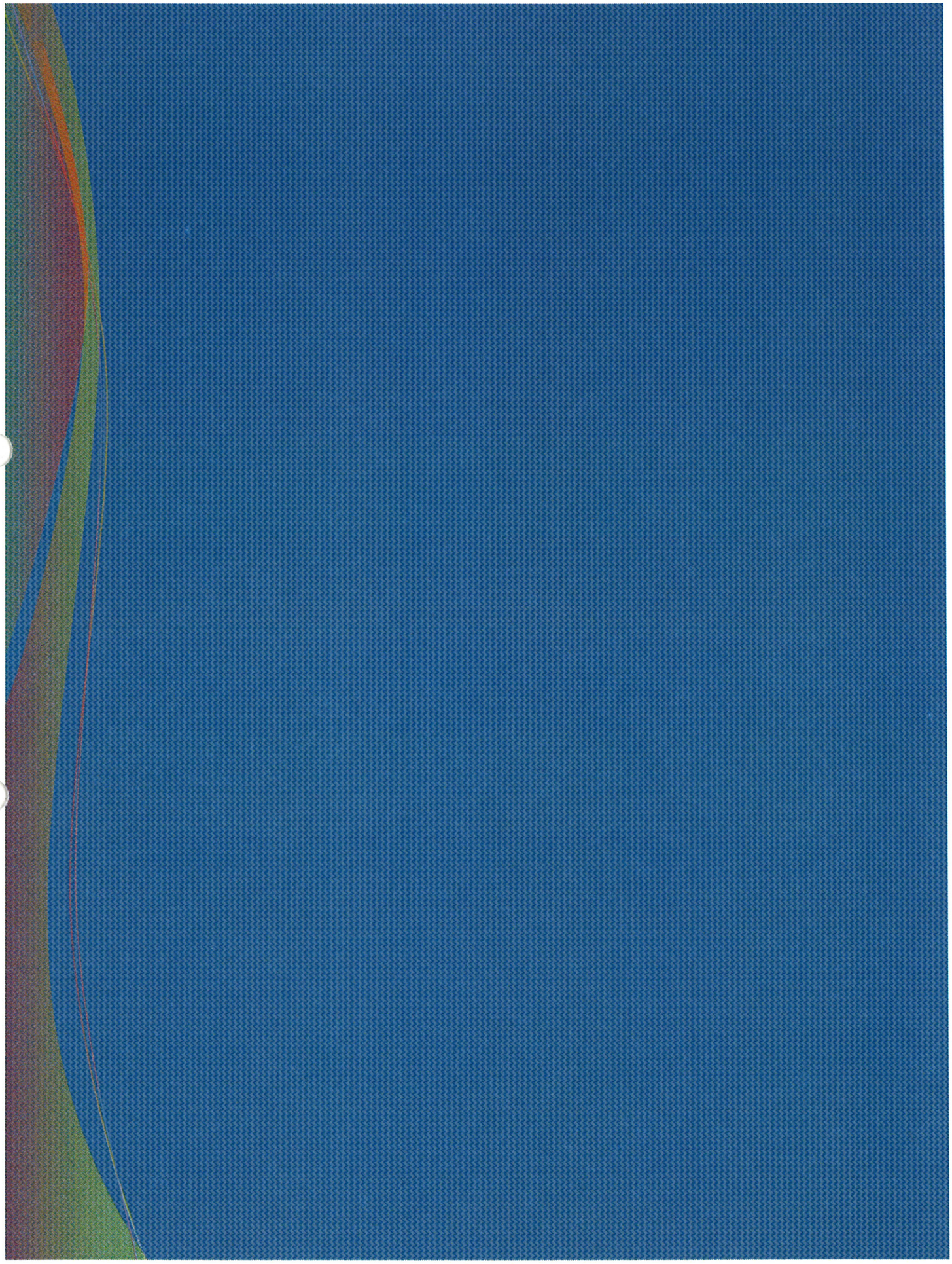
View looking South



CONCLUSION

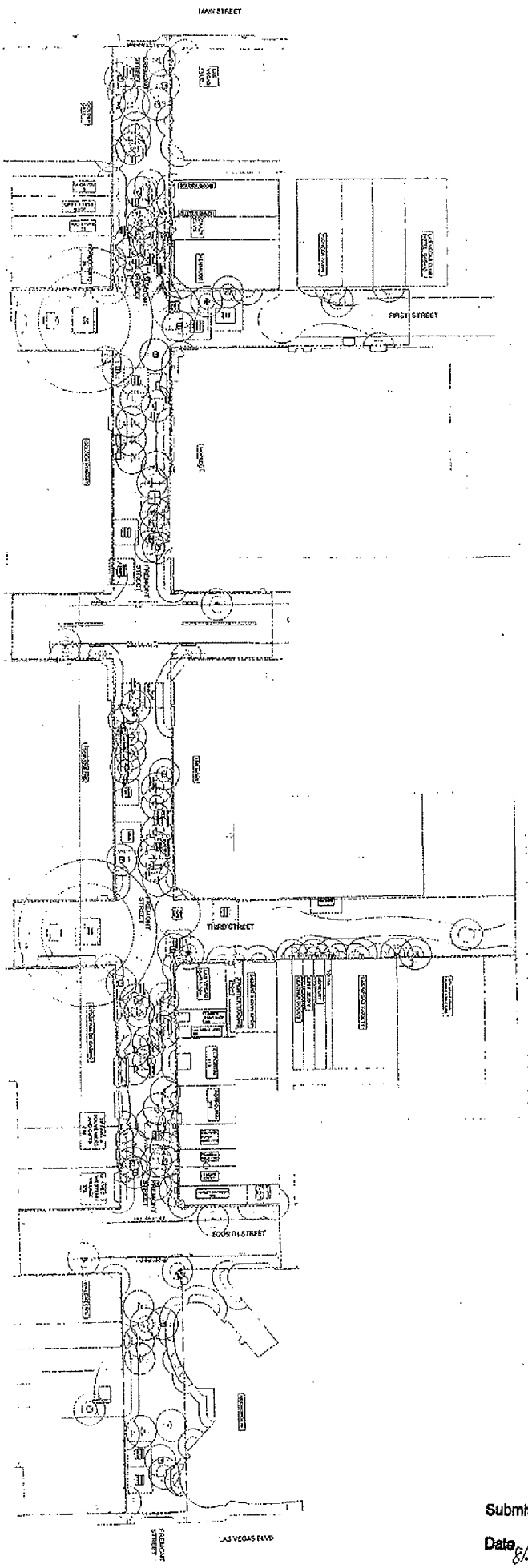


Recommending Committee Meeting of August 3, 2010

CD SUBMITTED AS BACKUP FOR ITEM 3 – FILED WITHIN MINUTE BINDER

Submitted At Meeting

Date 8/3/10 Item 3



Submitted At Meeting

Date 8/3/10 Item 3

Exhibit 1

Westlaw

913 F.Supp. 1402
(Cite as: 913 F.Supp. 1402)

C

United States District Court,
D. Nevada.

HAMPTON INTERNATIONAL COMMUNICATIONS, INC., Plaintiff,
v.
LAS VEGAS CONVENTION AND VISITORS AUTHORITY, Defendant.
No. CV-S-93-1110-HDM(RJJ).

Jan. 17, 1996.

Publisher brought suits seeking permanent injunction allowing it to distribute its "show dailies" on walkways leading to city's convention center, and actions were consolidated. On motion by convention and visitors authority for summary judgment, the District Court, McKibben, J., adopted report and recommendation of Johnston, United States Magistrate Judge, holding that: (1) tradeshow promoters, as lessees of convention center, were engaged in "state action" in prohibiting publisher's attempt to distribute its "show dailies"; but (2) walkway areas were not a public forum; (3) "show dailies" were not noncommercial speech; and (4) restrictions directly advanced substantial governmental interest.

Motion granted.

West Headnotes

[1] Federal Courts 170B ⚿13

170B Federal Courts
170BI Jurisdiction and Powers in General
170BI(A) In General
170Bk12 Case or Controversy Requirement
170Bk13 k. Particular Cases or Questions, Justiciable Controversy. Most Cited Cases
Publisher's settlement with lessee of convention center mooted its case as to alleged interference by lessee which prevented publisher from distributing its materials at convention center.

[2] Constitutional Law 92 ⚿1494

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1494 k. Applicability to Governmental or Private Action; State Action. Most Cited Cases
(Formerly 92k90(1))
First Amendment guarantee of free speech guards against undue governmental encroachment and erects no shield against merely private conduct. U.S.C.A. Const.Amend. 1.

[3] Civil Rights 78 ⚿1324

78 Civil Rights
78III Federal Remedies in General
78k1323 Color of Law
78k1324 k. In General. Most Cited Cases
(Formerly 78k196.1)

Civil Rights 78 ⚿1326(4)

78 Civil Rights
78III Federal Remedies in General
78k1323 Color of Law
78k1326 Particular Cases and Contexts
78k1326(3) Private Persons or Corporations, in General
78k1326(4) k. In General. Most Cited Cases
(Formerly 78k196.1)
Section 1983 permits liability actions where party is injured by person who, under color of state law, deprives party of any right, privilege or immunity secured by the Constitution; that is, persons violating this statute must be engaged in activity deemed to be acts of the state and not just acts of private persons or entities. 42 U.S.C.A. § 1983.

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Submitted At Meeting
Date 8/3/10 Item 3 Exhibit 2

[4] Civil Rights 78 ⚿1343

78 Civil Rights
78III Federal Remedies in General
78k1342 Liability of Municipalities and Other Governmental Bodies
78k1343 k. In General. Most Cited Cases
(Formerly 78k206(1))
Municipal corporation is "person," subject to § 1983 actions. 42 U.S.C.A. § 1983.

[5] Civil Rights 78 ⚿1325

78 Civil Rights
78III Federal Remedies in General
78k1323 Color of Law
78k1325 k. State or Territorial Action, or Individual or Private Action, in General. Most Cited Cases
(Formerly 78k197)
In determining whether state action exists, as required to support § 1983 claim, ultimate issue is whether alleged infringement of federal rights is fairly attributable to state; claimed constitutional deprivation must result from exercise of right or privilege having its source in state authority, and party charged with the deprivation must be person who fairly may be said to be a state actor. 42 U.S.C.A. § 1983.

[6] Civil Rights 78 ⚿1326(1)

78 Civil Rights
78III Federal Remedies in General
78k1323 Color of Law
78k1326 Particular Cases and Contexts
78k1326(1) k. In General. Most Cited Cases
(Formerly 78k198(1))
Trade show promoters, as lessees of convention center, were engaged in "state action," within meaning of § 1983, in prohibiting publisher's attempts to distribute its "show dailies" in walkways leading to convention center; promoters leased convention center from city and promoters were effectuating government policy as set forth in their leases. U.S.C.A. Const.Amend. 1; 42 U.S.C.A. § 1983.

[7] Constitutional Law 92 ⚿1507

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1507 k. Viewpoint or Idea Discrimination. Most Cited Cases
(Formerly 92k90(1))

Constitutional Law 92 ⚿1517

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1516 Content-Based Regulations or Restrictions
92k1517 k. In General. Most Cited Cases
(Formerly 92k90(1))
Generally, First Amendment prohibits governmental restrictions on expression due to ideas, subject matter, or content of that message. U.S.C.A. Const.Amend. 1.

[8] Constitutional Law 92 ⚿1512

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1511 Content-Neutral Regulations or Restrictions
92k1512 k. In General. Most Cited Cases
(Formerly 92k90(3))
Government may impose upon speech and conduct associated with speech reasonable time, place and manner restrictions which are content neutral.

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U.S.C.A. Const.Amend. 1.

[9] Constitutional Law 92 ⚿1730

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1730 k. In General. Most Cited Cases
(Formerly 92k90(3))
Particular standard by which federal courts determine reasonableness of government restriction on speech is determined by forum wherein speech occurs. U.S.C.A. Const.Amend. 1.

[10] Constitutional Law 92 ⚿1739

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1736 Traditional Public Forum in General
92k1739 k. Justification for Exclusion or Limitation. Most Cited Cases
(Formerly 92k90.1(4))
Governmental restrictions on speech in traditional public forum must be content neutral, narrowly tailored to serve compelling interests, and leave open alternative channels of communication. U.S.C.A. Const.Amend. 1.

[11] Constitutional Law 92 ⚿1735

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1732 Public Forum in General
92k1735 k. Justification for Exclusion or Limitation. Most Cited Cases
(Formerly 92k90.1(4))
Constitution forbids state to enforce certain exclusions from forum generally open to the public even if it was not required to create the forum in the first place, and as long as state retains open character of the facility, it is bound by same standards that apply to traditional public forum. U.S.C.A. Const.Amend. 1.

[12] Constitutional Law 92 ⚿1751

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1748 Non-Public Forum in General
92k1751 k. Justification for Exclusion or Limitation. Most Cited Cases
(Formerly 92k90.1(4))
Upon non-public forum consisting of public property which is not by tradition or designation a forum for public communication, state may, similar to other private property owners, reserve forum to its intended purposes and impose regulations that are viewpoint neutral and reasonably related to legitimate state interest. U.S.C.A. Const.Amend. 1.

[13] Constitutional Law 92 ⚿1760

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1760 k. Sidewalks. Most Cited Cases
(Formerly 92k90.1(4))
Ingress and egress walkways immediately adjacent to city's convention center were not a "public forum," for purposes of First Amendment analysis of handbilling restrictions; although walkway areas

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were open to the public at large and seemed, in all other physical regards, like a traditional public forum, walkways were created solely to manage heavy pedestrian traffic which generally accompanied large, privately-organized events for which convention center was built. U.S.C.A. Const.Amend. 1.

[14] Constitutional Law 92 ⚿1734

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1732 Public Forum in General
92k1734 k. Nature and Requisites. Most Cited Cases
(Formerly 92k90.1(4))
Government does not create public forum, for first-amendment purposes, whenever members of public are permitted freely to visit place owned or operated by the Government. U.S.C.A. Const.Amend. 1.

[15] Constitutional Law 92 ⚿1760

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1760 k. Sidewalks. Most Cited Cases
(Formerly 92k90.1(4))
Sidewalks which merely lead to entry of public, government-owned facility are not necessarily traditional public forum for First Amendment purposes. U.S.C.A. Const.Amend. 1.

[16] Constitutional Law 92 ⚿1730

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1730 k. In General. Most Cited Cases
(Formerly 92k90.1(4))
As general free speech principal, physical appearance alone does not dictate outcome of forum analysis; rather, it is combination of that appearance with consideration of property's fundamental purpose that controls. U.S.C.A. Const.Amend. 1.

[17] Constitutional Law 92 ⚿1537

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)2 Commercial Speech in General
92k1537 k. Difference in Protection Given to Other Speech. Most Cited Cases
(Formerly 92k90.2)
Even though commercial speech is usually afforded First Amendment protection equal to that of other forums of speech due to consumer's interest in free flow of commercial information, certain types of restrictions may be tolerated. U.S.C.A. Const.Amend. 1.

[18] Constitutional Law 92 ⚿1541

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)2 Commercial Speech in General
92k1541 k. Reasonableness; Relationship to Governmental Interest. Most Cited Cases
(Formerly 92k90.2)
In commercial speech cases, government regulation may be permitted if: speech concerns lawful activity and is not misleading; asserted governmental interest is substantial; regulation directly advances governmental interest asserted; and regulation is not more extensive than necessary to serve the in-

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terest. U.S.C.A. Const.Amend. 1.

[19] Constitutional Law 92 ⚿1640

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(E) Advertising and Signs
92XVIII(E)2 Advertising
92k1640 k. In General. Most Cited Cases
(Formerly 92k90.3)
Speech which contains advertisements, refers to specific product, or which is distributed with economic motivation evidences its commercial nature, for First Amendment purposes. U.S.C.A. Const.Amend. 1.

[20] Constitutional Law 92 ⚿1555

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)3 Particular Issues and Applications in General
92k1555 k. Matters of Public Concern. Most Cited Cases
(Formerly 92k90.2)

Constitutional Law 92 ⚿1640

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(E) Advertising and Signs
92XVIII(E)2 Advertising
92k1640 k. In General. Most Cited Cases
(Formerly 92k90.3, 92k90.2)
Communication can constitute commercial speech within meaning of First Amendment notwithstanding fact that it contains discussions of important issues; thus, advertising which links product to current debate is not thereby entitled to constitutional protection afforded noncommercial speech. U.S.C.A. Const.Amend. 1.

[21] Constitutional Law 92 ⚿1536

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)2 Commercial Speech in General
92k1536 k. What Is "Commercial Speech". Most Cited Cases
(Formerly 92k90.2)

Constitutional Law 92 ⚿1640

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(E) Advertising and Signs
92XVIII(E)2 Advertising
92k1640 k. In General. Most Cited Cases
(Formerly 92k90.3)

Constitutional Law 92 ⚿2079

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(U) Press in General
92k2079 k. Distribution of Materials in Public Places. Most Cited Cases
(Formerly 92k90.2)
"Show dailies" which publisher sought to distribute on grounds of convention center were not "noncommercial speech," for First Amendment purposes; publication contained mostly advertisements and editorials for products of advertisers, and publisher's desire to distribute it at tradeshows was motivated solely and undoubtedly by economic factors. U.S.C.A. Const.Amend. 1.

[22] Constitutional Law 92 ⚿1541

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and

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Press
92XVIII(A) In General
92XVIII(A)2 Commercial Speech in General
92k1541 k. Reasonableness; Relationship to Governmental Interest. Most Cited Cases
(Formerly 92k90.2)

Constitutional Law 92 ⚖2079

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(U) Press in General
92k2079 k. Distribution of Materials in Public Places. Most Cited Cases
(Formerly 92k90.2)
Prohibition against publisher's attempts to distribute its "show dailies" on walkways leading to city's convention center constituted valid regulation of commercial speech to protect city's substantial government interest in facilitating unencumbered entry and exit of visitors to the facility; moreover, regulation directly advanced governmental interest and regulation was no more extensive than necessary. U.S.C.A. Const.Amend. 1.

[23] Constitutional Law 92 ⚖1541

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)2 Commercial Speech in General
92k1541 k. Reasonableness; Relationship to Governmental Interest. Most Cited Cases
(Formerly 92k90.2)
When determining whether regulation on commercial speech is more extensive than necessary, "least-restrictive means" need not be used; rather, there must be only a reasonable fit between state's purpose and means chosen to achieve desired end. U.S.C.A. Const.Amend. 1.
***1405** Neil Beller, Las Vegas, NV, for plaintiff.

Luke Puschnig, Dickerson, Dickerson, Liberman & Consul, Las Vegas, NV, Paul E. Larsen, Lionel Sawyer & Collins, Las Vegas, NV, for defendant.

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

McKIBBEN, District Judge.

The court has considered the report and recommendation of the United States Magistrate Judge (# 136) filed on December 22, 1995, wherein the magistrate judge recommends that the court enter its order granting defendant's motion for summary judgment (# 115) in that the restriction on plaintiff's commercial speech does not violate the First Amendment and no genuine issue of material fact remain. No objections to the report and recommendation have been filed and the clerk of the court has been advised that objections will not be filed. The court has considered the pleadings and memoranda of the parties and other relevant matters of record and has made a review and determination in accordance with the requirements of 28 U.S.C. § 636 and applicable case law, and good cause appearing, the court hereby

ADOPTS AND ACCEPTS the report and recommendation of the United States Magistrate Judge. It is, therefore, ORDERED that defendant's motion for summary judgment (# 115) is granted and judgment shall be entered in favor of the Las Vegas Convention and Visitors Authority and against Hampton International Communications, Inc. The trial set for January 25, 1996 is vacated.

REPORT & RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

[December 22, 1995]

JOHNSTON, United States Magistrate Judge.

This matter was submitted to the undersigned Ma-

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gistrate Judge on Defendant Las Vegas Convention and Visitors Authority's Motion for Summary Judgment (# 115). The Court has reviewed the Motion for Summary Judgment (# 115), the Plaintiff's Opposition to the Defendant's Motion for Summary Judgment (# 116), and the Las Vegas Convention and Visitors Authority's Reply to Plaintiff's Opposition to Motion for Summary Judgment (# 118) and corresponding Supplements (# 121, # 129, # 130).

BACKGROUND

On or about October 18, 1993, the Las Vegas Convention and Visitors Authority ("LVCVA") leased the Las Vegas Convention Center to Interface Group-Nevada, Inc. ("Interface") for its annual "COMDEX" tradeshow. COMDEX promoters acquired a leasehold interest in the entire Convention Center facility, including the building, front entry, walkways leading to the Convention Center, and all parking lots in front of the facility. On or about November 8, 1993, the LVCVA leased the Las Vegas Convention Center to Electronic Industries Association ("CES") for its annual Consumer Electronics tradeshow. CES acquired a leasehold interest in essentially the identical areas of the Las Vegas Convention Center as the COMDEX promoters.

During these tradeshows, Plaintiff Hampton International Communications ("Hampton"), a for profit business which publishes various newspapers and commercial tabloids relevant to the computer industry, attempted to distribute its "show dailies" on the walkways leading to the Convention Center. ***1406** Tradeshow promoters prohibited Hampton's conduct since the distribution of commercial materials or "official dailies" [FN1] on Convention Center property was limited to designated areas and to only those organizations which had given consideration for the exclusive right to distribute commercial materials on the Las Vegas Convention Center grounds. Convention Center grounds include the ingress and egress walkways leading to the building where Plaintiff attempted to distribute its materials. No provision prohibits any person from distributing material on the municipal sidewalks which surround the Convention Center grounds.

> FN1. A convention "daily" is a profit-oriented publication which lists tradeshow events along with various paid commercial advertisements, articles, and editorials. Publishers of "official dailies" generally acquire such recognition, including the right to distribute its materials on convention premises, in exchange for a promotional fee.

On November 10, 1993, Hampton alleged a deprivation of its First Amendment right and sought a temporary restraining order and permanent injunction allowing it to distribute its commercial publication on Convention Center ingress and egress walkway areas during the COMDEX tradeshow. See, Compl. (# 1), Case No. CV-S-1110-LDG-(RLH). The injunctive request was denied. Less than two months later, on January 3, 1994, Hampton filed another Complaint for Injunctive Relief against LVCVA seeking to distribute its dailies at the CES tradeshow. Case No. CV-S-94-008-LDG-(RLH). Prior to the latter legal action, Hampton had contracted with CES to sublease a booth at the CES show in order to distribute its own materials on the Convention Center grounds. Tradeshow regulations, however, precluded Hampton both from distributing advertisements anywhere outside of its booth and from displaying or distributing its "dailies" on the Convention Center premises without the express permission of CES. Because Hampton believed such regulations were unduly restrictive, it filed the injunctive relief request before the CES tradeshow began. When the temporary restraining order was again denied, Hampton demanded a jury trial on the issue of damages. The district court subsequently consolidated the second case with the first. Order (# 22).

On November 24, 1993, Hampton filed its First Amended Complaint (# 14) alleging, *inter alia,* that (1) a prior Judgment by Consent entered into by

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LVCVA on June 30, 1993, permits a lessee to exclude only "protest or demonstration activities" from Civic Center premises and not other expressive activity, (2) Hampton was entitled to injunctive and declarative relief in that Defendant's restriction on the distribution of expressive material at the Las Vegas Convention Center violated its First and Fourteenth Amendment rights, and (3) Hampton incurred damages from Defendant's actions.

After nearly two years of pre-litigation maneuvering by the two private parties in this case, Hampton and Interface Group-Nevada, Inc. settled their dispute.[FN2] Pursuant to the Pretrial Order (# 124) and the Motion for Summary Judgment (# 115), the court must now determine whether any genuine issue of material fact exists requiring submission of the case against LVCVA to a jury.

> FN2. The controversy between Hampton and Interface became quite involved; however those matters were only peripheral to the pertinent First Amendment issues of this case. Specifically, on December 15, 1993, Interface filed its Answer and Counterclaim (# 19) against Hampton. In the counterclaim, Interface alleged, *inter alia,* that Hampton had used, without Interface's authority, the "COMDEX" service mark in soliciting advertisers for Hampton's show dailies, and on the front cover of its show dailies during the 1993 Fall COMDEX trade show. Consequently, Interface sought injunctive relief and damages for service mark infringement, unfair trade practices, and deceptive trade practices. Twice the Defendant disregarded Motions to Compel Discovery and twice the court imposed sanctions against it. See Orders (# 68) and (# 80). Then on June 28, 1995, a Stipulation and Order (# 117) was filed wherein the Complaint and Counterclaims between Hampton and Interface were dismissed.

DISCUSSION

I. STANDARD FOR MOTION FOR SUMMARY JUDGMENT

"Summary judgment may be granted when, viewing the evidence in the light most favorable to the nonmoving party, no genuine***1407** issues of fact remain and the movant is entitled to judgment as a matter of law." *Cleary v. News Corporation,* 30 F.3d 1255, 1259 (9th Cir.1994), citing Fed.R.Civ.P. 56; *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 247, 106 S.Ct. 2505, 2509, 91 L.Ed.2d 202 (1986). A court must grant a summary judgment motion against "a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett,* 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986). Evidence is sufficient to establish an essential element of a party's case if that evidence "is such that a reasonable jury could return a verdict" for that party. *Hopkins v. Dow Corning Corporation,* 33 F.3d 1116, 1121 (9th Cir.1994) , citing *Liberty Lobby, Inc.,* 477 U.S. at 248, 106 S.Ct. at 2510. However, "the mere existence of *some* alleged factual dispute will not defeat an otherwise properly supported motion for summary judgment[.]" *Anderson,* 477 U.S. at 247-48, 106 S.Ct. at 2509-10. Any showing of fact made by a party will be examined through the prism of the substantive evidentiary standards that apply to the particular case. *Id.* at 254-55, 106 S.Ct. at 2513-14.

II. MOOTNESS

[1] A federal court may have jurisdiction to decide a dispute provided that a case or controversy exists as set forth in U.S. Constitution, art. III, § 2. Because Plaintiff has stipulated to a settlement with Interface, its case is moot as to the alleged interference by Interface which prevented Hampton from distributing its materials at the Convention Center. The LVCVA is the only remaining defendant against which Hampton seeks redress. Hampton maintains a damages claim pursuant to 42 U.S.C. §

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1983 for the deprivation by a state agent of rights constitutionally guaranteed by the First and Fourteenth Amendments. But for this alleged state action to deprive a constitutional right, Plaintiff's continuing request that this court determine whether the disputed walkways located on the Las Vegas Convention Center are public fora would constitute merely an advisory opinion and lie beyond the jurisdiction of a federal court.[FN3] Plaintiff's case is justiciable by a federal court, therefore, only if their civil rights damages claim legitimately involves unconstitutional state action against private conduct.

> FN3. Had Plaintiff not sought damages, Plaintiff likely could have still had his case heard and avoid mootness concerns since the case appears to be one "capable of repetition, yet evading review," where the challenged action is in its duration too short to be fully litigated prior to its cessation and a reasonable expectation exists that the Plaintiff would be subject to the same action again. *Weinstein v. Bradford,* 423 U.S. 147, 149, 96 S.Ct. 347, 349, 46 L.Ed.2d 350 (1975).

III. STATE ACTION

[2][3][4] The First Amendment guarantee of free speech guards against undue governmental encroachment and erects no shield against merely private conduct. *Shelley v. Kraemer,* 334 U.S. 1, 13, 68 S.Ct. 836, 842, 92 L.Ed. 1161 (1948). Hence, Section 1983 of 42 U.S.C. permits liability actions wherein a party is injured by a person, *who under color of state law,* deprives the party of any right, privilege, or immunity secured by the Constitution. That is, persons violating this statute must be engaged in activity deemed to be acts of the state and not just acts of private persons or entities. *Rendell-Baker v. Kohn,* 457 U.S. 830, 837, 102 S.Ct. 2764, 2769, 73 L.Ed.2d 418 (1982). Additionally, municipal corporations are "persons" subject to Section 1983 actions. *Monell v. Dep't Social Services of New York,* 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978).

[5][6] In determining whether state action exists in this context, the ultimate issue is whether the alleged infringement of federal rights is "fairly attributable to the State." *Rendell-Baker,* 457 U.S. at 838, 102 S.Ct. at 2769, citing *Lugar v. Edmondson Oil Co.,* 457 U.S. 922, 937, 102 S.Ct. 2744, 2754, 73 L.Ed.2d 482 (1982). The Supreme Court has adopted a two-part approach to this question of "fair attribution." First, the claimed constitutional deprivation must result from the exercise of a right or privilege having its source in state authority. Second, the party charged with the deprivation must be a person who fairly may be said to be a state ***1408** actor. *Lugar,* 457 U.S. at 937, 102 S.Ct. at 2754. In this case, where the authority of a private entity to act stems from a direct agreement with the state, the central inquiry focuses on the second factor of whether a party can be described "in all fairness" as a state actor.[FN4] *Id.; see also, Edmonson v. Leesville Concrete Co. Inc.,* 500 U.S. 614, 619, 111 S.Ct. 2077, 2082, 114 L.Ed.2d 660 (1991).

> FN4. The constitutional deprivation alleged by Plaintiff in this case is a direct result of Interface and CES exercising their leasehold agreement for exclusive use of the Las Vegas Convention Center as set forth and granted in the lease entered into by Interface and CES with the LVCVA.

Determining what may be fairly considered governmental action is generally a fact-bound inquiry. However, Supreme Court precedents serve as guideposts in the analysis.[FN5] To be sure, the Supreme Court rarely finds undertakings to be within the narrow category of functions exercised traditionally and exclusively by the government. *See generally, Jackson v. Metropolitan Edison Co.,* 419 U.S. 345, 95 S.Ct. 449, 42 L.Ed.2d 477 (1974); *Flagg Brothers, Inc. v. Brooks,* 436 U.S. 149, 98 S.Ct. 1729, 56 L.Ed.2d 185 (1978). The Court has stated that "while many functions have been traditionally performed by governments, very few have

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been 'exclusively reserved to the State.' " *Flagg,* 436 U.S. at 158, 98 S.Ct. at 1734. At the same time, however, where a private party and its conduct are closely associated with the state, it may be fair to treat the private action as state conduct. *See, NCAA v. Tarkanian,* 488 U.S. 179, 109 S.Ct. 454, 102 L.Ed.2d 469 (1988).

> FN5. Several principles apply in a state action analysis: (1) a state normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State. *Blum v. Yaretsky,* 457 U.S. 991, 1003, 102 S.Ct. 2777, 2785, 73 L.Ed.2d 534 (1982); *Moose Lodge No. 107 v. Irvis,* 407 U.S. 163, 92 S.Ct. 1965, 32 L.Ed.2d 627 (1972) (the state compulsion test); (2) where a private group is serving a public function, federal courts must examine whether that function performed has been "traditionally the exclusive prerogative of the State." *Jackson v. Metropolitan Edison Co.,* 419 U.S. 345, 353, 95 S.Ct. 449, 455, 42 L.Ed.2d 477 (1974) (the public function test); and (3) a sufficiently close nexus between the state and the challenged action of the private party should exist so as to fairly treat the private conduct as state action. *Jackson v. Metropolitan Edison Co.,* 419 U.S. 345, 353, 95 S.Ct. 449, 455, 42 L.Ed.2d 477 (1974); *see also, Stypmann v. City of San Francisco,* 557 F.2d 1338, 1342 (9th Cir.1977); *NCAA v. Tarkanian,* 488 U.S. 179, 109 S.Ct. 454, 102 L.Ed.2d 469 (1988) (the nexus or joint action test).

The state action issue is pertinent to the instant case since no facts allege that LVCVA actually prohibited Hampton from distributing information. Rather, tradeshow promoters as lessees of the Convention Center implemented what was a perceived right to unconditionally prohibit unauthorized handbilling on leased Convention Center premises acquired under the leasehold agreement with the LVCVA. Neither party addressed this issue in its original brief. [FN6] Only in its Supplement (# 121) did Defendant raise the state action issue by noting a recent Fourth Circuit case which held that the private organizer of a municipal festival on city grounds did not constitute state action since the organization, management, and promotion of a community entertainment event is not a function traditionally and exclusively exercised by the government. *See, United Auto Workers v. Gaston Festivals, Inc.,* 43 F.3d 902 (4th Cir.1995).

> FN6. Both parties were directed by the Court to brief the state action issue subsequent to the hearing on Defendant's Motion for Summary Judgment. See Order (# 128).

The LVCVA argues that, similar to the actions by the plaintiff in *Gaston,* organizing a tradeshow event and exercising effective managerial control over a convention center do not fall within the domain of functions exercised traditionally and exclusively by the government.[FN7] However, the court finds that this case is more analogous to the state activity and reasoning undergirding the decision in *Evans v. Newton,* 382 U.S. 296, 86 S.Ct. 486, 15 L.Ed.2d 373 (1966) and similar cases in which a sufficiently close nexus exists***1409** between the state and the challenged action so as to fairly treat the private conduct as state action. *See, Jackson,* 419 U.S. at 351, 95 S.Ct. at 454; *NCAA v. Tarkanian,* 488 U.S. 179, 109 S.Ct. 454, 102 L.Ed.2d 469 (1988).

> FN7. Defendant also contends that the actual exclusion of Plaintiff's information from Convention Center premises cannot be fairly attributed to the State since it acted only as a lessor or "owner out of occupancy" and did not actually restrict speech through any means. Second Supplement (# 130).

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In *Newton,* the management activity carried on by private trustees over a municipal park was determined to be state action, not merely because the park traditionally served the public, but rather due to the state's entwined role in the management and control of the premises in question. Likewise, in the case at hand, a government entity retains ownership, maintenance, and daily control over the Convention Center.[FN8] In fact, the LVCVA's role as the traditional municipal authority over the premises is firmly established not only by corporeal conduct and control, but also by the Las Vegas Convention Center lease agreement to which tradeshow promoters must adhere.

> FN8. The LVCVA is a governmental agency founded by Clark County pursuant to N.R.S. 244A.597. Therefore, the Court considers this municipal entity an agent and actor for the government, and for purposes of a First Amendment analysis, its actions constitute state actions.

The lease agreement in this case is a distinguishing factor from those cases in which state action was not found because the State acted only as a lessor of its own property without enforcing restrictive policies or otherwise interfering with lessee activities.[FN9] According to the lease here, the lessee "shall not ... distribute or circulate or permit to be circulated or distributed, any advertising matter or program in or about the Las Vegas Convention Center public area." See Lease, attached to (# 33) as Exhibit 1, Paragraph 24. Although the Defendant did not actually prohibit the Plaintiff from handbilling on Convention Center premises, it was by the LVCVA's express authority as set forth in its lease and as proprietor of the Convention Center that tradeshow promoters acted. Interface and CES enforced the "no unauthorized handbilling" policy as required by the lease and with the authority granted by that lease. It is this close nexus between compelled government policy and the putative unconstitutional interference with speech that evidences state action. The policy of the LVCVA was so interdependent and indistinguishable from that of tradeshow promoters that it was, in effect, a joint participant with the tradeshow organizers in the effectuation of that policy. *See, Jackson,* 419 U.S. at 357-58, 95 S.Ct. at 457-58.

> FN9. Only where the State grants absolute autonomy to its lessees will its ownership of a facility be insufficient to constitute state action. *See, United Auto Workers v. Gaston Festivals, Inc.,* 43 F.3d 902 (4th Cir.1995); *Gannett Satellite Info. Network Inc. v. Berger,* 894 F.2d 61 (3rd Cir.1990); *NBC v. Communications Workers of America,* 860 F.2d 1022 (11th Cir.1988).

Because of this "symbiotic relationship" whereby the government advanced its policy through the acts of tradeshow promoters throughout its lease, and due to the fact that the government has remained so inexorably involved with the daily oversight and administration of the Las Vegas Convention Center, the tradeshow promoters' actions under their respective lease agreements with the LVCVA can in all fairness be described as state action. Consequently, any action taken by a private lessee of the Las Vegas Convention Center which comports to the LVCVA's lease agreement and which improperly deprives another of a constitutionally protected right constitutes state action for purposes of Section 1983 liability.

IV. FORUM DOCTRINE

[7][8][9][10] The constitutional standards which proscribe the amount of governmental restriction that can be placed on speech are well established. As a general rule, the First Amendment prohibits governmental restrictions on expression due to the ideas, subject matter, or content of that message. *See, e.g., Police Department of Chicago v. Mosley,* 408 U.S. 92, 95, 92 S.Ct. 2286, 2289, 33 L.Ed.2d 212 (1972). Government may impose upon speech and the conduct associated with speech, reasonable time, place, and manner restrictions which are con-

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tent-neutral. The particular standard by which federal courts determine the reasonableness of a governmental restriction is determined by the forum wherein the speech occurs. "At one end of the spectrum are streets and parks which ***1410** 'have immemorially been held in trust for the use of the public and ... have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.' " *Perry Ed. Ass'n v. Perry Local Ed. Ass'n,* 460 U.S. 37, 45, 103 S.Ct. 948, 955, 74 L.Ed.2d 794 (1983) (quoting *Hague v. C.I.O.,* 307 U.S. 496, 515, 59 S.Ct. 954, 964, 83 L.Ed. 1423 (1939)). Governmental restrictions upon these locales must be content neutral, narrowly tailored to serve a compelling state interest, and leave open alternative channels of communication. *Id.*

[11] Continuing down the spectrum from the traditional public forum is the designated public forum, opened by the state for limited or unlimited use by the public as a place for expressive activity. "The Constitution forbids a State to enforce certain exclusions from a forum generally open to the public even if it was not required to create the forum in the first place," and as long as the State retains the open character of the facility, it is bound by the same standards that apply to a traditional public forum. *Perry Ed. Ass'n,* 460 U.S. at 45-46, 103 S.Ct. at 955-56.

[12] Finally, the non-public forum consists of public property which is not by tradition or designation a forum for public communication. *Id.* at 46, 103 S.Ct. at 955. This forum is governed by a different standard from the previous two. Upon this forum, similar to other private property owners, the State may reserve the forum to its intended purposes and impose regulations that are viewpoint neutral and reasonably related to a legitimate state interest. *Id.*

[13][14][15][16] The distinctions between a designated public forum and a non-public forum are at times fine and difficult to determine. Turning to the case at hand, the ingress-egress walkways in dispute appear to more closely resemble those public areas immemorially held in trust for the use of the public and for purposes of assembly and communicating thought. The walkway areas are open to the public at large and seem, in all other physical regards, like a traditional public forum. On the other hand, some aspects of the Las Vegas Convention Center, which was built for the primary purpose of attracting large conventions and increasing the economic activity of Las Vegas and Clark County, are non-public in nature. The Court notes that the government does not create a public forum "whenever members of the public are permitted freely to visit a place owned or operated by the Government." *Greer v. Spock,* 424 U.S. 828, 836, 96 S.Ct. 1211, 1216, 47 L.Ed.2d 505 (1976). Moreover, sidewalks which merely lead to the entry of a public, government-owned facility are not necessarily a traditional public forum. *Jacobsen v. U.S. Postal Service,* 993 F.2d 649 (9th Cir.1992, Amended April 30, 1993). As a general free speech principle, physical appearance alone does not dictate the outcome of a forum analysis; rather it is the combination of that appearance with considerations of the property's fundamental purpose that controls. *See, United States v. Kokinda,* 497 U.S. 720, 727, 110 S.Ct. 3115, 3120, 111 L.Ed.2d 571 (1990).

The ingress and egress walkways at issue here have the appearance and clear purpose to assist Convention Center patrons in traveling between the privately-leased Convention Center and public areas. They do not constitute a public thoroughfare. They were created solely to manage the heavy pedestrian traffic which generally accompanies large, privately-organized events for which the Convention Center was built. Accordingly, the ingress and egress walkways associated with the Las Vegas Convention Center are not the traditional public forum sidewalk referred to in *Perry Education Assoc. v. Perry Local Educators' Ass'n,* 460 U.S. 37, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983). The Court recognizes that the entrance to a Convention Center may be more conducive to distributing speech than, for example, a post office or federal building. However, Plaintiff has not proffered sufficient facts

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to show that the walkway areas here are a public forum.[FN10] ***1411** Moreover, as will be shown, even if the area in dispute had been a limited-public or public forum, the speech restriction here was a valid regulation of commercial speech to protect a substantial government interest.

> FN10. Plaintiff mentions in its brief only five specific "disputed material facts" accompanied by an argument that its speech is not purely commercial and is entitled to protection since its handbilling is not "incompatible" with the walkways in question. *See,* Opposition to Motion for Summary Judgment (# 116). The facts proffered by Plaintiff are generally either non-disputed or non-material: The first two "disputed facts" deal with the exact composition of Plaintiff's show dailies and are irrelevant to this analysis. The third is a correct statement inasmuch as it states that the LVCVA requires permission to distribute materials from *leased* areas. Statement four alleges that Plaintiff's show dailies are given free and that another distributor once handbilled promotional materials from the walkways here. These facts are not disputed nor relevant. Finally, statement five asserts that Convention Center sidewalks are indistinguishable from public sidewalks. This conclusion is unsupported and encompassed in the court's legal analysis.

V. COMMERCIAL SPEECH

[17] Although the First Amendment guarantees freedom from government restrictions on all speech, there exists a sensible distinction between speech proposing a commercial transaction, which often arises in areas traditionally subject to government regulation, and other varieties of speech. *Ohralik v. Ohio State Bar Ass'n,* 436 U.S. 447, 455-56, 98 S.Ct. 1912, 1918-19, 56 L.Ed.2d 444 (1978). Accordingly, even though commercial speech is usually afforded First Amendment protection equal to that of other forms of speech due to the "consumer's interest in the free flow of commercial information," certain types of restriction may be tolerated. *Rubin v. Coors Brewing Co.,* 514 U.S. 476, ----, 115 S.Ct. 1585, 1589, 131 L.Ed.2d 532, 538 (1995) (quoting *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.,* 425 U.S. 748, 765, 96 S.Ct. 1817, 1827, 48 L.Ed.2d 346 (1976)).

[18] In commercial speech cases, government regulation may be permitted depending on the outcome of the applicable four-part analysis: (1) the speech must concern lawful activity and not be misleading, (2) the asserted governmental interest must be substantial, (3) the regulation must directly advance the governmental interest asserted, and (4) the regulation must not be more extensive than is necessary to serve the interest. *Central Hudson Gas & Electric Corp. v. Public Serv. Comm'n of N.Y.,* 447 U.S. 557, 566, 100 S.Ct. 2343, 2351, 65 L.Ed.2d 341 (1980). State restrictions of commercial speech that do not comport with this test are unconstitutional.

[19][20] The foregoing analysis is applicable to government restrictions on speech which does nothing more than propose a commercial transaction. *Virginia State Board of Pharmacy,* 425 U.S. at 762, 96 S.Ct. at 1826. Speech which contains advertisements, refers to a specific product, or which is distributed with an economic motivation evidences its commercial nature. *See, Bolger v. Youngs Drug Products Corp.,* 463 U.S. 60, 66-67, 103 S.Ct. 2875, 2880-81, 77 L.Ed.2d 469 (1983). Importantly, communication can constitute commercial speech "notwithstanding the fact that [it] contain[s] discussions of important public issues." *Bolger,* 463 U.S. at 67, 103 S.Ct. at 2880 (quoting *Central Hudson Gas,* 447 U.S. at 563, 100 S.Ct. at 2350). Thus "advertising which 'links a product to a current public debate' is not thereby entitled to the constitutional protection afforded noncommercial speech." *Id.*

[21] In the case at hand, Plaintiff Hampton produced and sought to distribute on the grounds of the

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Las Vegas Convention Center a "show daily" containing mostly advertisements and editorials for products of advertisers. [FN11] Hampton's desire to distribute its publication at computer tradeshows is motivated exclusively and undoubtedly by economic factors. It was the prospect of commercial gain that motivated the concept, creation, development, and production of the material. Indeed, it is financial interests that undergird this very litigation. Hampton's arguments that its "show daily" was noncommercial speech is without merit.

> FN11. The daily is approximately 75 percent advertisements. Two-Thirds of the remaining 25 percent comprises editorial material supporting products or services or personnel of advertisers in the publication. Pretrial Order (# 124) at 3.

A. *Central Hudson Gas* Analysis

[22] The commercial speech analysis of the Plaintiff's materials is more definitively ***1412** demonstrates, regardless of the forum, that LVCVA's conduct comported with First Amendment guarantees of free speech. Because neither party contends that Plaintiff's speech is misleading, the first test of the *Central Hudson Gas* analysis need not be addressed. Thus Plaintiff's speech may be restricted, despite the forum in which it is disseminated, provided the LVCVA's interest is substantial and the regulation it imposes directly advances the government's interest in a way that is not overly restrictive.

1. Substantial Government Interest

The LVCVA has a substantial government interest in restricting commercial speech because the Las Vegas Convention Center is a commercial venture by Clark County and the City of Las Vegas for improving economic activity in southern Nevada. This convention-leasing enterprise generates economic development throughout southern Nevada. Accordingly, the government's desire to maintain this economic activity is a substantial one. *See, Lehman v. City Shaker Heights,* 418 U.S. 298, 303, 94 S.Ct. 2714, 2717, 41 L.Ed.2d 770 (1974) (a state agency engaged in a permitted commercial activity has a substantial interest entitled to deference).

Additionally, the government has a substantial public policy interest. The ingress-egress walkways were designed to facilitate the unencumbered entry and exit of visitors to the Las Vegas convention facility. The unregulated activity of innumerable commercial venturers vying for favorable locales from which to distribute their sundry commercial materials would unduly congest the walkways and not only interfere with the ability of tradeshow promoters to control its crowds, but also with the ability of attendees to freely enter and exit the very event they traveled to attend. The LVCVA has an substantial interest in avoiding this adverse situation.

2. Regulation Must Directly Advance that Interest

The government "has power to preserve the property under its control for the use to which it is lawfully dedicated." *Greer,* 424 U.S. at 836, 96 S.Ct. at 1216 (1976). Hampton seeks to publish commercial materials that would compete with the financial interests of the lessees the LVCVA desires to serve. Permitting competing commercial entities to distribute materials without acquiring consent from leasing tradeshow promoters would undermine the LVCVA's fundamental purpose to lure, facilitate, and ultimately, lease space to large business conventions and commercial events in the Las Vegas Convention Center. A convention center lessees' ability to control and sell the exclusive rights to access convention patrons is the quintessence of the tradeshow enterprise. The integrity of that ability attracts future tradeshow promoters, conventions, visitors, and indirectly generates significant economic activity within the area served by the LVCVA. By regulating the distribution of competing commercial materials, the LVCVA preserves the competitiveness of the Las Vegas Convention

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Center and directly advances its substantial economic interest. Additionally, the prohibition of unauthorized distributors from the ingress-egress walkway areas maintains that areas for its intended purpose of safe and convenient entrance and exit for convention center visitors. *See, Heffron v. Int'l Society for Krishna Consciousness, Inc.*, 452 U.S. 640, 650-51, 101 S.Ct. 2559, 2565-66, 69 L.Ed.2d 298 (1981) (activities incompatible with the normal character and function of the government property may be regulated).

3. Regulation No More Extensive than Necessary

[23] When determining whether a regulation on commercial speech is more extensive than necessary, the "least-restrictive means" need not be used. Rather, there must only be a reasonable fit between the state's purpose and the means chosen to achieve the desired end. *Board of Trustees of State University of N.Y. v. Fox*, 492 U.S. 469, 109 S.Ct. 3028, 106 L.Ed.2d 388 (1989). LVCVA policy meets this burden. Hampton argues that Defendant's means are not reasonable because a previous June 30, 1993, judgment ***1413** by consent specifies the restrictions that Defendant is authorized to place upon speech. However, commercial speech was not at issue in that case. Here, where plaintiff's motivation to distribute materials is financial gain, a different standard applies. Accordingly, by prohibiting the unauthorized distribution of materials on leased convention center premises the LVCVA employs a reasonable means to preserve its substantial economic interest.

CONCLUSION

Because of the integral role the LVCVA plays in daily management and control of the Las Vegas Convention center and considering the nature of the LVCVA's lease whereby a policy of excluding non-authorized commercial activity is expressly maintained therein, state action exists for purposes of Section 1983 claims. However, the regulations imposed by the LVCVA as lessor of the Las Vegas Convention Center are reasonable since (1) the ingress-egress areas are non-public forums, and (2) the restrictions directly advance a substantial government interest. Specifically, the LVCVA may preserve the marketability of its tradeshow-industry enterprise and the significant economic development that venture generates by prohibiting commercial entities from distributing unauthorized materials on all Convention Center premises.

RECOMMENDATION

Based on the foregoing, and good cause appearing therefore,

IT IS THE RECOMMENDATION of the undersigned Magistrate Judge that Defendant's Motion for Summary Judgement (# 115) be GRANTED in that the restriction on Plaintiff's commercial speech does not violate the First Amendment and no genuine issue of material fact remain.

D.Nev.,1996.
Hampton Intern. Communications, Inc. v. Las Vegas Convention and Visitors Authority
913 F.Supp. 1402

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C Hampton Intern. Communications, Inc. v. Las Vegas Convention and Visitors Authority, 913 F.Supp. 1402 (D.Nev. Jan 17, 1996) (NO. CV-S-93-1110-HDM RJJ)

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C 2 Albrecht v. Metropolitan Pier and Exposition Authority, 338 F.Supp.2d 914, 924 (N.D.Ill. Oct 01, 2004) (NO. 03 C 6472)

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3 Advertising & Comm. Speech: A First Amend. Guide s 14:37, Solicitation of Business or Funds (2008) **HN: 22 (F.Supp.)**

C 4 SIDEWALK DEMOCRACY: FREE SPEECH, PUBLIC SPACE AND THE CONSTITUTION, 8-MAY Nev. Law. 18, 20 (2000) **HN: 13 (F.Supp.)**

5 BRIEF FOR THE PETITIONER, 15 J. Marshall J. Computer & Info. L. 609, 631 (1997)

6 ADVERTISING AND COMMERCIAL SPEECH, 680 Practising Law Institute Patents, Copyrights, Trademarks, & Literary Property 199 (2001) **HN: 21 (F.Supp.)**

7 ADVERTISING AND COMMERCIAL SPEECH, 626 Practising Law Institute Patents, Copyrights, Trademarks, & Literary Property 31 (2000) **HN: 21 (F.Supp.)**

8 ADVERTISING AND COMMERCIAL SPEECH, 582 Practising Law Institute Patents, Copyrights, Trademarks, & Literary Property 715 (1999) **HN: 21 (F.Supp.)**

9 ADVERTISING AND COMMERCIAL SPEECH, 538 Practising Law Institute Patents, Copyrights, Trademarks, & Literary Property 59 (1998) **HN: 21 (F.Supp.)**

10 ADVERTISING AND COMMERCIAL SPEECH, 499 Practising Law Institute Patents, Copyrights, Trademarks, & Literary Property 655 (1997) **HN: 21 (F.Supp.)**

11 ADVERTISING AND COMMERCIAL SPEECH, 462 Practising Law Institute Patents, Copyrights, Trademarks, & Literary Property 371 (1996) **HN: 21 (F.Supp.)**

Court Documents

Appellate Court Documents (U.S.A.)

Appellate Briefs

12 NORTHERN INDIANA GUN & OUTDOOR SHOWS, INC., Appellant (Plaintiff Below), v.

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CITY OF SOUTH BEND, Stephen J. Luecke, as Mayor of the City of South Bend, Brian R. Hedman, Individually and as Executive Director of Century Center, and Karl King, as Chairman of the Civic Center Board of Managers, Appellees (Defendants Below)., 1996 WL 33415565, *33415565+ (Appellate Brief) (7th Cir. May 22, 1996) **Brief of Appellees** (NO. 98-1636) * * **HN: 6 (F.Supp.)**

13 George VILLEGAS, Bob Poelker, Marcelo Orta, and Don Derosiers, Plaintiffs and Appellants, v. CITY OF GILROY, Gilroy Garlic Festival Association, Inc., Defendants and Appellees., 2005 WL 3577727, *3577727+ (Appellate Brief) (9th Cir. Oct 03, 2005) **Brief Of Appellee Gilroy Garlic Festival Association, Inc.** (NO. 05-15725) * * * **HN: 6 (F.Supp.)**

14 George VILLEGAS, et al., Plaintiffs-Appellants, v. CITY OF GILROY, et al., Defendants-Appellees., 2005 WL 3128160, *3128160+ (Appellate Brief) (9th Cir. Aug 17, 2005) **Appellants' Opening Brief** (NO. 05-15725) " * * **HN: 6 (F.Supp.)**

15 SOC, INC., Richard Soranno, Hillsboro Enterprises, Inc., and the American Civil Liberties Union of Nevada, Appellants, v. COUNTY OF CLARK, State of Nevada, Las Vegas Metropolitan Police Department, Lorraine Hunt, Myrna Williams, Erin Kenny, Bruce Woodbury, Yvonne Atkinson Gates, Lance Malone, Mary Kincaid, Nevada Resort Association, Flamingo Hilton Corp., Mirage Casino-Hotel, Circus-Circus Enterprises, Inc., Las Vegas Convention and Visitors' Authority,, 1998 WL 34104147, *34104147+ (Appellate Brief) (9th Cir. Jan 29, 1998) **Joint Answering Brief of Appellees** (NO. 97-15912) " * * **HN: 22 (F.Supp.)**

16 S.O.C., INC.; Hillsboro Enterprises, Inc.; Hillsboro Enterprises, Ltd.; Appellants, v. The Mirage CASINO-HOTEL, a Nevada Corporation; and Treasure Island Corp., a Nevada Corporation, Respondents., 2000 WL 35587060, *35587060+ (Appellate Brief) (Nev. Aug 31, 2000) **Appellant Hillsboro's Reply Brief** (NO. 34563) * * **HN: 13 (F.Supp.)**

17 S.O.C., INC.; Hillsboro Enterprises, Inc.; Hillsboro Enterprises, Ltd.; Appellants, v. The Mirage CASINO-HOTEL, a Nevada Corporation; and Treasure Island Corp., a Nevada Corporation, Respondents., 2000 WL 35587056, *35587056+ (Appellate Brief) (Nev. May 03, 2000) **Amicus Curie Brief of the American Civil Liberties Union of Nevada** (NO. 34563) * * **HN: 13 (F.Supp.)**

Trial Court Documents (U.S.A.)

Trial Motions, Memoranda and Affidavits

18 FLORIDA ALLIANCE FOR RETIRED AMERICANS, et al., Plaintiffs, v. CITY OF FORT LAUDERDALE, et al., Defendants., 2005 WL 1501889, *1501889 (Trial Motion, Memorandum and Affidavit) (S.D.Fla. 2005) **Defendant. Broward County'S. Memorandum of Law Opposing Motion for Temporary Restraining Order or Preliminary Injunction** (NO. 05-60813-CIV-MOORE) * *

19 RGW COMMUNICATIONS, INC., d/b/a Watson Cable Company, Plaintiff, v. UNITED STATES OF AMERICA, DEPARTMENT OF THE AIR FORCE, et al., Defendants., 2001 WL 35677213, *35677213+ (Trial Motion, Memorandum and Affidavit) (M.D.Ga. Dec 24, 2001) **Defendants Hunt Building Corporation and WRAF Housing, LLC's Reply Brief in Support of Motion for Summary Judgment** (NO. 501-CV-302-4, DF) * *

20 Katherine ALBRECHT and Quentin Young, on behalf of themselves and all persons similarly

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situated, Plaintiffs, v. METROPOLITAN PIER AND EXPOSITION AUTHORITY, Defendant., 2004 WL 2174599, *2174599+ (Trial Motion, Memorandum and Affidavit) (N.D.Ill. Aug 30, 2004) **Plaintiffs' Response to Defendants' Motion to Dismiss** (NO. 03C6472) * *

21 Katherine ALBRECHT, plaintiff, v. METROPOLITAN PIER AND EXPOSITION AUTHORITY and Leticia Peralta Davis, in her official capacity as Ceo of the MPEA, defendants., 2003 WL 23799211, *23799211+ (Trial Motion, Memorandum and Affidavit) (N.D.Ill. Sep 15, 2003) **The Authority's Verified Memorandum in Opposition to Plaintiff's Motion for A Temporary Restraining Order** (NO. 03C6472) * *

22 Katherine ALBRECHT, plaintiff, v. METROPOLITAN PIER AND EXPOSITION AUTHORITY and Leticia Peralta Davis, in her official capacity as Ceo of the MPEA, defendants., 2003 WL 23799265, *23799265+ (Trial Motion, Memorandum and Affidavit) (N.D.Ill. Sep 15, 2003) **The Authority's Verified Memorandum in Opposition to Plaintiff's Motion for A Temporary Restraining Order** (NO. 03C6472) * *

23 William G. MAYJOR, Plaintiff, v. HARRAH'S LAS VEGAS, INC., Does I-X; and Roe Corporations I-X, inclusive, Defendants., 2002 WL 32975592, *32975592 (Trial Motion, Memorandum and Affidavit) (D.Nev. Jul 01, 2002) **Defendant's Motion to Dismiss Plaintiff's Violation of His Right to Freedom of Speech Cause of Action** (NO. CV-S-02-0859-KJD-LRL) * *

24 CHRISTIAN RIGHTS MINISTRIES, a Virginia non-profit corporation; and Steve Taylor, an individual, Plaintiffs, v. CITY OF CHESAPEAKE; South Norfolk Borough Civic League; Robert Clifton, in his official capacity as Director of Parks and Recreation; Donna Hill, individually and in her official capacity as Recreation Superintendent; Brenda Johnson, individually and in her capacity as a member of the South Norfolk Borough Civic League and Chairperson for, 2008 WL 7315890, *7315890 (Trial Motion, Memorandum and Affidavit) (E.D.Va. Jun 26, 2008) **Response to Rule 12(b)(6) Motions to Dismiss of Defendants South Norfolk Borough Civic League and Brenda Johnson** (NO. 208-CV-154) " * * **HN: 6 (F.Supp.)**

25 CHRISTIAN RIGHTS MINISTRIES, a Virginia non-profit corporation; and Steve Taylor, an individual, Plaintiffs, v. CITY OF CHESAPEAKE; Robert Clifton, in his official capacity as Director of Parks and Recreation; Donna Hill, individually and in her official capacity as Recreation Superintendent; Brenda Johnson, individually and in her official capacity as Chairperson for the Chesapeake Fourth of July Celebration, Defendants., 2008 WL 7315885, *7315885 (Trial Motion, Memorandum and Affidavit) (E.D.Va. May 12, 2008) **Reply Memorandum in Support of Plaintiffs' Motion for Preliminary Injunction** (NO. 208-CV-154) " * * **HN: 6 (F.Supp.)**

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Minn. fairground

Supreme Court of the United States
Michael HEFFRON, Secretary and Manager of the Minnesota State Agricultural Society Board of Managers, et al., Petitioners,
v.
INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., et al.
No. 80-795.

Argued April 20, 1981.
Decided June 22, 1981.

Members of religious sect, one whose doctrines require its members to go out into public places to distribute or sell religious literature and to solicit donations, brought action for judgment declaring that enforcement against them of state fair rule, prohibiting sale or distribution on fair grounds of any merchandise including printed or written material except from fixed location, would violate First Amendment. The District Court, Ramsey County, J. Jerome Plunkett, J., granted summary judgment in favor of governing body of state fair, and religious sect appealed. The Minnesota Supreme Court, 299 N.W.2d 79, reversed and remanded. Certiorari was granted. The Supreme Court, Justice White, held that rule did not violate free exercise clause of First Amendment as applied to members of religious sect.

Reversed and remanded.

Justice Brennan, with whom Justice Marshall and Justice Stevens joined, filed an opinion concurring in part and dissenting in part.

Justice Blackmun, filed an opinion concurring in part and dissenting in part.

Opinion on remand, 311 N.W.2d 843.

West Headnotes

|1| Constitutional Law 92 ⚿1498

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1498 k. Absolute Nature of Right. Most Cited Cases
(Formerly 92k90(3))
The First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired. U.S.C.A.Const. Amend. 1.

|2| Constitutional Law 92 ⚿1517

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1516 Content-Based Regulations or Restrictions
92k1517 k. In General. Most Cited Cases
(Formerly 92k90(3))
A major criterion for a valid time, place, and manner restriction on First Amendment rights is that restriction may not be based upon either content or subject matter of speech. U.S.C.A.Const. Amend. 1.

|3| Agriculture 23 ⚿5

23 Agriculture
23k5 k. Agricultural Exhibitions and Fairs. Most Cited Cases
(Formerly 92k90.1(4))

Constitutional Law 92 ⚿1764

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events

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Date 8/3/10 Item 3 Exhibit 3

92XVIII(G)2 Government Property and Events

92k1764 k. Fairs, Festivals, Exhibitions, and Conventions. Most Cited Cases
(Formerly 92k90.1(4))

Constitutional Law 92 ⚿1879

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(M) Soliciting, Canvassing, Pamphletting, Leafletting, and Fundraising
92k1879 k. Charities or Religious Organizations. Most Cited Cases
(Formerly 92k90.1(4))

Minnesota state fair rule requiring that the sale and distribution of any merchandise, including printed or written material, be from a duly licensed location on fair grounds did not violate free exercise clause of First Amendment as applied to members of the Hari Krishna sect, although sect claimed that rule suppressed practice of religious ritual enjoining its members to go into public places to distribute or sell religious literature and to solicit donations, where rule was applied even-handedly, and state's interest in maintaining orderly movement of crowd at fair was sufficient to justify the requirement that at time, place, or manner of restriction must serve significant governmental interest. U.S.C.A.Const. Amend. 1.

****2560 *640 Syllabus*** FN*

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

A rule (Rule 6.05) of the Minnesota Agricultural Society (Society), a Minnesota public corporation that operates the annual state fair, provides that sale or distribution of any merchandise, including printed or written material, except from a duly licensed location on the fairgrounds shall be a misdemeanor. As Rule 6.05 is construed and applied by the Society, all persons, groups, or firms desiring to sell, exhibit, or distribute materials during the fair must do so only from fixed locations. However, the Rule does not prevent organizational representatives from walking about the fairgrounds and communicating the organization's views to fair patrons in face-to-face discussions. Space in the fairgrounds is rented in a nondiscriminatory fashion on a first-come, first-served basis, and Rule 6.05 applies alike to nonprofit, charitable, and commercial enterprises. Respondents, International Society for Krishna Consciousness, Inc. (ISKCON), an organization espousing the views of the Krishna religion, and the head of one of its temples, filed suit in a Minnesota state court against state officials, seeking declaratory and injunctive relief on the ground that Rule 6.05, on its face and as applied, violated their First Amendment rights. ISKCON asserted that the Rule suppressed the practice of Sankirtan, a religious ritual that enjoins its members to go into public places to distribute or sell religious literature and to solicit donations for the support of the Krishna religion. The trial court upheld the constitutionality of Rule 6.05, but the Minnesota Supreme Court reversed.

Held: Rule 6.05, requiring members of ISKCON who desire to practice Sankirtan at the state fair to confine their distribution, sales, and solicitation activities to a fixed location, is a permissible restriction on the place and manner of communicating the views of the Krishna religion. Pp. 2563-2568.

(a) Rule 6.05 is not based upon the content or subject matter of speech, since it applies evenhandedly to all persons or organizations, ***641** whether commercial or charitable, who wish to distribute and sell written materials or to solicit funds. Nor is the Rule-which involves a method of allocating space on a first-come, first-served basis-open to the kind of arbitrary application that is inherently inconsistent with a valid time, place, and manner regulation as having the potential for becoming a means of

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suppressing a particular point of view. Pp. 2564-2565.

(b) The State's interest in maintaining the orderly movement of the crowd at fair is sufficient to satisfy the requirement that a time, place, or manner restriction must serve a significant governmental interest. The significance of that interest must be assessed in light of the characteristic nature and function of the particular forum involved. Because the fairgrounds comprise a relatively small area where an enormous variety of goods, services, entertainment, and other matters of interest are exhibited to large crowds on a temporary basis, the State's interest in the orderly movement and control of such an assembly is a substantial consideration. Pp. 2565-2566.

**2561 (c) The justification for Rule 6.05 cannot be measured solely on the basis of the disorder that would result from granting members of ISKCON an exemption from the Rule. Inclusion of peripatetic solicitation as part of a church ritual does not entitle church members to solicitation rights in a public forum superior to those of members of other religious groups that raise money but do not purport to ritualize the process. And if Rule 6.05 is an invalid restriction on ISKCON's activities, it is no more valid with respect to other social, political, or charitable organizations seeking to distribute information, sell wares, or solicit funds at the fair. Pp. 2566-2567.

(d) Similarly, Rule 6.05 cannot be viewed as an unnecessary regulation on the ground that the State could avoid the threat to its interest posed by ISKCON by less restrictive means, such as penalizing disorder, limiting the number of solicitors, or imposing more narrowly drawn restrictions on the location and movement of ISKCON's representatives. Since the inquiry must involve all other organizations that would be entitled to distribute, sell, or solicit if the booth rule may not be enforced with respect to ISKCON, it is improbable that such alternative means would deal adequately with the problems posed by the large number of distributors and solicitors that would be present on the fairgrounds. P. 2567.

(e) Alternative forums for the expression of respondents' protected speech exist despite the effects of Rule 6.05. The Rule does not prevent ISKCON from practicing Sankirtan anywhere outside the fairgrounds, nor does it exclude ISKCON from the fairgrounds. Its members may mingle with the crowd and orally propagate their views, and ISKCON *642 may also arrange for a booth and distribute and sell literature and solicit funds from that location on the fairgrounds. Pp. 2567-2568.

299 N.W.2d 79, reversed and remanded.

Kent G. Harbison, St. Paul, Minn., for petitioners.

Laurence H. Tribe, Cambridge, Mass., for respondents.

JUSTICE WHITE delivered the opinion of the Court.

The question presented for review is whether a State, consistent with the First and Fourteenth Amendments, may require a religious organization desiring to distribute and sell religious literature and to solicit donations at a state fair to conduct those activities only at an assigned location within the fairgrounds even though application of the rule limits the religious practices of the organization.

*643 I

Each year, the Minnesota Agricultural Society (Society), a public corporation organized under the laws of Minnesota, see Minn.Stat. § 37.01 (1980), operates a State Fair on a 125-acre state-owned tract located in St. Paul, Minn.[FN1] The Fair is conducted for the purpose of "exhibiting ... the agricultural, stock-breeding, horticultural, mining, mechanical, industrial, and other products and resources of the state, including proper exhibits and expositions of the arts, human skills, and sciences." *Ibid.* The Fair is a major public event and attracts visitors

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from all over Minnesota as well as from other parts of the country. During the past five years, the average total attendance for the 12-day Fair has been 1,320,000 persons. The average daily attendance on weekdays has been 115,000 persons and on Saturdays and Sundays 160,000.

FN1. The facts are taken primarily from the parties' stipulation of facts filed with the Minnesota District Court on July 31, 1978, and reprinted in the joint appendix. App. A-30 through A-36.

The Society is authorized to make all "bylaws, ordinances, and rules, not inconsistent with law, which it may deem necessary or proper for the government of the fair grounds...." **2562 Minn.Stat. § 37.16 (1980). Under this authority, the Society promulgated Minnesota State Fair Rule 6.05 which provides in relevant part that

> "[s]ale or distribution of any merchandise, including printed or written material except under license issued [by] the Society and/or from a duly-licensed location shall be a misdemeanor."

As Rule 6.05 is construed and applied by the Society, "all persons, groups or firms which desire to sell, exhibit or distribute materials during the annual State Fair must do so only from fixed locations on the fairgrounds." FN2 Although the Rule does not prevent organizational representatives from walking about the fairgrounds and communicating the organization's*644 views with fair patrons in face-to-face discussions, FN3 it does require that any exhibitor conduct its sales, distribution, and fund solicitation operations from a booth rented from the Society. Space in the fairgrounds is rented to all comers in a nondiscriminatory fashion on a first-come, first-served basis with the rental charge based on the size and location of the booth. FN4 The Rule applies alike to nonprofit, charitable, and commercial enterprises. FN5

FN2. Stipulation of Fact # 16.

FN3. Fair officials did not "intend to restrict [respondents] from peaceably walking around the fairgrounds and discussing their political, religious or other views with Fair patrons." Affidavit of Michael Heffron, App. A-28. See also Tr. of Oral Arg. 5-7. The trial court expressly permitted such oral proselytizing, see *infra*, at 2563, and that part of the order was not challenged or appealed.

FN4. Over 1,400 exhibitors and concessionaires rented booth space during the 1977 and 1978 Fairs, with several hundred potential exhibitors denied rental space solely because of the limited amount of area available. The propriety of the fee is not an issue in the present case. Cf. *Cox v. New Hampshire*, 312 U.S. 569, 576-577, 61 S.Ct. 762, 766, 85 L.Ed. 1049 (1941).

FN5. The following represent some of the charitable, religious, and other noncommercial organizations that rented booth space at the 1978 Minnesota State Fair: Abortion Rights Council of Minnesota, American Association of Retired Persons, American Heart Association, American Party of Minnesota, Christian Business Men's Association, Church of Christ, D.F.L. State Central Committee, Faith Broadcasting Network, Inc., Independent Republicans of Minnesota, Minnesota Foster Parents Association, Twin Cities Baptist Messianic Witness, World Home Bible League, Christian Educational Service, Lutheran Colportage Service, Minnesota Citizens Concerned for Life, Save Our Unwanted Life, Inc., and United States-China Peoples Friendship Association.

One day prior to the opening of the 1977 Minnesota State Fair, respondents International Society for Krishna Consciousness, Inc. (ISKCON), an international religious society espousing the views of the

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Krishna religion, and Joseph Beca, head of the Minneapolis ISKCON temple, filed suit against numerous state officials seeking a declaration that Rule 6.05, both on its face and as applied, violated respondents' rights under the First Amendment, and seeking injunctive relief ***645** prohibiting enforcement of the Rule against ISKCON and its members. Specifically, ISKCON asserted that the Rule would suppress the practice of Sankirtan, one of its religious rituals, which enjoins its members to go into public places to distribute or sell religious literature and to solicit donations for the support of the Krishna religion.[FN6] The trial court entered temporary orders to govern the conduct of the parties during the 1977 Fair.[FN7] When ****2563** that event concluded and after a hearing, the trial court granted the state officials' motion for summary judgment, upholding the constitutionality of Rule 6.05. Relying on the reasoning in *International Society for Krishna Consciousness, Inc. v. Evans*, 440 F.Supp. 414 (SD Ohio 1977), the court found that the State's interest "in providing all fair goers and concessionaries with adequate and equal access to each other and in providing a minimum of ***646** congestion on the fairgrounds" was sufficient to sustain Rule 6.05's limitations as applied to respondents.[FN8] The court, however, provided that respondents were free to "[r]oam throughout those areas of the fairgrounds generally open to the public for the purpose of discussing with others their religious beliefs."

FN6. In performing Sankirtan, ISKCON members "often greet members of the public by giving them flowers or small American flags...." Stipulation of Fact # 11. For the purpose of this lawsuit, respondents did not assert any right to seek contributions in return for these "greeting gifts," nor did they seek to dance, chant, or engage in any other activities besides the distribution and sale of literature and the solicitation of donations. *Ibid.*

FN7. The trial court temporarily restrained the officials from "arresting, participating in the arrest of, excluding from the Fairgrounds, or preventing activities of [respondents], such as, espousing their religious beliefs, proselytizing others to those beliefs, distributing religious literature or soliciting donations for religious purposes in any portion of the Minnesota Fair Grounds generally open to the public during the 1977 Minnesota State Fair." The court enjoined respondents from "selling or inducing others to purchase, religious literature, items or artifacts, except at a space rented for that purpose on the grounds of the Minnesota Agricultural Society in compliance with the applicable regulations of said Society." Respondents took part in the 1977 Fair pursuant to the terms of the court order. The State submitted various affidavits stating that respondents violated the terms of the order by misrepresenting their cause in seeking solicitations, and by making similar fraudulent statements. These charges are disputed by respondents.

FN8. Given the great number of exhibitors at the State Fair, the trial court was of the view that "[s]ome form of time, place and manner restriction is clearly required if the free speech rights of each of these exhibitors are to be protected." Accordingly, the court ordered that respondents be prohibited from distributing materials such as books, flowers, flags, incense, or artifacts and from engaging in sales or solicitation for monetary donations throughout the fairgrounds except from a booth rented from the Society.

On appeal, the Minnesota Supreme Court reversed, holding that Rule 6.05, as applied to respondents, unconstitutionally restricted the Krishnas' religious practice of Sankirtan. 299 N.W.2d 79 (1980). The court rejected the Society's proffered justifications

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for the Rule as inadequate to warrant the restriction. Furthermore, the application of Rule 6.05 to ISKCON was not essential to the furtherance of the State's interests in that those interests could be served by means less restrictive of respondents' First Amendment rights. We granted the state officials' petition for writ of certiorari in light of the important constitutional issues presented and the conflicting results reached in similar cases in various lower courts.[FN9] 449 U.S. 1109, 101 S.Ct. 917, 66 L.Ed.2d 838.

FN9. Compare *International Society for Krishna Consciousness, Inc. v. Barber*, 506 F.Supp. 147 (NDNY, 1980), rev'd, 650 F.2d 430 (CA2 1981) (invalidating "booth" rule); *Edwards v. Maryland State Fair and Agricultural Society, Inc.*, 628 F.2d 282 (CA4 1980) (same); *International Society for Krishna Consciousness, Inc. v. Bowen*, 600 F.2d 667 (CA7) (same), cert. denied, 444 U.S. 963, 100 S.Ct. 448, 62 L.Ed.2d 375 (1979); *International Society for Krishna Consciousness, Inc. v. Colorado State Fair and Industrial Exposition Comm'n*, 199 Colo. 265, 610 P.2d 486 (Colo.1980) (same) with *Hynes v. Metropolitan Government of Nashville*, 478 F.Supp. 9 (MD Tenn.1979) (upholding "booth" rule); *International Society for Krishna Consciousness, Inc. v. Evans*, 440 F.Supp. 414 (SD Ohio 1977) (same). Related issues have been raised concerning religious groups' access to other types of public facilities. See *International Society for Krishna Consciousness of Atlanta v. Eaves*, 601 F.2d 809 (CA5 1979) (airports); *International Society for Krishna Consciousness, Inc. v. Rochford*, 585 F.2d 263 (CA7 1978) (same); *International Society for Krishna Consciousness, Inc. v. McAvey*, 450 F.Supp. 1265 (SDNY 1978) (World Trade Center); *International Society for Krishna Consciousness, Inc. v. Hays*, 438 F.Supp. 1077 (SD Fla.1977) (highway rest stops); *United States v. Boesewetter*, 463 F.Supp. 370 (DC 1978) (performing arts center).

***647 II**

The State does not dispute that the oral and written dissemination of the Krishnas' religious views and doctrines is protected by the First Amendment. See *Schneider v. State*, 308 U.S. 147, 160, 162-164, 60 S.Ct. 146, 150, 151-152, 84 L.Ed. 155 (1939); *Lovell v. City of Griffin*, 303 U.S. 444, 452, 58 S.Ct. 666, 669, 82 L.Ed. 949 (1938). Nor does it claim that this protection is lost because the written materials sought to be distributed are sold rather than given away or because contributions or gifts are solicited in the course of propagating the faith. Our cases indicate as much. *Murdock v. Pennsylvania*, 319 U.S. 105, 111, 63 S.Ct. 870, 874, 87 L.Ed. 1292 (1943); ****2564***Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 632, 100 S.Ct. 826, 63 L.Ed.2d 73 (1980). See *Cantwell v. Connecticut*, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940).

[1] It is also common ground, however, that the First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired. *Adderley v. Florida*, 385 U.S. 39, 47-48, 87 S.Ct. 242, 247, 17 L.Ed.2d 149 (1966); *Poulos v. New Hampshire*, 345 U.S. 395, 405, 73 S.Ct. 760, 766, 97 L.Ed. 1105 (1953); see *Cox v. Louisiana*, 379 U.S. 536, 554, 85 S.Ct. 453, 464, 13 L.Ed.2d 471 (1965). As the Minnesota Supreme Court recognized, the activities of ISKCON, like those of others protected by the First Amendment, are subject to reasonable time, place, and manner restrictions. *Grayned v. City of Rockford*, 408 U.S. 104, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972); ***Adderley v. Florida, supra;*** *Kovacs v. Cooper*, 336 U.S. 77, 69 S.Ct. 448, 93 L.Ed. 513 (1949); *Cox v. New Hampshire*, 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049 (1941).[FN10] "We have often approved***648** restrictions of that kind provided that they are justified without reference to

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the content of the regulated speech, that they serve a significant governmental interest, and that in doing so they leave open ample alternative channels for communication of the information." *Virginia Pharmacy Board v. Virginia Citizens Consumer Council*, 425 U.S. 748, 771, 96 S.Ct. 1817, 1830, 48 L.Ed.2d 346 (1976); see also *Consolidated Edison Co. v. Public Service Comm'n*, 447 U.S. 530, 535, 100 S.Ct. 2326, 2331, 65 L.Ed.2d 319 (1980). The issue here, as it was below, is whether Rule 6.05 is a permissible restriction on the place and manner of communicating the views of the Krishna religion, more specifically, whether the Society may require the members of ISKCON who desire to practice Sankirtan at the State Fair to confine their distribution, sales, and solicitation activities to a fixed location.

FN10. In *Cox v. New Hampshire*, a religious group challenged a local ordinance forbidding street parades without a license. The Court held the requirement constitutional as a reasonable time, place, and manner regulation: "Where a restriction of the use of highways in that relation is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection." 312 U.S., at 574, 61 S.Ct., at 765. *Kovacs v. Cooper* upheld as applied to a sound truck a content-neutral and nondiscriminatory local ordinance against the emission of loud and raucous noises on the public streets. In *Adderley v. Florida*, no constitutional violation was discerned in applying a local trespass ordinance to persons demonstrating on the grounds of a city jail. We rejected the argument "that people who want to propagandize protests or views have a constitutional right to do so whenever and however and wherever they please" and held that the "State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated." 385 U.S., at 47-48, 87 S.Ct., at 247. *Grayned v. City of Rockford* sustained as a reasonable time, place, and manner regulation a local ordinance forbidding disturbing noises in the vicinity of a building in which a school is in session.

[2] A major criterion for a valid time, place and manner restriction is that the restriction "may not be based upon either the content or subject matter of speech." *Consolidated Edison Co. v. Public Service Comm'n, supra*, at 536, 100 S.Ct., at 2332. FN11 Rule 6.05 ***649** qualifies in this respect, since as the Supreme Court of Minnesota observed, the Rule applies evenhandedly to all who wish to distribute and sell written materials or to solicit funds. No person or organization, whether commercial or charitable, is permitted to engage in such activities except from a booth rented for those purposes.[FN12]

FN11. See *Virginia Pharmacy Board v. Virginia Citizens Consumer Council*, 425 U.S. 748, 771, 96 S.Ct. 1817, 1830, 48 L.Ed.2d 346 (1976); *Linmark Associates, Inc. v. Willingboro*, 431 U.S. 85, 93-94, 97 S.Ct. 1614, 1618-1619, 52 L.Ed.2d 155 (1977); *Police Department of Chicago v. Mosley*, 408 U.S. 92, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972); *Papish v. University of Minnesota Curators*, 410 U.S. 667, 670, 93 S.Ct. 1197, 1199, 35 L.Ed.2d 618 (1973).

FN12. Respondents do argue that because the Rule requires ISKCON to await expressions of interest from fair patrons before it may distribute, sell, or solicit funds, the regulation is not content-neutral in that it prefers listener-initiated exchanges to those originating with the speaker. The argument is interesting but has little force. This aspect of the Rule is inherent in the determination to confine exhibitors to fixed locations, it applies to all exhibitors

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alike, and it does not invalidate the Rule as a reasonable time, place, and manner regulation.

**2565 Nor does Rule 6.05 suffer from the more covert forms of discrimination that may result when arbitrary discretion is vested in some governmental authority. The method of allocating space is a straightforward first-come, first-served system. The Rule is not open to the kind of arbitrary application that this Court has condemned as inherently inconsistent with a valid time, place, and manner regulation because such discretion has the potential for becoming a means of suppressing a particular point of view. See *Shuttlesworth v. Birmingham*, 394 U.S. 147, 150-153, 89 S.Ct. 935, 938-940, 22 L.Ed.2d 162 (1969); *Cox v. Louisiana*, *supra*, at 555-558, 85 S.Ct., at 464-466; *Staub v. City of Baxley*, 355 U.S. 313, 321-325, 78 S.Ct. 277, 281-284, 2 L.Ed.2d 302 (1958); *Largent v. Texas*, 318 U.S. 418, 63 S.Ct. 667, 87 L.Ed. 873 (1943); *Cantwell v. Connecticut*, *supra*, at 304, 60 S.Ct., at 903; *Schneider v. State*, 308 U.S., at 164, 60 S.Ct., at 152; *Hague v. CIO*, 307 U.S. 496, 516, 59 S.Ct. 954, 964, 83 L.Ed. 1423 (1939).

A valid time, place, and manner regulation must also "serve a significant governmental interest." *Virginia Pharmacy Board v. Virginia Citizens Consumer Council*, *supra*, at 771, 96 S.Ct., at 1830. See *Grayned v. City of Rockford*, *supra*, at 108, 92 S.Ct., at 2298. Here, the principal justification asserted by the State in support of Rule 6.05 is the need to maintain the orderly movement of ***650** the crowd given the large number of exhibitors and persons attending the Fair.[FN13]

FN13. Petitioners assert two other state interests in support of the Rule. First, petitioners claim that the Rule forwards the State's valid interest in protecting its citizens from fraudulent solicitations, deceptive or false speech, and undue annoyance. See *Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 100 S.Ct. 826, 63 L.Ed.2d 73 (1980); *Cantwell v. Connecticut*, 310 U.S. 296, 306-307, 60 S.Ct. 900, 904, 84 L.Ed. 1213 (1940). Petitioners also forward the State's interest in protecting the fairgoers from being harassed or otherwise bothered, on the grounds that they are a captive audience. In light of our holding that the Rule is justified solely in terms of the State's interest in managing the flow of the crowd, we do not reach whether these other two purposes are constitutionally sufficient to support the imposition of the Rule.

The fairgrounds comprise a relatively small area of 125 acres, the bulk of which is covered by permanent buildings, temporary structures, parking lots, and connecting thoroughfares. There were some 1,400 exhibitors and concessionaires renting space for the 1977 and 1978 Fairs, chiefly in permanent and temporary buildings. The Fair is designed to exhibit to the public an enormous variety of goods, services, entertainment, and other matters of interest. This is accomplished by confining individual exhibitors to fixed locations, with the public moving to and among the booths or other attractions, using streets and open spaces provided for that purpose. Because the Fair attracts large crowds, see *supra*, at 2561, it is apparent that the State's interest in the orderly movement and control of such an assembly of persons is a substantial consideration.

As a general matter, it is clear that a State's interest in protecting the "safety and convenience" of persons using a public forum is a valid governmental objective. See *Grayned v. City of Rockford*, 408 U.S., at 115, 92 S.Ct., at 2302; *Cox v. New Hampshire*, 312 U.S., at 574, 61 S.Ct., at 765. Furthermore, consideration of a forum's special attributes is relevant to the constitutionality of a regulation since the significance of the governmental ***651** interest must be assessed in light of the characteristic nature and function of the particular forum involved. See, *e. g.*, *Grayned v. City of Rockford*, *supra*, at 116-117, 92 S.Ct., at 2303; *Lehman v. City of Shaker Heights*, 418 U.S. 298, 302-303, 94

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S.Ct. 2714, 2716-2717, 41 L.Ed.2d 770 (1974). This observation bears particular import in the present case since respondents make a number of analogies between the fairgrounds and city **2566 streets which have "immemorially been held in trust for the use of the public and ... have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Hague v. CIO, supra,* at 515, 59 S.Ct., at 963. See *Kunz v. New York*, 340 U.S. 290, 293, 71 S.Ct. 312, 314, 95 L.Ed. 280 (1951). But it is clear that there are significant differences between a street and the fairgrounds. A street is continually open, often uncongested, and constitutes not only a necessary conduit in the daily affairs of a locality's citizens, but also a place where people may enjoy the open air or the company of friends and neighbors in a relaxed environment. The Minnesota Fair, as described above, is a temporary event attracting great numbers of visitors who come to the event for a short period to see and experience the host of exhibits and attractions at the Fair. The flow of the crowd and demands of safety are more pressing in the context of the Fair. As such, any comparisons to public streets are necessarily inexact.

The Minnesota Supreme Court recognized that the State's interest in the orderly movement of a large crowd and in avoiding congestion was substantial and that Rule 6.05 furthered that interest significantly.[FN14] Nevertheless, the Minnesota Supreme Court declared that the case did not turn on the "importance of the state's undeniable interest in preventing*652 the widespread disorder that would surely exist if no regulation such as Rule 6.05 were in effect" but upon the significance of the State's interest in avoiding whatever disorder would likely result from granting members of ISKCON an exemption from the Rule. 299 N.W.2d, at 83. Approaching the case in this way, the court concluded that although some disruption would occur from such an exemption, it was not of sufficient concern to warrant confining the Krishnas to a booth. The court also concluded that, in any event, the Rule was not essential to the furtherance of the State's interest in crowd control, which could adequately be served by less intrusive means.

> FN14. The court stated that the facts suggested "a situation in which the state's interest in maintaining order is substantial. We have no doubt that Rule 6.05's requirement that all vendors, exhibitors, and concessionaires perform their functions at fixed locations furthers that interest significantly." 299 N.W.2d, at 83.

As we see it, the Minnesota Supreme Court took too narrow a view of the State's interest in avoiding congestion and maintaining the orderly movement of fair patrons on the fairgrounds. The justification for the Rule should not be measured by the disorder that would result from granting an exemption solely to ISKCON. That organization and its ritual of Sankirtan have no special claim to First Amendment protection as compared to that of other religions who also distribute literature and solicit funds.[FN15] None of our cases suggest that the inclusion of peripatetic solicitation as part of a church ritual entitles church members to solicitation rights in a public forum superior to those of members of other religious groups that raise money but do not purport to ritualize the process. Nor for present purposes do religious organizations enjoy rights to communicate, distribute, and solicit on the fairgrounds superior to those of other organizations having social, political, or other ideological messages to *653 proselytize. These nonreligious organizations seeking support for their activities are entitled to rights equal to those of religious groups to enter a public forum and spread their views, whether by soliciting funds or by distributing literature.

> FN15. Respondents do not defend the limited approach of the Minnesota Supreme Court. They concede that whatever exemption they were entitled to under the First Amendment would apply to other organizations seeking similar rights to take part in certain protected activities in the public

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areas of the fairgrounds. See Brief for Respondents 8; Tr. of Oral Arg. 25-26.

If Rule 6.05 is an invalid restriction on the activities of ISKCON, it is no more valid with respect to the other social, political, or charitable organizations that have **2567 rented booths at the Fair and confined their distribution, sale, and fund solicitation to those locations. Nor would it be valid with respect to other organizations that did not rent booths, either because they were unavailable due to a lack of space or because they chose to avoid the expense involved, but that would in all probability appear in the fairgrounds to distribute, sell, and solicit if they could freely do so. The question would also inevitably arise as to what extent the First Amendment also gives commercial organizations a right to move among the crowd to distribute information about or to sell their wares as respondents claim they may do.

ISKCON desires to proselytize at the fair because it believes it can successfully communicate and raise funds. In its view, this can be done only by intercepting fair patrons as they move about, and if success is achieved, stopping them momentarily or for longer periods as money is given or exchanged for literature. This consequence would be multiplied many times over if Rule 6.05 could not be applied to confine such transactions by ISKCON and others to fixed locations. Indeed, the court below agreed that without Rule 6.05 there would be widespread disorder at the fairgrounds. The court also recognized that some disorder would inevitably result from exempting the Krishnas from the Rule. Obviously, there would be a much larger threat to the State's interest in crowd control if all other religious, nonreligious, and noncommercial organizations could likewise move freely about the fairgrounds distributing and selling literature and soliciting funds at will.

[3] *654 Given these considerations, we hold that the State's interest in confining distribution, selling, and fund solicitation activities to fixed locations is sufficient to satisfy the requirement that a place or manner restriction must serve a substantial state interest. By focusing on the incidental effect of providing an exemption from Rule 6.05 to ISKCON, the Minnesota Supreme Court did not take into account the fact that any such exemption cannot be meaningfully limited to ISKCON, and as applied to similarly situated groups would prevent the State from furthering its important concern with managing the flow of the crowd. In our view, the Society may apply its Rule and confine the type of transactions at issue to designated locations without violating the First Amendment.

For similar reasons, we cannot agree with the Minnesota Supreme Court that Rule 6.05 is an unnecessary regulation because the State could avoid the threat to its interest posed by ISKCON by less restrictive means, such as penalizing disorder or disruption, limiting the number of solicitors, or putting more narrowly drawn restrictions on the location and movement of ISKCON's representatives. As we have indicated, the inquiry must involve not only ISKCON, but also all other organizations that would be entitled to distribute, sell, or solicit if the booth rule may not be enforced with respect to ISKCON. Looked at in this way, it is quite improbable that the alternative means suggested by the Minnesota Supreme Court would deal adequately with the problems posed by the much larger number of distributors and solicitors that would be present on the fairgrounds if the judgment below were affirmed.

For Rule 6.05 to be valid as a place and manner restriction, it must also be sufficiently clear that alternative forums for the expression of respondents' protected speech exist despite the effects of the Rule. Rule 6.05 is not vulnerable on this ground. First, the Rule does not prevent ISKCON from *655 practicing Sankirtan anywhere outside the fairgrounds. More importantly, the Rule has not been shown to deny access within the forum in question. Here, the Rule does not exclude ISKCON from the fairgrounds, nor does it deny that organization the right to conduct any desired activity at

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some point within the forum. Its members may mingle with the crowd and orally propagate their views. The organization may also arrange for a booth and distribute and sell literature and solicit funds from that location on the fairgrounds itself. The Minnesota State Fair is a limited public forum in **2568 that it exists to provide a means for a great number of exhibitors temporarily to present their products or views, be they commercial, religious, or political, to a large number of people in an efficient fashion. Considering the limited functions of the Fair and the combined area within which it operates, we are unwilling to say that Rule 6.05 does not provide ISKCON and other organizations with an adequate means to sell and solicit on the fairgrounds. The First Amendment protects the right of every citizen to "reach the minds of willing listeners and to do so there must be opportunity to win their attention." *Kovacs v. Cooper*, 336 U.S. 77, 87, 69 S.Ct. 448, 453, 93 L.Ed. 513 (1949). Rule 6.05 does not unnecessarily limit that right within the fairgrounds.[FN16]

FN16. Given this understanding of the nature of the Fair, we reject respondents' claim that Rule 6.05 effects a total ban on protected First Amendment activities in the open areas of the fairgrounds. In effect, respondents seek to separate, for constitutional purposes, the open areas of the fairgrounds from that part of the fairgrounds where the booths are located. For the reasons stated in text, we believe respondents' characterization of the Rule is plainly incorrect. The booths are not secreted away in some nonaccessible location, but are located within the area of the fairgrounds where visitors are expected, and indeed encouraged, to pass. Since respondents are permitted to solicit funds and distribute and sell literature from within the fairgrounds, albeit from a fixed location, it is inaccurate to say that Rule 6.05 constitutes a ban on such protected activity in the relevant public forum. Accordingly, the only question is the Rule's validity as a time, place, and manner restriction.

***656** The judgment of the Supreme Court of Minnesota is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

So ordered.

Justice BRENNAN, with whom Justice MARSHALL and Justice STEVENS join, concurring in part and dissenting in part.

As the Court recognizes, the issue in this case is whether Minnesota State Fair Rule 6.05 constitutes a reasonable time, place, and manner restriction on respondents' exercise of protected First Amendment rights. See *Schad v. Mount Ephraim*, 452 U.S. 61, 74-76, 101 S.Ct. 2176, 2186, 68 L.Ed.2d 671; *Grayned v. City of Rockford*, 408 U.S. 104, 115-116, 92 S.Ct. 2294, 2302, 33 L.Ed.2d 222 (1972). In deciding this issue, the Court considers, *inter alia*, whether the regulation serves a significant governmental interest and whether that interest can be served by a less intrusive restriction. See *ante*, at 2565, 2567. The Court errs, however, in failing to apply its analysis separately to each of the protected First Amendment activities restricted by Rule 6.05. Thus, the Court fails to recognize that some of the State's restrictions may be reasonable while others may not.

Rule 6.05 restricts three types of protected First Amendment activity: distribution of literature, sale of literature, and solicitation of funds. See *Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 632, 633, 100 S.Ct. 826, 833, 834, 63 L.Ed.2d 73 (1980); *Murdock v. Pennsylvania*, 319 U.S. 105, 108, 63 S.Ct. 870, 872, 87 L.Ed. 1292 (1943); *Jamison v. Texas*, 318 U.S. 413, 416, 63 S.Ct. 669, 671, 87 L.Ed. 869 (1943); *Schneider v. State*, 308 U.S. 147, 160, 60 S.Ct. 146, 150, 84 L.Ed. 155 (1939); *Lovell v. Griffin*, 303 U.S. 444, 452, 58 S.Ct. 666, 669, 82 L.Ed. 949 (1938). No individual or group is permitted to engage in these activities at the Minnesota State Fair except from preassigned, rented booth locations. Violation of this Rule constitutes a misdemeanor, and violators are subject to arrest and

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expulsion from the fairgrounds.

The State advances three justifications for its booth Rule. The justification relied upon by the Court today is the State's ***657** interest in maintaining the orderly movement of the crowds at the fair. *Ante*, at 2565. The second justification, relied upon by the dissenting justices below, 299 N.W.2d 79, 87 (Minn.1980), is the State's interest in protecting its fairgoers from fraudulent, deceptive, and misleading solicitation practices. The third justification, based on the "captive audience" doctrine, is the State's interest in protecting its fairgoers from annoyance and harassment.

****2569** I quite agree with the Court that the State has a significant interest in maintaining crowd control on its fairgrounds. See *Grayned v. City of Rockford, supra*, 408 U.S., at 115-116, 92 S.Ct., at 2302-2303, *Cox v. New Hampshire*, 312 U.S. 569, 574, 61 S.Ct. 762, 765, 85 L.Ed. 1049 (1941). I also have no doubt that the State has a significant interest in protecting its fairgoers from fraudulent or deceptive solicitation practices. See *Schaumburg v. Citizens for a Better Environment, supra*, 444 U.S., at 636, 100 S.Ct., at 836; *Virginia Pharmacy Board v. Virginia Citizens Consumer Council*, 425 U.S. 748, 771-772, 96 S.Ct. 1817, 1830-1831, 48 L.Ed.2d 346 (1976). Indeed, because I believe on this record that this latter interest is substantially furthered by a Rule that restricts sales and solicitation activities to fixed booth locations, where the State will have the greatest opportunity to police and prevent possible deceptive practices, I would hold that Rule 6.05's restriction on those particular forms of First Amendment expression is justified as an antifraud measure. Accordingly, I join the judgment of the Court insofar as it upholds Rule 6.05's restriction on sales and solicitations. However, because I believe that the booth Rule is an overly intrusive means of achieving the State's interest in crowd control, and because I cannot accept the validity of the State's third asserted justification.[FN1] I dissent from the Court's approval of Rule 6.05's restriction on the distribution of literature.

FN1. Because fairgoers are fully capable of saying "no" to persons seeking their attention and then walking away, they are not members of a captive audience. They have no general right to be free from being approached. See *Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 638-639, 100 S.Ct. 826, 837, 63 L.Ed.2d 73 (1980); *Martin v. Struthers*, 319 U.S. 141, 143-144, 63 S.Ct. 862, 863, 87 L.Ed. 1313 (1943).

***658** As our cases have long noted, once a governmental regulation is shown to impinge upon basic First Amendment rights, the burden falls on the government to show the validity of its asserted interest and the absence of less intrusive alternatives. See, *e. g., Schneider v. State, supra*. The challenged "regulation must be narrowly tailored to further the State's legitimate interest." *Grayned v. City of Rockford, supra*, 408 U.S., at 116-117, 92 S.Ct., at 2303. Minnesota's Rule 6.05 does not meet this test.

The Minnesota State Fair is an annual 12-day festival of people and ideas. Located on permanent fairgrounds comprising approximately 125 acres, the fair attracts an average of 115,000 visitors on weekdays and 160,000 on Saturdays and Sundays. Once the fairgoers pay their admission fees, they are permitted to roam the fairgrounds at will, visiting booths, meeting friends, or just milling about. Significantly, each and every fairgoer, whether political candidate, concerned citizen, or member of a religious group, is free to give speeches, engage in face-to-face advocacy, campaign, or proselytize. No restrictions are placed on any fairgoer's right to speak at any time, at any place, or to any person.[FN2] Thus, if on a given day 5,000 members of ISKCON came to the fair and paid their admission fees, all 5,000 would be permitted to wander throughout the fairgrounds, delivering speeches to ***659** whomever they wanted, about whatever they wanted. Moreover, because ****2570** this right does not rest on Sankirtan or any other religious principle,[FN3] it can be exercised by every political

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candidate, partisan advocate, and common citizen who has paid the price of admission. All share the identical ***660** right to move peripatetically and speak freely throughout the fairgrounds.

FN2. A state fair is truly a marketplace of ideas and a public forum for the communication of ideas and information. As one court has stated, a "fair is almost by definition a congeries of hawkers, vendors of wares and services, and purveyors of ideas, commercial, esthetic, and intellectual." *International Society for Krishna Consciousness v. State Fair of Texas*, 461 F.Supp. 719, 721 (ND Tex.1978). See also *International Society for Krishna Consciousness, Inc. v. Barber*, 650 F.2d 430, 444, n.21 (CA2 1981). Despite the Court's suggestion to the contrary, *ante*, at 2565-2566, a fair is surely a "natural and proper plac[e] for the dissemination of information and opinion." *Schneider v. State*, 308 U.S. 147, 163, 60 S.Ct. 146, 151, 84 L.Ed. 155 (1939). In no way could I agree that respondents' desired " 'manner of expression is basically incompatible with the normal activity' " of the fair. See *Schad v. Mount Ephraim*, 452 U.S., at 75, 101 S.Ct., at 2186, quoting *Grayned v. City of Rockford*, 408 U.S. 104, 116, 92 S.Ct. 2294, 2303, 33 L.Ed.2d 222 (1972).

FN3. I am somewhat puzzled by the Court's treatment of the Sankirtan issue. Respondents' complaint, based on 42 U.S.C. § 1983, alleges that Rule 6.05, on its face and as applied, violates both the Free Exercise and the Free Speech Clauses. In their brief and in oral argument, however, respondents emphasize that they do not claim any special treatment because of Sankirtan, but are willing to rest their challenge wholly upon their general right to free speech, which they concede is identical to the right enjoyed by every other religious, political, or charitable group. Tr. of Oral Arg. 26; Brief for Respondents 19-20, 47-48. There is therefore no need for the Court to discuss Sankirtan.

Having chosen to discuss it, however, the Court does so in a manner that is seemingly inconsistent with prior case law. The parties have stipulated that members of ISKCON have a unique "duty to perform a religious ritual known as *Sankirtan*, which consists of going out into public places, to disseminate or sell religious literature and to solicit contributions to support the publishing, religious, and educational functions of Krishna Consciousness." App. A-32. The Court, however, disparages the significance of this ritual, stating without explanation or supporting authority:

"[ISKCON] and its ritual of Sankirtan have no special claim to First Amendment protection as compared to that of other religions who also distribute literature and solicit funds. None of our cases suggest that the inclusion of peripatetic solicitation as part of a church ritual entitles church members to solicitation rights in a public forum superior to those of members of other religious groups that raise money but do not purport to ritualize the process." *Ante*, at 2566 (footnote omitted).

Our cases are clear that governmental regulations which interfere with the exercise of specific religious beliefs or principles should be scrutinized with particular care. See, *e. g., Sherbert v. Verner*, 374 U.S. 398, 402-403, 83 S.Ct. 1790, 1793, 10 L.Ed.2d 965 (1963). As we stated in *Wisconsin v. Yoder*, 406 U.S. 205, 220, 92 S.Ct. 1526, 1535, 32 L.Ed.2d 15 (1972), "there are areas of

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> conduct protected by the Free Exercise Clause of the First Amendment and thus beyond the power of the State to control, even under regulations of general applicability." I read the Court as accepting these precedents, and merely holding that even if Sankirtan is "conduct protected by the Free Exercise Clause," it is entitled to no greater protection than other forms of expression protected by the First Amendment that are burdened to the same extent by Rule 6.05.

Because of Rule 6.05, however, as soon as a proselytizing member of ISKCON hands out a free copy of the Bhagavad-Gita to an interested listener, or a political candidate distributes his campaign brochure to a potential voter, he becomes subject to arrest and removal from the fairgrounds. This constitutes a significant restriction on First Amendment rights. By prohibiting distribution of literature outside the booths, the fair officials sharply limit the number of fairgoers to whom the proselytizers and candidates can communicate their messages. Only if a fairgoer affirmatively seeks out such information by approaching a booth does Rule 6.05 fully permit potential communicators to exercise their First Amendment rights.

In support of the crowd control justification,[FN4] petitioners contend that if fairgoers are permitted to distribute literature, large crowds will gather, blocking traffic lanes and causing safety problems. As counsel for petitioners asserted at oral argument:

> FN4. Other than the "captive audience" justification, see n.1, *supra,* the only interest seriously asserted by petitioners in support of the restriction on distribution of literature is the State's interest in crowd control. At oral argument, counsel for petitioners expressly declined to advance an antilittering objective, Tr. of Oral Arg. 16, and virtually conceded that the antifraud rationale would not apply unless the communicator sought to obtain money from the fairgoers. *Id.*, at 14-16, 17-19. See also Brief for Petitioners 24-29.

> "[I]t seems to me that if you had [distribution] activity going on with not just the Krishnas but 10 or 20 or 30 representatives from perhaps 30 to 60 or 70 groups, that inevitably is going to draw more attention and going to cause or create more or less moving pockets or moving congested crowds .... [I]f all of a sudden the crowd becomes aware of the fact that dozens of people are walking around passing out materials and they're going ****2571** to ***661** inevitably be attracted by that. Whereas, they wouldn't be if people were just talking." Tr. of Oral Arg. 18-19.
> See also Brief for Petitioners 31.

But petitioners have failed to provide any support for these assertions. They have made no showing that relaxation of the booth Rule would create additional disorder in a fair that is already characterized by the robust and unrestrained participation of hundreds of thousands of wandering fairgoers. See *International Society for Krishna Consciousness, Inc. v. Barber*, 650 F.2d 430, 444, n.22 (CA2 1981). If fairgoers can make speeches, engage in face-to-face proselytizing, and buttonhole prospective supporters, they can surely distribute literature to members of their audience without significantly adding to the State's asserted crowd control problem. Cf. *Martin v. Struthers*, 319 U.S. 141, 151, 63 S.Ct. 862, 867, 87 L.Ed. 1313 (1943) (Murphy, J. concurring) (invalidating ordinance that banned house-to-house distribution of handbills but did not ban house-to-house proselytizing). The record is devoid of any evidence that the 125-acre fairgrounds could not accommodate peripatetic distributors of literature just as easily as it now accommodates peripatetic speechmakers and proselytizers.[FN5]

> FN5. Moreover, petitioners' expressed concerns are significantly undermined by three affidavits contained in the record which indicate that the State itself engages in the seemingly forbidden practice of leafletting.

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Thus, the affidavit of Thomas Kerr states:

> "2. On numerous occasions when I entered the [1977 Minnesota State Fair], *the individual taking tickets would give to me a flier* which stated that fairgoers might be approached by roving solicitors, that the fair neither licensed nor sanctioned them, and that complaints against them could be filed with the fair administration. On several occasions, *I also noted individuals who appeared to be state fair employees handing out similar fliers at information booths and concession areas.* On several occasions, *I also noticed that individuals, who appeared to be state fair employees, would begin to distribute similar fliers to fairgoers in areas where I or my fellow ISKCON members were proselytizing* or distributing literature." App. A-40 (emphasis added).
>
> See also Affidavit of Joseph Beca, *id.*, at A-38; Affidavit of David C. Ewert, *id.*, at A-43. It is hard to believe the State is seriously concerned about the effects of leafletting, when apparently it too engages in such activity at the State Fair.

***662** Relying on a general, speculative fear of disorder, the State of Minnesota has placed a significant restriction on respondents' ability to exercise core First Amendment rights. This restriction is not narrowly drawn to advance the State's interests, and for that reason is unconstitutional. "[U]ndifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression." *Tinker v. Des Moines School Dist.*, 393 U.S. 503, 508, 89 S.Ct. 733, 737, 21 L.Ed.2d 731 (1969). If the State had a reasonable concern that distribution in certain parts of the fairgrounds-for example, entrances and exits-would cause disorder, it could have drafted its Rule to prohibit distribution of literature at those points. If the State felt it necessary to limit the number of persons distributing an organization's literature, it could, within reason, have done that as well. [FN6] It had no right, however, to ban all ****2572** distribution of literature outside the booths. [FN7] A State

> FN6. Respondents recognize that some limitations may constitutionally be imposed upon their right to distribute literature. Stipulation of Fact 23 states:
>
> "ISKCON, while unwilling to confine its religious activities to a booth, has indicated its willingness to submit to the regulation of its members in their circulation throughout the fairgrounds to proselytize, distribute and sell literature, and solicit contributions." *Id.*, at A-36.
>
> In addition, paragraph 11 of respondents' complaint states:
>
> "ISKCON's devotees have tried to allay any fears Defendants might have that their religious activity might be disruptive to normal Fair activities by offering to wear identifying name tags at all times, to limit the number of devotees at the State Fair Grounds, to approach only consenting patrons, to refrain from engaging Fair patrons in conversation near entrances or exits to buildings or exhibits or in areas where there are lines or queues, and to identify themselves to Fair officials, including police officials." *Id.*, at A-6.
>
> See also Tr. of Oral Arg. 30, 34-35.
>
> FN7. As the Minnesota Supreme Court concluded:
>
> "The state's interest can be adequately served by means less restrictive of First Amendment rights. Conduct that tends to create disorder on the fairgrounds may be specifically prohibited." 299 N.W.2d 79, 84 (1980).

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"may serve its legitimate interests, but it must do so by narrowly drawn regulations designed to serve those ***663** interests without unnecessarily interfering with First Amendment freedoms.... 'Broad prophylactic rules in the area of free expression are suspect. Precision of regulation must be the touchstone....' " *Schaumburg v. Citizens for a Better Environment*, 444 U.S., at 637, 100 S.Ct. at 836, quoting *NAACP v. Button*, 371 U.S. 415, 438, 83 S.Ct. 328, 340, 9 L.Ed.2d 405 (1963).

Accord, *Grayned v. City of Rockford*, 408 U.S., at 116-117, 92 S.Ct., at 2303.

Because I believe that the State could have drafted a more narrowly drawn restriction on the right to distribute literature without undermining its interest in maintaining crowd control on the fairgrounds, I would affirm that part of the judgment below that strikes down Rule 6.05 as it applies to distribution of literature.

Justice BLACKMUN, concurring in part and dissenting in part.

For the reasons stated by Justice BRENNAN, I believe that Minnesota State Fair Rule 6.05 is unconstitutional as applied to the distribution of literature.[FN1] I also agree, however, that the Rule is *constitutional* as applied to the sale of literature and the solicitation of funds. I reach this latter conclusion by a different route than does Justice BRENNAN for I am not persuaded that, under the Court's precedents, the State's interest in protecting fairgoers from fraudulent solicitation ***664** or sales practices justifies Rule 6.05's restrictions of those activities.[FN2]

FN1. Like Justice BRENNAN, I would not reach the question whether respondents can claim an exemption from the operation of Rule 6.05 because of their adherence to the doctrine of Sankirtan.

FN2. It should be stressed that Rule 6.05 does not prevent respondents from wandering throughout the fairgrounds and directing interested donors or purchasers to their booth. See Brief for Petitioners 35-36. Thus, it is in fact only the exchange of money, rather than the solicitation *per se* of contributions or of purchases, that is limited to a booth. See 299 N.W.2d 79, 86 (Minn.1980) (opinion dissenting in part). Accordingly, I use the terms "solicitation" and "sales" to connote only the actual exchange of money, rather than the act of requesting that the fairgoer purchase literature or make a contribution at the booth.

In *Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 636-637, 100 S.Ct. 826, 836-837, 63 L.Ed.2d 73 (1980), the Court stressed that a community's interest in preventing fraudulent solicitations must be met by narrowly drawn regulations that do not unnecessarily interfere with First Amendment freedoms. It there held that possibility of fraud in "door-to-door" or "on-street" solicitations could be countered "by measures less intrusive than a direct prohibition on solicitation," such as disclosure provisions and penal laws prohibiting fraudulent misrepresentations. *Id.*, at 637-638, 100 S.Ct., at 836-837. I see no reason why the same considerations are not applicable here. There is nothing in this record to suggest that it is more difficult to police fairgrounds for fraudulent solicitations than it is to police an entire community's streets; just as fraudulent solicitors may "melt into a crowd" at the fair, so also may door-to-door solicitors quickly move on after consummating several transactions in a particular neighborhood. Indeed, since respondents have offered to wear identifying tags, see App. A-6, and since the fairgrounds are an enclosed area, it is at least arguable that it is easier to police the fairgrounds than a community's streets.

Nonetheless, I believe that the State's substantial interest in maintaining crowd control and safety on the fairgrounds does justify Rule 6.05's restriction on solicitation and sales activities not conducted from a ****2573** booth. As the Court points out, *ante*, at 2566, "[t]he flow of the crowd and demands of

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***665** safety are more pressing in the context of the Fair" than in the context of a typical street. While I agree with Justice BRENNAN that the State's interest in order does not justify restrictions upon distribution of literature, I think that common-sense differences between literature distribution, on the one hand, and solicitation and sales, on the other, suggest that the latter activities present greater crowd control problems than the former. The distribution of literature does not require that the recipient stop in order to receive the message the speaker wishes to convey; instead, the recipient is free to read the message at a later time. For this reason, literature distribution may present even fewer crowd control problems than the oral proselytizing that the State already allows upon the fairgrounds. In contrast, as the dissent in the Minnesota Supreme Court observed, sales and the collection of solicited funds not only require the fairgoer to stop, but also "engender additional confusion ... because they involve acts of exchanging articles for money, fumbling for and dropping money, making change, etc." 299 N.W.2d 79, 87 (1980). Rules restricting the exchange of money to booths have been upheld in analogous contexts, see *e. g., International Society for Krishna Consciousness of Atlanta v. Eaves*, 601 F.2d 809, 828-829 (CA5 1979) (Atlanta airports), and for similar reasons I would uphold Rule 6.05 insofar as it applies to solicitation and sales.

U.S.Minn.,1981.
Heffron v. International Soc. for Krishna Consciousness, Inc.
452 U.S. 640, 101 S.Ct. 2559, 69 L.Ed.2d 298, 7 Media L. Rep. 1489

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76 F.3d 1009, 64 USLW 2531, 24 Media L. Rep. 1434, 96 Cal. Daily Op. Serv. 981, 96 Daily Journal D.A.R. 1623
(Cite as: 76 F.3d 1009)

United States Court of Appeals,
Ninth Circuit.

ONE WORLD ONE FAMILY NOW, a Hawaii non-profit corporation; James McDonough; Bhaktivedanta Mission, Ltd., a Hawaii non-profit corporation; Anton Voight, Plaintiffs-Appellants,

v.

CITY AND COUNTY OF HONOLULU; Frank F. Fasi, individually and in his capacity as Mayor of the City and County of Honolulu; Michael Nakamura, Chief of Police; Donna Woo, individually and in her capacity as Special Deputy Attorney General of the State of Hawaii; and John Does 1-10, Defendants-Appellees.

ONE WORLD ONE FAMILY NOW; James McDonough, an individual; Bhaktivedanta Mission, Ltd., a Hawaii non-profit corporation; Anton Voight, Plaintiffs-Appellees,

v.

CITY AND COUNTY OF HONOLULU; Frank F. Fasi, individually and in his capacity as Mayor of the City and County of Honolulu; Michael Nakamura, Chief of Police, Defendants-Appellants.

Nos. 94-16373, 94-16511.

Argued and Submitted May 2, 1995.
Decided Feb. 13, 1996.

Nonprofit organizations brought § 1983 action for declaratory and injunctive relief from ordinance which would prohibit sales of their message-bearing T-shirts on sidewalks. The United States District Court for the District of Hawai'i, Harold M. Fong, Chief Judge, denied preliminary injunction against enforcement in heart of commercial area, but granted it as to the rest of city. Both sides appealed. The Court of Appeals, Kozinski, Circuit Judge, held that: (1) plaintiffs' activities were protected under First Amendment; (2) ordinance was content-neutral; (3) ordinance was narrowly tailored to serve substantial interests; (4) other channels of communication were open to plaintiffs; (5) selling message-bearing T-shirts on sidewalk was not uniquely valuable mode of communication; and (6) preliminary injunction to prevent enforcement of ordinance in any area of city was not warranted.

Affirmed in part; reversed in part.

Pregerson, Circuit Judge, dissented and filed opinion.

West Headnotes

[1] Constitutional Law 92 ⚿1600

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(C) Trade or Business
92k1600 k. In General. Most Cited Cases
(Formerly 92k90.1(1))

Nonprofit groups' activities in selling T-shirts imprinted with various philosophical and inspirational messages were protected by First Amendment. U.S.C.A. Const.Amend. 1.

[2] Constitutional Law 92 ⚿1512

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1511 Content-Neutral Regulations or Restrictions
92k1512 k. In General. Most Cited Cases
(Formerly 92k90(3))

Constitutional Law 92 ⚿1514

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General

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Date 8/3/10 Item 3 Exh. 6, 1 of 4

92XVIII(A)1 In General
92k1511 Content-Neutral Regulations or Restrictions
92k1514 k. Narrow Tailoring Requirement; Relationship to Governmental Interest. Most Cited Cases
(Formerly 92k90(3))

Constitutional Law 92 ⚿1515

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1511 Content-Neutral Regulations or Restrictions
92k1515 k. Existence of Other Channels of Expression. Most Cited Cases
(Formerly 92k90(3))
Time, place, or manner restrictions on protected speech are valid if they are content-neutral, are narrowly tailored to serve significant governmental interest, and leave open ample alternative channels of communication. U.S.C.A. Const.Amend. 1.

[3] Constitutional Law 92 ⚿1512

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1511 Content-Neutral Regulations or Restrictions
92k1512 k. In General. Most Cited Cases
(Formerly 92k90(3))
Speech restriction is "content-neutral" if it is justified without reference to content of regulated speech. U.S.C.A. Const.Amend. 1.

[4] Constitutional Law 92 ⚿1512

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1511 Content-Neutral Regulations or Restrictions
92k1512 k. In General. Most Cited Cases
(Formerly 92k90(3))

Constitutional Law 92 ⚿1513

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1511 Content-Neutral Regulations or Restrictions
92k1513 k. Governmental Disagreement with Message Conveyed. Most Cited Cases
(Formerly 92k90(3))
Regulation that serves purposes unrelated to content of expression is deemed neutral, even if it has incidental effect on some speakers or messages but not others; test is whether government has adopted restriction because of disagreement with message it conveys. U.S.C.A. Const.Amend. 1.

[5] Constitutional Law 92 ⚿1760

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1760 k. Sidewalks. Most Cited Cases
(Formerly 92k90.1(4))

Municipal Corporations 268 ⚿661(2)

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works

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268XI(A) Streets and Other Public Ways
268k660 Power to Control and Regulate
268k661 In General
268k661(2) k. Reasonableness and Validity of Regulations in General. Most Cited Cases
Challenged ordinance which banned sales of plaintiffs' message-bearing T-shirts was content neutral, since it imposed flat ban on sales of goods on sidewalks, with certain exemptions, without regard to content; ordinance was not designed to suppress certain ideas that government found distasteful nor was it applied to plaintiffs because of views they expressed. U.S.C.A. Const.Amend. 1.

[6] Constitutional Law 92 ⚿1759

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1759 k. Streets and Highways. Most Cited Cases
(Formerly 92k90.1(4))

Constitutional Law 92 ⚿1760

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1760 k. Sidewalks. Most Cited Cases
(Formerly 92k90.1(4))

Municipal Corporations 268 ⚿661(2)

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works
268XI(A) Streets and Other Public Ways
268k660 Power to Control and Regulate
268k661 In General
268k661(2) k. Reasonableness and Validity of Regulations in General. Most Cited Cases
For purposes of challenge to ordinance banning sales of goods and services on streets and sidewalks, city had substantial interests in eliminating visual blight of vendor stands, assuring orderly movement of pedestrians on crowded sidewalks, and protecting local merchants from unfair competition. U.S.C.A. Const.Amend. 1.

[7] Constitutional Law 92 ⚿1509

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1508 Time, Place, or Manner Restrictions
92k1509 k. In General. Most Cited Cases
(Formerly 92k90(3))
Validity of time, place, or manner regulation depends on relation it bears to overall problem government seeks to correct, not on extent to which it furthers government's interests in individual case. U.S.C.A. Const.Amend. 1.

[8] Constitutional Law 92 ⚿1760

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1760 k. Sidewalks. Most Cited Cases
(Formerly 92k90.1(4))

Municipal Corporations 268 ⚿661(2)

268 Municipal Corporations
268XI Use and Regulation of Public Places,

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Property, and Works
268XI(A) Streets and Other Public Ways
268k660 Power to Control and Regulate
268k661 In General
268k661(2) k. Reasonableness and Validity of Regulations in General. Most Cited

Municipal Corporations 268 ⚖692

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works
268XI(A) Streets and Other Public Ways
268k691 Obstructions and Encroachments
268k692 k. Obstruction of Use. Most Cited Cases
Ordinance which prohibited sales of goods and services on sidewalks, including sale of plaintiffs' message-bearing T-shirts, was narrowly tailored to serve substantial interests of eliminating visual blight of vendor stands, assuring orderly movement of pedestrians on crowded sidewalks, and protecting local merchants from unfair competition; proliferation of sidewalk vendors could aggravate congestion on already crowded sidewalks and siphon off sales from local merchants. U.S.C.A. Const.Amend. 1.

[9] **Constitutional Law 92 ⚖1870**

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(M) Soliciting, Canvassing, Pamphletting, Leafletting, and Fundraising
92k1870 k. In General. Most Cited Cases
(Formerly 92k90.1(1.1))

Constitutional Law 92 ⚖1760

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1760 k. Sidewalks. Most Cited Cases
(Formerly 92k90.1(4))
Although city ordinance prohibited sidewalk sales of plaintiffs' message-bearing T-shirts, plaintiffs had alternative channels of communication to reach intended audience, such as handing out literature, proselytizing or soliciting donations; also, plaintiffs' volunteers could hand out free T-shirts to passers-by, could mingle with city's tourist throngs wearing T-shirts, and could sell T-shirts through local retail outlets or by opening their own stores. U.S.C.A. Const.Amend. 1.

[10] **Constitutional Law 92 ⚖1600**

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(C) Trade or Business
92k1600 k. In General. Most Cited Cases
(Formerly 92k90.1(1))

Constitutional Law 92 ⚖1760

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1760 k. Sidewalks. Most Cited Cases
(Formerly 92k90.1(4))
While wearing message-bearing T-shirt might be uniquely valuable mode of communication whose total ban could raise serious constitutional questions, same can't be said for selling such T-shirt on sidewalk; although selling T-shirts is unique form of expression in sense that serving message-bearing raviolis or preaching on street corners in Donald Duck voice would be unique, it does nothing to make message uniquely significant or effective. U.S.C.A. Const.Amend. 1.

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|11| Civil Rights 78 ⚖1457(7)

78 Civil Rights
78III Federal Remedies in General
78k1449 Injunction
78k1457 Preliminary Injunction
78k1457(7) k. Other Particular Cases and Contexts. Most Cited Cases
(Formerly 78k268)

Because ordinance banning sales of message-bearing T-shirts on sidewalk was not violation of First Amendment, preliminary injunction to prevent enforcement of ordinance for areas other than main part of downtown was not warranted; city was not obliged to prove validity of ordinance on block-by-block basis. U.S.C.A. Const.Amend. 1.

***1010** Keith M. Kiuchi,Kiuchi, Nakamoto & Ahu, Honolulu, Hawaii, for plaintiffs-appellants One World One Family Now and James McDonough.

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Appeals from the United States District Court for the District of Hawaii; Harold M. Fong, Chief Judge, Presiding.

Before PREGERSON, KOZINSKI and HAWKINS, Circuit Judges.

***1011** KOZINSKI, Circuit Judge.

OPINION

An ordinance prohibits the sale of merchandise on city streets. We must determine whether it may be constitutionally applied to bar non-profit organizations from selling message-bearing T-shirts.

I

Plaintiffs One World One Family Now and Bhaktivedanta Mission are non-profit corporations operating in Hawaii. Both organizations sell T-shirts imprinted with various philosophical and inspirational messages, such as "Protect and Preserve the Truth, the Beauty & Harmony of our Native Cultures," Ex. 3, "TAKE IT EASY MEDITATE HANG LOOSE HAWAII," Ex. 4, and "WAIKIKI HAWAII HARINAM," Ex. 6.[FN1] Many of the T-shirts feature colorful depictions of Hawaii's scenic natural beauty, not unlike shirts sold in retail stores catering to tourists. Plaintiffs believe that selling T-shirts is a particularly effective way to communicate because those who buy and wear the T-shirts help spread the message.

> FN1. "Harinam" apparently means "chant the name of god" in Sanskrit. Appellee's Br. at 5.

Aiming for a wide audience, plaintiffs, along with a number of commercial T-shirt vendors, set up several display tables on the sidewalks of Kalakaua Avenue, one of the busiest commercial streets in Waikiki.[FN2] The City and County of Honolulu soon began to hear from visitors and local residents who complained that the T-shirt tables were an obstruction and an eyesore. Merchants with stores near the T-shirt tables also complained, citing a drop in their own sales of tourist-oriented merchandise, which they attributed to unfair competition from the sidewalk vendors.

> FN2. Waikiki is a relatively small, self-contained district within the city of Honolulu, comprising approximately 500 acres. Within it one can find, on any given day,

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> the highest concentration of tourists in the city. It also has a large residential population.

The city notified the sidewalk vendors (including plaintiffs) that they were violating Honolulu, Haw., Rev.Ordinances § 29-6.2(b)(7), which bans the sale of all "goods, wares, merchandise, foodstuffs, refreshments or other kinds of property or services ... upon the public streets, alleys, sidewalks, malls, parks, beaches and other public places in Waikiki." After police threatened them with citations for failure to comply, plaintiffs sued for declaratory and injunctive relief under 42 U.S.C. § 1983, claiming that section 29-6.2 violated their First Amendment rights, and moved for a preliminary injunction.

The district court held an evidentiary hearing. Finding that the city was regulating the time, place and manner of speech pursuant to legitimate and significant interests, it refused to enjoin enforcement of the ordinance as to Kalakaua and Kuhio Avenues-the heart of Waikiki's commercial area and the focus of the city's evidence. The district court granted a preliminary injunction against enforcement of the ordinance in the rest of Waikiki, holding that the city hadn't shown a sufficient interest in keeping plaintiffs from selling there, or that doing so would leave adequate alternative means of communication. Both sides appeal.

II

Because the focus of the litigation has been on Kalakaua and Kuhio Avenues, we deal first with the district court's decision not to enjoin enforcement of the ordinance there.

A

Before we decide which standard to use in evaluating the ordinance, we dispose of a preliminary matter: the application here of our decision in *Gaudiya Vaishnava Soc'y v. City and County of San Francisco,* 952 F.2d 1059 (9th Cir.1990), *cert. denied,* 504 U.S. 914, 112 S.Ct. 1951, 118 L.Ed.2d 555 (1992). Plaintiffs argue that, under *Gaudiya,* their selling is constitutionally protected expression. The city claims plaintiffs' activities aren't constitutionally protected at all.

***1012** In *Gaudiya,* we addressed two questions, one of first impression, the other not. The novel question was whether an ordinance prohibiting charitable organizations from selling message-bearing merchandise implicated the First Amendment. Rejecting San Francisco's contention that selling goods was unprotected conduct, we held that, when the sale of merchandise bearing political, religious, philosophical or ideological messages is "inextricably intertwined" with other forms of protected expression (like distributing literature and proselytizing), the First Amendment applies. *Id.* at 1064. The mundane question followed: Whether San Francisco's ordinance facially violated the First Amendment by giving the police chief unbridled discretion to grant or deny peddling permits for an activity protected by the First Amendment. Following a well-worn path, *see City of Lakewood v. Plain Dealer Publishing Co.,* 486 U.S. 750, 756-57, 108 S.Ct. 2138, 2143-44, 100 L.Ed.2d 771 (1988) (collecting cases), we held the ordinance facially invalid. 952 F.2d at 1065-66.

[1] Plaintiffs' activities closely resemble those in *Gaudiya* and the First Amendment therefore protects them. But there ends the similarity. In *Gaudiya,* the ordinance granted the police chief unbridled discretion to grant peddling permits and the plaintiffs there brought a facial challenge to this discretion. By contrast, Honolulu's ordinance is a flat ban; there are some exceptions, but no discretion to be exercised. Accordingly, on appeal, plaintiffs challenge section 29-6.2 only as applied to their activities. [FN3]

> FN3. Below, plaintiffs purported to bring a facial challenge, as well. We assume they don't appeal the district court's rejection of their facial challenge as they make no arguments to support such a challenge.

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B

[2] Having determined that plaintiffs' T-shirt sales fall within the ambit of the First Amendment, we must decide whether Honolulu's ordinance is valid as applied to them. We use the standard governing time, place and manner restrictions.[FN4] Such restrictions are valid if they (1) are content-neutral; (2) are narrowly tailored to serve a significant governmental interest; and (3) leave open ample alternative channels of communication. *Ward v. Rock Against Racism,* 491 U.S. 781, 791, 109 S.Ct. 2746, 2753, 105 L.Ed.2d 661 (1989).

> FN4. The city doesn't dispute that the sidewalks of Waikiki are a public forum, nor could it. *See, e.g., United States v. Grace,* 461 U.S. 171, 177, 103 S.Ct. 1702, 1706, 75 L.Ed.2d 736 (1983).

[3][4] **1.** A speech restriction is content-neutral if it is "justified without reference to the content of the regulated speech." *Clark v. Community for Creative Non-Violence,* 468 U.S. 288, 293, 104 S.Ct. 3065, 3068, 82 L.Ed.2d 221 (1984). "A regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others." *Ward,* 491 U.S. at 791, 109 S.Ct. at 2753. The test is whether the government has adopted the restriction "because of disagreement with the message it conveys." *Id.*

[5] The district court found that the ordinance furthers three legitimate governmental interests: (1) "maintaining the aesthetic attractiveness of Waikiki," (2) "promoting public safety and the orderly movement of pedestrians," and (3) "protecting the local merchant economy." E.R. at 31. None of these interests concerns the content of speech, and there's no evidence that "the ordinance was designed to suppress certain ideas that the City finds distasteful or that it has been applied to [the plaintiffs] because of the views that they express." *Members of the City Council of Los Angeles v. Taxpayers for Vincent,* 466 U.S. 789, 804, 104 S.Ct. 2118, 2128, 80 L.Ed.2d 772 (1984). The ordinance imposes a flat ban, one that is applied without regard to content. Accordingly, it is content-neutral. [FN5]

> FN5. Plaintiffs argue that the ordinance provides several exemptions that have the effect of discriminating on the basis of content. Its provisions do not apply to the "sale ... of newspapers of general circulation and to duly authorized concessions in public places." Honolulu, Haw., Rev.Ordinances § 29-6.2(b). The provision also exempts buttons and souvenir items sold in conjunction with a parade. *Id.* § 29-6.2(c). Because these exemptions don't enable the city to discriminate against ideas it disfavors, they don't render the ordinance content-based. *See Leathers v. Medlock,* 499 U.S. 439, 450, 111 S.Ct. 1438, 1445, 113 L.Ed.2d 494 (1991).

***1013** [6] **2.** Cities have a substantial interest in protecting the aesthetic appearance of their communities by "avoiding visual clutter." *Id.* at 806-07, 104 S.Ct. at 2129-30. As the district court found, Honolulu's interest in eliminating the visual blight caused by unsightly vendor stands easily qualifies under this standard. Likewise, cities have a substantial interest in assuring safe and convenient circulation on their streets. *See Cox v. Louisiana,* 379 U.S. 536, 554-55, 85 S.Ct. 453, 464, 13 L.Ed.2d 471 (1965). The district court found that Waikiki is the center of the state's tourism industry, receives as many as 60,000 visitors a day, and consequently has "a large concentration of vehicles and pedestrians which causes unique traffic problems." E.R. at 11. Judged in light of "the characteristic nature and function of the particular forum involved," *Heffron v. International Soc'y for Krishna Consciousness, Inc.,* 452 U.S. 640, 651, 101 S.Ct. 2559, 2565, 69 L.Ed.2d 298 (1981), the city's interest in maintaining the orderly movement of pedestrians on Waikiki's crowded sidewalks is also substantial. *See* Appendix.

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[7] Finally, Honolulu has demonstrated a substantial interest in protecting local merchants from unfair competition. *See Turner Broadcasting Sys., Inc. v. F.C.C.*, 512 U.S. 622, ---- - ----, 114 S.Ct. 2445, 2469-70, 129 L.Ed.2d 497 (1994). One legitimate preoccupation of local government is to attract and preserve business. Cities rely on a prosperous, stable merchant community for their tax base, as well as for the comfort and welfare of their citizens. Here, the district court found that "the tax-free and rent-free activities of the plaintiffs ... have had a significant affect [sic] on the economy of the abutting shop owners on Kalakaua and Kuhio Avenues whose taxes and rent contribute to the welfare and economy of this state." E.R. at 35. This kind of unfair competition threatens to erode tax revenues and undermine the strength of its commercial life.[FN6] As amici remind us, plaintiffs can offer "remarkably low prices" in part because they pay no rent and aren't subject to various municipal regulations. Given the district court's findings, we must take seriously the concern that "[n]o ordinary merchant, forced to pay rent in Waikiki and comply with other applicable laws, possibly could compete with those prices for any significant period of time." Br. Amici Curiae at 20.

> FN6. Plaintiffs contend that the city failed to offer any concrete evidence demonstrating that their T-shirt sales actually harmed local merchants. But "the validity of [a time, place or manner] regulation depends on the relation it bears to the overall problem the government seeks to correct, not on the extent to which it furthers the government's interests in an individual case." *Ward*, 491 U.S. at 801, 109 S.Ct. at 2759.

Given the evidence before it and the deference due the city council's determinations of necessity, *see Turner Broadcasting*, 512 U.S. at ---- - ----, 114 S.Ct. at 2470-71 (plurality opinion),[FN7] the district court didn't err in concluding that the city had actual, significant interests. *See id.* at ----, 114 S.Ct. at 2470 (plurality opinion) (requiring finding that "recited harms are real, not merely conjectural" to establish significant government interest); *cf. id.* at ---- - ----, 114 S.Ct. at 2472-73 (Blackmun, J., concurring). *Id.* at ---- - ----, 114 S.Ct. at 2473-75 (Stevens, J., concurring).[FN8]

> FN7. Although this portion of Justice Kennedy's opinion had only four votes, under *Marks v. United States*, 430 U.S. 188, 193, 97 S.Ct. 990, 993, 51 L.Ed.2d 260 (1977), it's the holding of the case, since it was the "position taken by those members who concurred in the judgment[ ] on the narrowest grounds." *See Turner Broadcasting*, 512 U.S. at ---- - ----, 114 S.Ct. at 2473-75 (Stevens, J., concurring) (advocating greater deference).
>
> FN8. The district court didn't clearly err in finding that the city showed insufficient evidence that sidewalk vending was actually "causing a proliferation of fraud and duress among tourists and residents." E.R. at 31. In any case, an ordinance that bans all sidewalk vending isn't narrowly tailored to eliminate fraud. *Cf. Martin v. City of Struthers*, 319 U.S. 141, 144-49, 63 S.Ct. 862, 863-66, 87 L.Ed. 1313 (1943) (ban on door-to-door handbilling not narrowly tailored to prevent crime and fraud).

[8] Honolulu's peddling ordinance is narrowly tailored to serve these interests because they "would be achieved less effectively absent the regulation." ***1014** *Ward*, 491 U.S. at 799, 109 S.Ct. at 2758 (internal quotation marks omitted). Without the ordinance, sidewalk vendors (commercial and charitable alike) would be free to peddle their wares on Kalakaua and Kuhio Avenues, undermining the city's efforts to provide a pleasant strolling and shopping area. *See* Appendix. A proliferation of sidewalk vendors could also aggravate the congestion on already crowded sidewalks and siphon off sales from local merchants. Because the peddling ordinance addresses these problems "without ... significantly restricting a substantial quantity of

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speech that does not create the same evils," *Ward,* 491 U.S. at 799 n. 7, 109 S.Ct. at 2758 n. 7, section 29-6.2(b)(7) is narrowly tailored.[FN9]

> FN9. The ordinance doesn't stop anyone from handing out T-shirts free of charge. This, plaintiffs argue, makes the ordinance invalid because handing out T-shirts causes the same harm to the city's interests as selling them. The city, however, was entitled to conclude that fewer sidewalk vendors would come to hand out merchandise for free. The ordinance is therefore a "valuable, but perhaps imperfect" means of addressing the targeted problem. *Clark,* 468 U.S. at 297, 104 S.Ct. at 3071; *cf. Vincent,* 466 U.S. at 811, 104 S.Ct. at 2132 ("Even if some visual blight remains, a partial, content-neutral ban may nevertheless enhance the City's appearance.").

Plaintiffs suggest less restrictive alternatives Honolulu could adopt to advance its interests, such as limiting the number of vendors, their hours of operation or the size and location of their stands. A reasonable time, place and manner regulation, however, need not be the "least restrictive or least intrusive" alternative. *Id.* at 798, 109 S.Ct. at 2757. "So long as the means chosen are not substantially broader than necessary to achieve the government's interest, ... the regulation will not be invalid simply because a court concludes that the government's interest could be adequately served by some less-speech-restrictive alternative." *Id.* at 800, 109 S.Ct. at 2758.

Honolulu's peddling ordinance isn't "substantially broader than necessary" to achieve its interests. The ordinance targets precisely the activity-sidewalk vending-causing the problems the city legitimately seeks to ameliorate, and it doesn't sweep in expressive activity that doesn't contribute to those problems. As in *Vincent,* the city "did no more than eliminate the exact source of the evil it sought to remedy." 466 U.S. at 808, 104 S.Ct. at 2130.

[9] **3.** Honolulu's peddling ordinance also leaves open ample alternative channels of communication. The ordinance forecloses one narrow form of expression-sidewalk sales of message-bearing merchandise-and leaves the plaintiffs free to disseminate and seek financial support for their views through "myriad and diverse" alternative channels, such as handing out literature, proselytizing or soliciting donations. *See ACORN v. City of Phoenix,* 798 F.2d 1260, 1271 (9th Cir.1986) (ordinance prohibiting charitable solicitation from people in cars leaves open ample alternative channels of communication). In addition, plaintiffs' volunteers may hand out free T-shirts to passers-by, *see* note 9 *supra,* or mingle with Waikiki's tourist throngs wearing T-shirts (thereby acting as human billboards). Plaintiffs may also sell T-shirts through local retail outlets or by opening their own stores, so long as they comply with the regulations generally applicable to merchants.

Plaintiffs argue we must nevertheless invalidate the peddling ordinance because it prevents them from reaching their intended audience. They rely heavily on *Bay Area Peace Navy v. United States,* 914 F.2d 1224 (9th Cir.1990), where we invalidated the Coast Guard's 75-yard security zone around the Aquatic Park Pier during annual Fleet Week activities on San Francisco Bay. We noted that the security zone effectively prevented the plaintiff from reaching its intended audience (military officers, local government officials and other dignitaries) because its protest messages couldn't reach observers on the pier over 75 yards away. *Id.* at 1229-30. We emphasized that other channels of communication-passing out pamphlets or holding demonstrations on land-were "not viable alternatives because the invited visitors, who are the Peace Navy's intended audience, are not accessible from those positions." *Id.* at 1229 (internal quotation marks omitted).

Bay Area Peace Navy is inapposite. Nothing prevents plaintiffs here from reaching their intended audience-the tourists ***1015** congregating in Waikiki. As noted, they have a number of alternat-

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ive means of disseminating their message, each of which allows them to communicate effectively with people on the sidewalks.

Finally, plaintiffs claim that the Supreme Court's recent decision in *City of Ladue v. Gilleo,* 512 U.S. 43, 114 S.Ct. 2038, 129 L.Ed.2d 36 (1994), casts doubt on the validity of the ordinance. In *Ladue,* the Court struck down a broad ban on the display of signs on private residential property. The opinion rested heavily on the view that the city's ordinance closed off a "unique and important" mode of expression for which there is "no practical substitute." *Id.* at ---- - ----, 114 S.Ct. at 2045-46. The Court explained that "[d]isplaying a sign from one's own residence often carries a message quite distinct from placing the same sign someplace else, or conveying the same text or picture by other means." *Id.* at ----, 114 S.Ct. at 2046.

[10] Plaintiffs argue that selling message-bearing T-shirts is a unique mode of expression akin to displaying a sign in front of one's home. We are not persuaded. While *wearing* a message-bearing T-shirt might be a uniquely valuable mode of communication whose total ban could raise serious constitutional questions, *cf. Cohen v. California,* 403 U.S. 15, 91 S.Ct. 1780, 29 L.Ed.2d 284 (1971), the same can't be said for *selling* such a T-shirt on the sidewalk. A message on one's person or home has a unique effect because it "provide[s] information about the identity of the 'speaker' [which is] an important component of many attempts to persuade." *Ladue,* 512 U.S. at ----, 114 S.Ct. at 2046. While selling T-shirts is a unique form of expression in the sense that serving message-bearing raviolis or preaching on street corners in a Donald Duck voice would be unique, it does nothing to make the message uniquely significant or effective. Various other traditional means of dissemination would get across exactly the same idea. Thus, we do not believe the sale of message-bearing T-shirts is so "uniquely valuable or important [a] mode of communication" as to be without effective substitute. *Vincent,* 466 U.S. at 812, 104 S.Ct. at 2132.

III

[11] Although the district court refused to enjoin enforcement of the ordinance on Kalakaua and Kuhio Avenues, it granted a preliminary injunction for the rest of Waikiki, finding that the city had proved its interest only as to these two streets. E.R. at 31-35. Neither party asked for this Solomonic solution and, on appeal, both correctly argue that the district court erred in differentiating between Waikiki's main and side streets. Cities need not prove up their interests on a block-by-block basis, particularly where the interests asserted are as basic and traditional as Honolulu's. *See, e.g., Metromedia, Inc. v. City of San Diego,* 453 U.S. 490, 507-08, 101 S.Ct. 2882, 2892, 69 L.Ed.2d 800 (1981). The evidence before the district court focused on Kalakaua Avenue because that's where most of the sidewalk vendors were operating. *See* Deposition of James McDonough at 37-38; Deposition of Anton Voight at 61-62. There was ample evidence, though, that the city's interests in open and attractive sidewalks and fair competition extended throughout Waikiki. *See, e.g.,* E.R. at 11-12 (district court's findings indicating Waikiki's history of special treatment in city ordinances); Defendant's Ex. 8 at 43-55 (1992 Waikiki Master Plan indicating plans to improve and beautify streets throughout Waikiki); R.T. at 168-69 (testimony that landowners wouldn't make crucial concessions to allow further implementation of Master Plan if widened and beautified sidewalks would be inhabited by sidewalk vendors). Indeed, these types of interests can be presumed to operate throughout a city, absent a strong showing to the contrary.

The district court also found that a ban throughout Waikiki didn't leave ample alternative channels for plaintiffs to communicate their messages. Citing *Clark* and *Gaudiya,* it reasoned that a "total ban on selling expressive T-shirts in a heavily trafficked section of town" was impermissible. E.R. at 32-33. Neither we nor the Supreme Court have said any such thing. Rather, we have held broad and narrow bans in even the most desirable locations to the

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same standard. The broader the ban, of course, the more *1016 difficult it is to prove that the remaining means of communication are adequate. Difficult, however, doesn't mean impossible. As discussed above, this ordinance meets the test.

Accordingly, plaintiffs showed no likelihood of success on the merits and the district court erred in granting their motion for a preliminary injunction, even in part. *See Senate of California v. Mosbacher,* 968 F.2d 974, 977-78 (9th Cir.1992).

* * *

Honolulu's peddling ordinance is content-neutral, narrowly tailored to serve substantial interests throughout Waikiki, and leaves ample alternative channels of communication. We therefore **AFFIRM** the partial denial of plaintiff's motion for a preliminary injunction on its enforcement on Kalakaua and Kuhio Avenues and **VACATE** the preliminary injunction on its enforcement in other areas of Waikiki.

AFFIRMED IN PART; REVERSED IN PART.

APPENDIX

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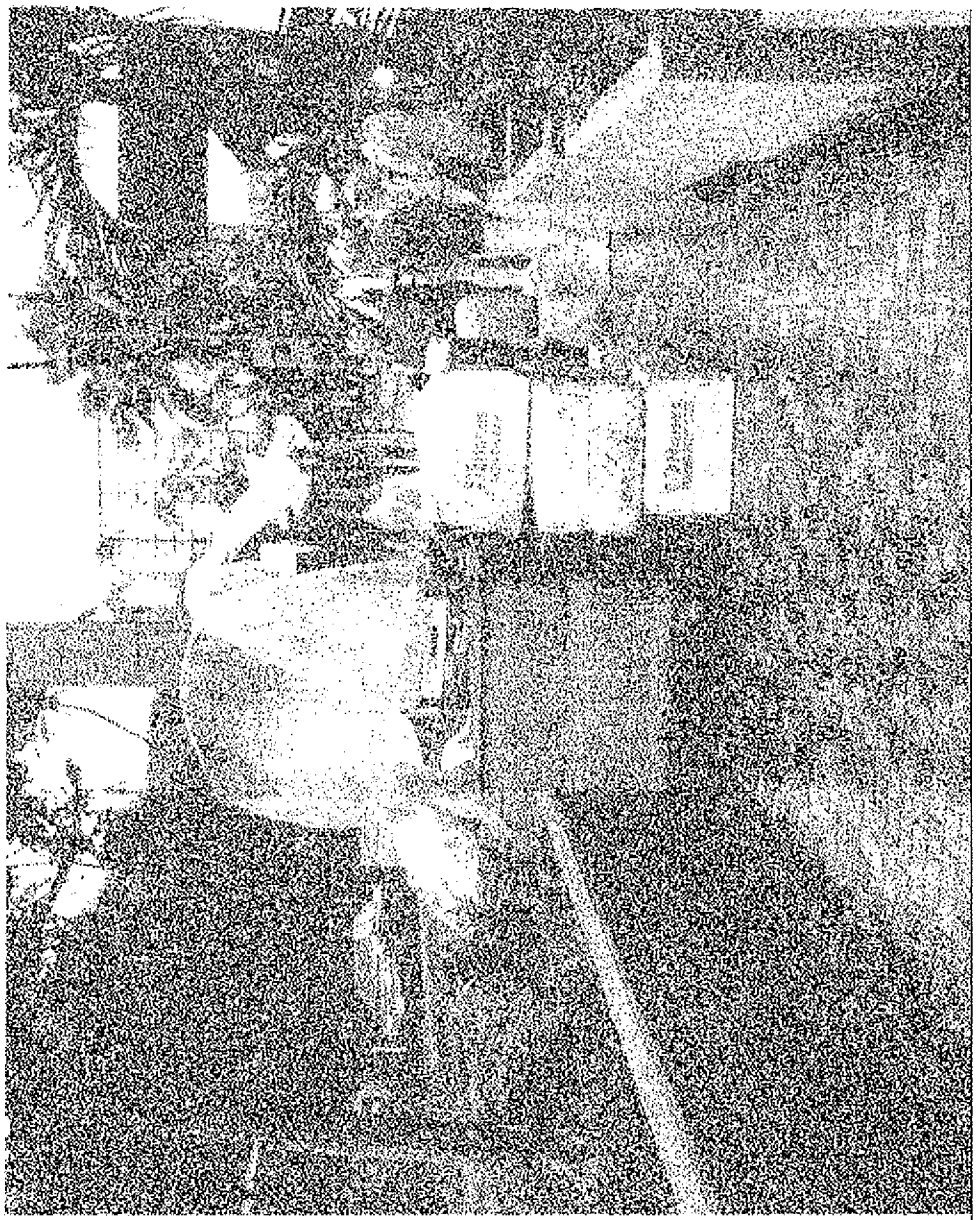

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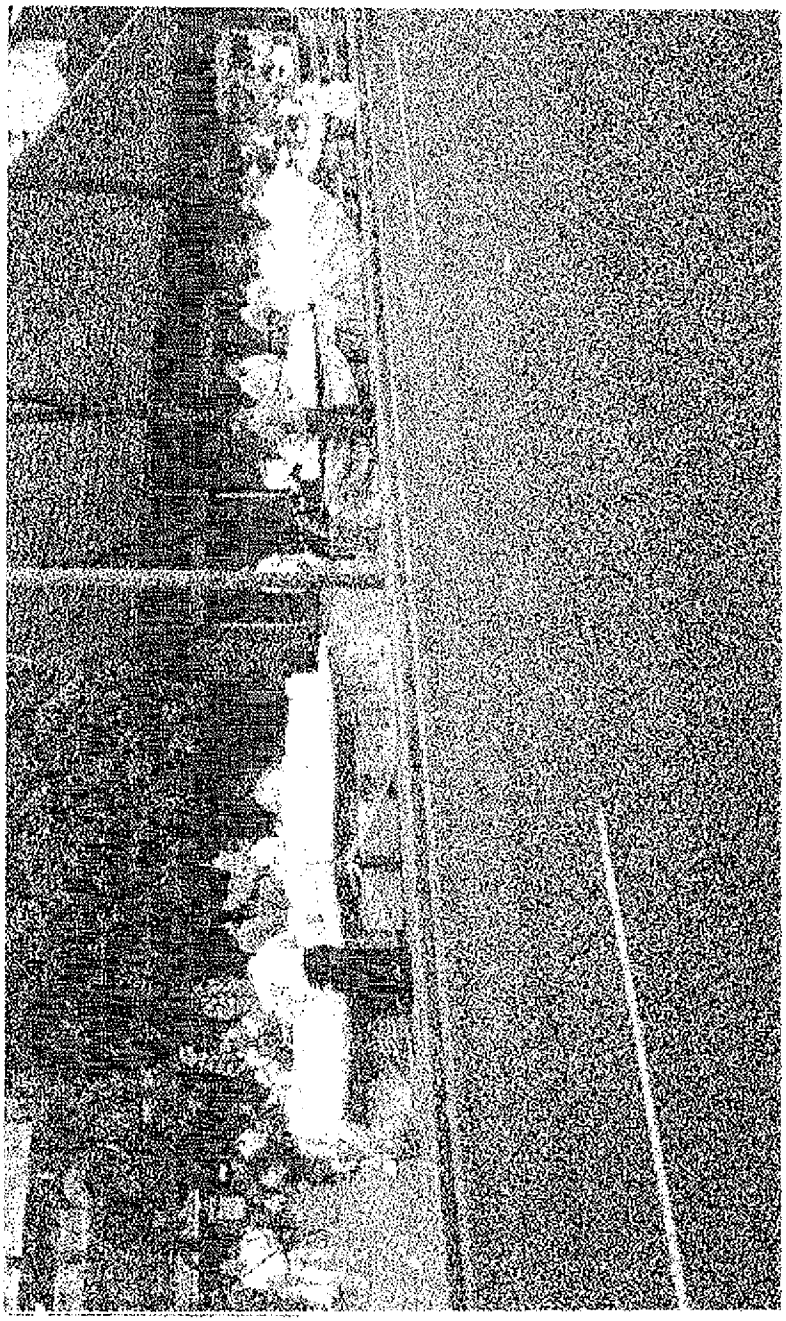

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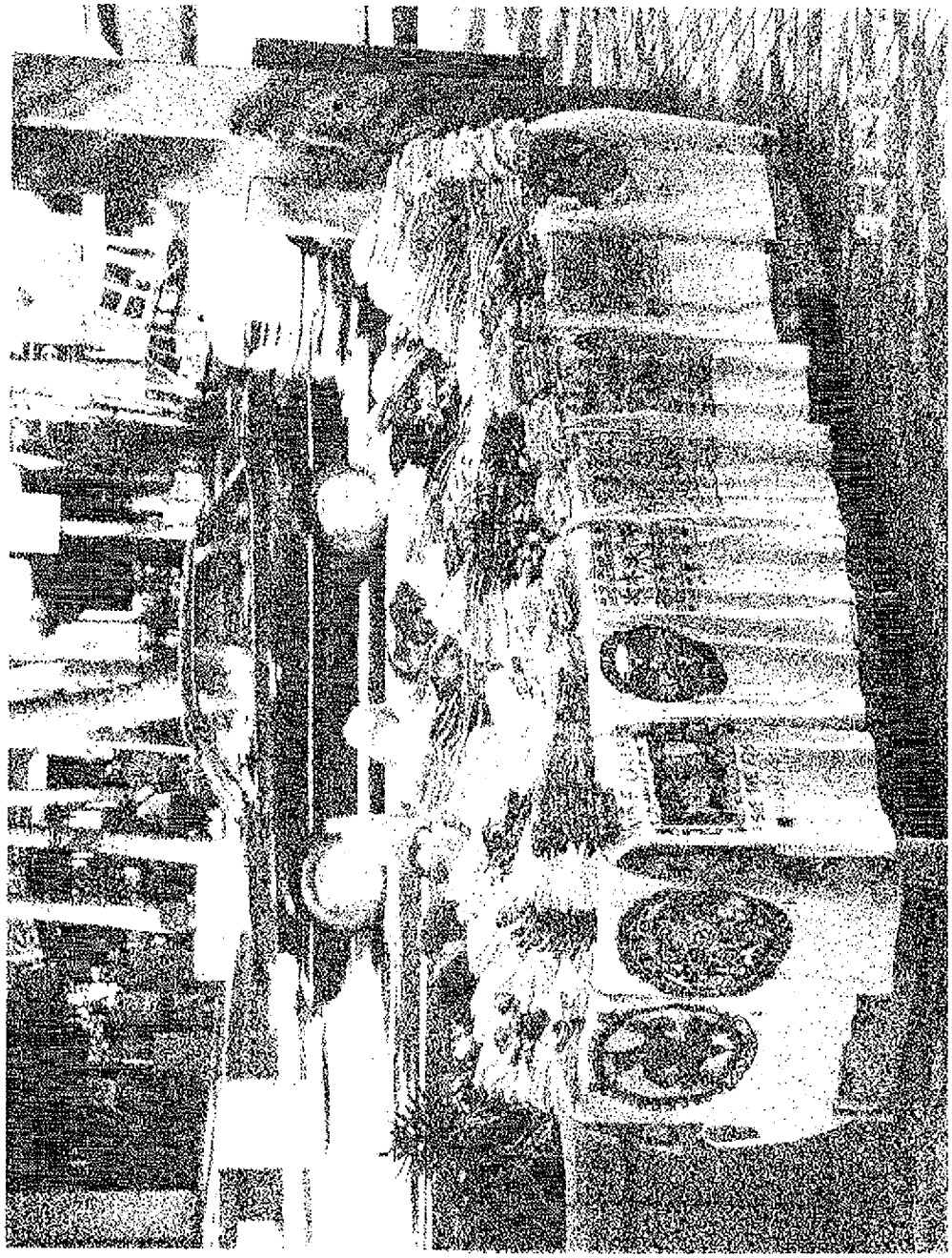

PREGERSON, Circuit Judge, dissenting:

Because I believe the First Amendment protects the right to speak freely in a public ***1020** forum, I dissent. Two aspects of the majority opinion are troublesome. First, the majority opinion diminishes the free speech right at stake here by narrowing the scope of our decision in *Gaudiya Vaishnava Society v. City of San Francisco,* 952 F.2d 1059 (9th Cir.1990), *cert. denied,* 504 U.S. 914, 112 S.Ct. 1951, 118 L.Ed.2d 555 (1992). Second, the majority's time, place, and manner analysis rubber-stamps Honolulu's ordinance restricting speech even though (a) the ordinance is not narrowly tailored to achieve Honolulu's civic goals, and (b) no equally effective alternative forum for the restricted speech exists. I address each concern in

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turn.

I

The majority recognizes that the plaintiffs' T-shirt sales fall within the protective ambit of the First Amendment. Nevertheless, the majority's analysis gives short shrift to our important discussion in *Gaudiya* concerning the substance of the right to speak in a public forum, which includes the right to sell message-bearing T-shirts.

In *Gaudiya,* we held that merchandise with messages affixed to the product, "when sold in conjunction with other activities in order to disseminate [an] organizations' message ... is fully protected speech." 952 F.2d at 1064-65. There, various nonprofit organizations challenged a San Francisco ordinance that prohibited selling, without a permit, T-shirts and other message-bearing merchandise at Fisherman's Wharf and Union Square. *Id.* at 1060-61. The messages conveyed-verbally or symbolically-the nonprofits' philosophies. *Id.* at 1060. The sale of message-bearing merchandise at high foot-traffic locations helped the nonprofits solicit donations, distribute literature, and educate the public about their causes. *Id.*

As in *Gaudiya,* the T-shirts at issue here bear messages that convey the religious and political philosophies of the plaintiff organizations. Some of the T-shirts read: "Meditate," "Clean and Safe Oceans for All," and "Protect and Preserve the Truth, the Beauty & Harmony of our Native Cultures." Just because the messages are printed along with pictures of flowers or fish does not diminish the religious or political quality of the speech. The messages on the merchandise in *Gaudiya* were also intermingled with aesthetic design, but we nevertheless found that the sale of the merchandise was "inextricably intertwined" with fully protected speech. *Gaudiya,* 952 F.2d at 1064 n. 5.

Also, as was true of the San Francisco nonprofits, the plaintiffs here distribute information about their philosophies in conjunction with selling message-bearing T-shirts. The ultimate purpose of these T-shirt transactions is the dissemination of passionately-held viewpoints. The people manning the T-shirt stands discuss their religious beliefs and philosophies with anyone who stops by.[FN1]

> FN1. The plainclothes officer who investigated the T-shirt stands testified that he had a "good" conversation with an "active" member of the Bhaktivedanta Mission, who shared his religious beliefs with the officer and read aloud parts of a handout on these beliefs. The officer also testified that three organizations, including One World One Family Now, distributed literature to him.

Contrary to the majority's view, *Gaudiya* controls the disposition of the case at hand. It is true that *Gaudiya* struck down San Francisco's permit requirement because of its lack of "rules that give guidance to the chief of police." *Gaudiya,* 952 F.2d at 1065. But we didn't strike down the permit requirement merely because it was police-administered. We were concerned with San Francisco's unbridled restriction of free speech in the absence of a rational set of operating procedures; and, we looked to whether the city had given its chief of police guiding rules for restricting speech. *Id.* at 1065-66.

Applying *Gaudiya* to this case is not difficult. Under *Gaudiya,* Honolulu could have easily avoided running afoul of the First Amendment by instituting guiding rules under which nonprofits could sell their message-bearing T-shirts. But Honolulu imposed a blanket ban on such sales. This ban amounts to an unlimited governmental restriction of speech in a public forum-in substance, the same kind of governmental action condemned in *Gaudiya.* As in *Gaudiya,* there is no need here for Honolulu's unbridled ban on First Amendment activities. *See* ***1021** *Gaudiya,* 952 F.2d at 1065. Yet the majority minimizes any substantive similarity between Honolulu's blanket ban and San Fran-

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cisco's unchecked permit scheme.

The majority opinion does not explain adequately its departure from *Gaudiya.* On the one hand, the majority acknowledges that plaintiff organizations have a "fully protected" speech right. But on the other hand, the majority fails to recognize Honolulu's duty to respect and preserve that right for it to be effective. In so doing, the majority's position only gives lip service not only to *Gaudiya,* but also to the Supreme Court's strong admonitions that message-bearing merchandise, when sold in conjunction with other First Amendment activities, is *fully protected* speech. *See Heffron v. International Soc'y for Krishna Consciousness,* 452 U.S. 640, 647, 101 S.Ct. 2559, 2563, 69 L.Ed.2d 298 (1981). *See also Pittsburgh Press Co. v. Pittsburgh Comm'n on Human Relations,* 413 U.S. 376, 385, 93 S.Ct. 2553, 2558, 37 L.Ed.2d 669 (1973) (stating that newspaper's profit motive should not be the basis for regulation of First Amendment rights); *Village of Schaumburg v. Citizens for a Better Env't,* 444 U.S. 620, 632, 100 S.Ct. 826, 833, 63 L.Ed.2d 73 (1980) (holding that charitable appeals for funds in conjunction with other First Amendment activities are protected).

Underlying the majority opinion may be the notion that the nonprofits are using the First Amendment to protect a niche in the Waikiki T-shirt market. If this is so, then the matter should be remanded for further findings of fact. Without a more complete record, an unsupported suspicion that the T-shirt stands are a sham should not be the basis for circumventing the First Amendment.

II

The majority opinion's time, place, and manner discussion is thin. The majority summarily concludes that Honolulu's ordinance is content-neutral, is narrowly tailored to serve a significant governmental interest, and leaves ample alternative channels of communication. *Ward v. Rock Against Racism,* 491 U.S. 781, 791, 109 S.Ct. 2746, 2753, 105 L.Ed.2d 661 (1989). The last two conclusions are questionable.

A

To satisfy the narrowly tailored requirement, a regulation need not be the "least restrictive" means of serving the relevant government interest, but "if there are numerous and obvious less-burdensome alternatives to the restriction on ... speech, that is certainly a relevant consideration in determining whether the 'fit' between ends and means is reasonable." *City of Cincinnati v. Discovery Network, Inc.,* 507 U.S. 410, 413 n. 13, 113 S.Ct. 1505, 1510 n. 13, 123 L.Ed.2d 99 (1993). Indeed, as we concluded in *Project 80's, Inc. v. City of Pocatello,* 942 F.2d 635, 638 (9th Cir.1991), "restrictions which disregard far less restrictive and more precise means are not narrowly tailored."

Honolulu claims that it enacted the peddling ordinance to maintain the aesthetic attractiveness of Waikiki, promote public safety and orderly movement of pedestrians, protect the local merchant economy, and prevent the nonprofit vendors from pressuring or defrauding potential buyers. These are laudable civic goals. But obvious, less restrictive means for achieving these same aims are readily available, and the majority simply chooses to ignore them.

To control congestion and visual blight, Honolulu can easily prohibit the nonprofits from setting up their stands in the most congested areas, such as areas near street intersections. Honolulu can also limit the size or number of stands that nonprofits may operate on each block, or restrict sales during certain times of the day, such as during the morning and afternoon rush hours. To protect the local merchant economy, Honolulu can require the nonprofits to display prominent signs on each stand, which is what some nonprofits already do.[FN2] Signs would clearly identify each organization as a nonprofit. This would make it obvious to tourists and other passersby that they are not dealing with

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the traditional souvenir shop. *1022 Finally, to prevent fraud and duress, Honolulu can employ traditional legal methods, such as prosecuting those who actually commit such crimes. *See Martin v. Struthers,* 319 U.S. 141, 148, 63 S.Ct. 862, 865, 87 L.Ed. 1313 (1943) (invalidating ordinance which prohibited the distribution of handbills to residences because city can punish those who harass or defraud occupants); *cf. Schneider v. State,* 308 U.S. 147, 162, 60 S.Ct. 146, 151, 84 L.Ed. 155 (1939) (invalidating ordinance which prohibited passing out leaflets on city streets because obvious alternative methods such as punishing those who litter would effectively solve the littering problem).

> FN2. For example, One World One Family Now's T-shirt stands display a sign that reads "One World Family."

In sum, a cursory glance at the available options reveals numerous less-restrictive alternatives to an outright ban on the sale of message-bearing T-shirts by nonprofits on Waikiki. Because Honolulu disregards obvious, far less restrictive, and more precise methods of achieving the same ends, Honolulu's ordinance is not narrowly tailored. *See Discovery Network,* 507 U.S. at 417 n. 13, 113 S.Ct. at 1510 n. 13; *Project 80's,* 942 F.2d at 638.

B

The majority also claims that plaintiff organizations remain free to spread their message through other media or in other places. Yet such alternative modes of communication may nevertheless be constitutionally inadequate if the speaker's "ability to communicate effectively is threatened." *Bay Area Peace Navy,* 914 F.2d at 1229 (citations omitted). The Supreme Court has given us guidance on this point in *City of Ladue v. Gilleo,* 512 U.S. 43, 114 S.Ct. 2038, 129 L.Ed.2d 36 (1994).

In *Ladue,* private property owners challenged an ordinance that prohibited display of any signs on their property other than "For Sale" or "For Rent." The Court struck down the ordinance because the City of Ladue foreclosed a "unique" and "important" medium of expression-the display of a sign on one's property to express a point of view. *Id.* at ----, 114 S.Ct. at 2045. The Court rejected the city's argument that the regulation left open ample alternative channels of communication because it found that hand-held signs and other media were not an adequate substitute for posted signs:

> Residential signs are an unusually cheap and convenient form of communication. Especially for persons of modest means or limited mobility, a yard or window sign may have no practical substitute.

Id. at ----, 114 S.Ct. at 2046.

Similarly, the T-shirt sales in this case constitute an effective and inexpensive medium of expression. When combined with oral proselytizing and literature distribution, selling message-bearing T-shirts is a particularly effective form of charitable solicitation. Indeed, a listener is more likely to expend funds to support a particular cause if he receives, in return, a T-shirt that communicates a message to him and that allows him to express *his* support for the cause by wearing it.

For the plaintiff organizations, Waikiki is a location uniquely suited to their mission. Waikiki is the social and economic center of not just the City of Honolulu, but also of the State of Hawaii. The nonprofits offered evidence that they selected Waikiki to sell their T-shirts because the area would allow them to share their philosophies with a large number of people who visit Hawaii from all over the world. Depriving plaintiffs of access to Waikiki separates them from a large and diverse audience.

The majority assumes the existence of other forums for plaintiffs' First Amendment activities. But we have held that an alternative is not adequate if the speaker is not permitted to reach the "intended audience." *Bay Area Peace Navy,* 914 F.2d at 1229. In *Bay Area Peace Navy,* we invalidated a Coast

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Guard regulation that prohibited protesters from demonstrating within a 75-yard radius of the pier during the annual "Fleet Week" celebration. We found that the 75-yard zone completely insulated the audience from the anti-war and anti-militarization views of the demonstrators. 914 F.2d at 1230. *See also Ladue,* 512 U.S. at ----, 114 S.Ct. at 2046 (alternatives to posting signs on residential property such as posting signs on commercial property are inadequate because residents may wish to reach neighbors); ***1023***Students Against Apartheid Coalition v. O'Neil,* 660 F.Supp. 333, 339-40 (W.D.Va.1987) (university regulation prohibiting shanties on lawn of building where Board of Visitors meets, impermissibly insulates the Board, the intended audience, from the protest), *aff'd,* 838 F.2d 735 (4th Cir.1988).

Here, the majority allows the City of Honolulu to exile plaintiff organizations from Waikiki. In so doing, it allows their removal from Waikiki's large and diverse audience and prevents them from spreading their message in an efficient and effective manner. Under *Bay Area Peace Navy,* Honolulu must afford plaintiffs an opportunity to reach their intended audience. This is especially true when, as discussed above in part A, there are reasonable alternative means to achieve legitimate government interests.

Accordingly, I dissent.

C.A.9 (Hawai'i),1996.
One World One Family Now v. City and County of Honolulu
76 F.3d 1009, 64 USLW 2531, 24 Media L. Rep. 1434, 96 Cal. Daily Op. Serv. 981, 96 Daily Journal D.A.R. 1623

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409 F.3d 1113, 05 Cal. Daily Op. Serv. 4630, 2005 Daily Journal D.A.R. 6366
(Cite as: 409 F.3d 1113)

H

United States Court of Appeals,
Ninth Circuit.
Victor MENOTTI; Thomas Sellman; Todd Stedl; Doug Skove, Plaintiffs-Appellants,
v.
CITY OF SEATTLE; Paul Schell, Former Mayor of the City of Seattle; Norman Stamper, Former Chief of Police of the City of Seattle; Sharon Stevens, a Seattle Police Detective; Ronald Smith, a Seattle Police Officer, Defendants-Appellees.
Kenneth Hankin; Jennifer Hudziec; Stephanie Lane; Denise Cooper; Nicole Pearson; on behalf of themselves and all others similarly situated; Plaintiffs-Appellants,
v.
City of Seattle; Paul Schell, Former Mayor of the City of Seattle; Norman Stamper, Former Chief of Police of the City of Seattle, Defendants-Appellees.
Nos. 02-35971, 02-36027.

Argued and Submitted Feb. 6, 2004.
Submission Vacated Feb. 17, 2004.
Resubmitted April 14, 2004.
Filed June 2, 2005.

Background: Arrestees brought class action, challenging constitutionality of city emergency order prohibiting access to portions of downtown during international trade conference, and individual claims for violations of constitutional rights. The United States District Court for the Western District of Washington, Barbara J. Rothstein, J., 2002 WL 32168077, granted summary judgment for city, and appeal was taken.

Holdings: The Court of Appeals, Gould, Circuit Judge, held that:
(1) order was facially valid time, place, and manner restriction;
(2) fact issue existed as to whether officers were acting pursuant to municipal policy when they implemented order in allegedly unconstitutional manner; and
(3) fact issue existed as to whether officer's warrantless seizure of protestor's sign was justified by exigent circumstances.

Affirmed in part, reversed in part, and remanded.

Paez, Circuit Judge, concurred in part, dissented in part, and filed opinion.

West Headnotes

[1] Municipal Corporations 268 ⚿594(2)

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k594 Ordinances and Regulations in General
268k594(2) k. Form and Sufficiency in General. Most Cited Cases
Municipal ordinance is facially unconstitutional if (1) it is unconstitutional in every conceivable application because it is vague or impermissibly restricts protected activity or (2) it seeks to prohibit such broad range of protected conduct that it is unconstitutionally overbroad.

[2] Constitutional Law 92 ⚿1513

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1511 Content-Neutral Regulations or Restrictions
92k1513 k. Governmental Disagreement with Message Conveyed. Most Cited Cases
(Formerly 92k90(3))
Principal inquiry in determining content neutrality, in speech cases generally and in time, place, or

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manner cases in particular, is whether government has adopted regulation of speech because of disagreement with message it conveys. U.S.C.A. Const.Amend. 1.

[3] Constitutional Law 92 ⚿1730

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1730 k. In General. Most Cited Cases
(Formerly 92k90.1(4))
Fundamental principle behind content analysis of speech restriction is that government may not grant use of forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views. U.S.C.A. Const.Amend. 1.

[4] Constitutional Law 92 ⚿1517

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1516 Content-Based Regulations or Restrictions
92k1517 k. In General. Most Cited Cases
(Formerly 92k90(3))
Whether speech restriction is content neutral or content based is something that can be determined on face of it; if restriction describes speech by content then it is content based. U.S.C.A. Const.Amend. 1.

[5] Constitutional Law 92 ⚿1758

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1758 k. Public Squares, Plazas, and Greens. Most Cited Cases
(Formerly 92k90.1(4))

Constitutional Law 92 ⚿1845

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(K) Protests and Demonstrations in General
92XVIII(K)1 In General
92k1845 k. In General. Most Cited Cases
(Formerly 92k90.1(4))

Municipal Corporations 268 ⚿596

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k596 k. Public Peace and Order. Most Cited Cases
Emergency order prohibiting access to portions of city's downtown area during international trade conference was content neutral, for purpose of determining its facial constitutionality; order, though predominantly affecting anti-conference protestors, prohibited protests, in support of or against, any topic within restricted zone. U.S.C.A. Const.Amend. 1.

[6] Constitutional Law 92 ⚿2487

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)2 Encroachment on Legislature
92k2485 Inquiry Into Legislative Judgment
92k2487 k. Motive. Most Cited

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(Formerly 92k70.3(2))
Court will not strike down otherwise constitutional statute on basis of alleged illicit legislative motive.

[7] Constitutional Law 92 ⚿1505

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1505 k. Narrow Tailoring. Most Cited Cases
(Formerly 92k90(3))
To be narrowly tailored, speech restriction need not be least restrictive means of furthering government's interests, but restriction may not burden substantially more speech than necessary to further such interests. U.S.C.A. Const.Amend. 1.

[8] Constitutional Law 92 ⚿1725

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)1 In General
92k1725 k. In General. Most Cited Cases
(Formerly 92k90.1(4))

Constitutional Law 92 ⚿1758

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1758 k. Public Squares, Plazas, and Greens. Most Cited Cases
(Formerly 92k90.1(4))

Municipal Corporations 268 ⚿596

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k596 k. Public Peace and Order. Most Cited Cases
Emergency order prohibiting access to portions of city's downtown area during international trade conference was narrowly tailored to serve significant governmental interest in maintaining public order, for purpose of determining whether it was reasonable time, place, and manner restriction; zone covered only enough territory for delegates to move safely from their hotels to conference site, lasted only during conference, and was justified by difficulty of protecting delegates in environment in which small group of violent protestors were determined to cause chaos and to disrupt conference proceedings amidst tens of thousands of non-violent protestors. U.S.C.A. Const.Amend. 1.

[9] Constitutional Law 92 ⚿1509

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1508 Time, Place, or Manner Restrictions
92k1509 k. In General. Most Cited Cases
(Formerly 92k90(3))
Time, place, and manner restriction does not violate First Amendment simply because there is some imaginable alternative that might be less burdensome on speech. U.S.C.A. Const. Amend. 1.

[10] Constitutional Law 92 ⚿1498

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1498 k. Absolute Nature of Right. Most Cited Cases
(Formerly 92k90(3))

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First Amendment does not guarantee right to communicate one's views at all times and places or in any manner that may be desired. U.S.C.A. Const.Amend. 1.

[11] Constitutional Law 92 ⚿1509

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1508 Time, Place, or Manner Restrictions
92k1509 k. In General. Most Cited Cases
(Formerly 92k90(3))
Alternative mode of communication left available by speech restriction may be constitutionally inadequate if speaker's ability to communicate effectively is threatened. U.S.C.A. Const.Amend. 1.

[12] Constitutional Law 92 ⚿1845

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(K) Protests and Demonstrations in General
92XVIII(K)1 In General
92k1845 k. In General. Most Cited Cases
(Formerly 92k90.1(4))

Municipal Corporations 268 ⚿596

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k596 k. Public Peace and Order. Most Cited Cases
Emergency order prohibiting access to portions of city's downtown area during international trade conference left ample alternative channels of communication, for purpose of determining whether it was reasonable time, place, and manner restriction; protestors were able to demonstrate and express their views immediately outside restricted zone, including positions directly across street from relevant sites. U.S.C.A. Const.Amend. 1.

[13] Constitutional Law 92 ⚿1490

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1490 k. In General. Most Cited Cases
(Formerly 92k90(1))
First Amendment does not require that individuals retain most effective means of communication, but only that individuals retain ability to communicate effectively. U.S.C.A. Const.Amend. 1.

[14] Constitutional Law 92 ⚿1510

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1508 Time, Place, or Manner Restrictions
92k1510 k. Reasonableness. Most Cited Cases
(Formerly 92k90(3))
To comply with First Amendment, even a reasonable time, place, and manner restriction on speech must contain adequate standards to guide official's decision and render it subject to effective judicial review. U.S.C.A. Const.Amend. 1.

[15] Constitutional Law 92 ⚿1758

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and

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Events
92k1758 k. Public Squares, Plazas, and Greens. Most Cited Cases
(Formerly 92k90.1(4))

Municipal Corporations 268 ⚿594(2)

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k594 Ordinances and Regulations in General
268k594(2) k. Form and Sufficiency in General. Most Cited Cases
Emergency order prohibiting access to portions of city's downtown area during international trade conference was not facially overbroad restriction on speech, even though it gave officers discretion to permit persons with reasonable purpose to enter zone. U.S.C.A. Const.Amend. 1.

|16| Civil Rights 78 ⚿1351(1)

78 Civil Rights
78III Federal Remedies in General
78k1342 Liability of Municipalities and Other Governmental Bodies
78k1351 Governmental Ordinance, Policy, Practice, or Custom
78k1351(1) k. In General. Most Cited Cases
Section 1983 liability may attach to municipality only where municipality itself causes constitutional violation through execution of government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy. 42 U.S.C.A. § 1983.

|17| Civil Rights 78 ⚿1351(1)

78 Civil Rights
78III Federal Remedies in General
78k1342 Liability of Municipalities and Other Governmental Bodies
78k1351 Governmental Ordinance, Policy, Practice, or Custom
78k1351(1) k. In General. Most Cited Cases
Existence of municipal policy or custom may be established, for purpose of imposing § 1983 liability on city, by showing: (1) longstanding practice or custom which constitutes standard operating procedure; (2) that decision-making official was, as matter of state law, final policymaking authority whose edicts or acts may fairly be said to represent official policy in area of decision; or (3) that official with final policymaking authority either delegated that authority to, or ratified decision of, subordinate. 42 U.S.C.A. § 1983.

|18| Federal Civil Procedure 170A ⚿2491.5

170A Federal Civil Procedure
170AXVII Judgment
170AXVII(C) Summary Judgment
170AXVII(C)2 Particular Cases
170Ak2491.5 k. Civil Rights Cases in General. Most Cited Cases
Issue of material fact as to whether police officers were acting pursuant to municipal policy when they allegedly implemented emergency order, prohibiting access to portions of city's downtown area during international trade conference, in manner that excluded only conference protestors precluded summary judgment on question of city's § 1983 liability. 42 U.S.C.A. § 1983.

|19| Civil Rights 78 ⚿1355

78 Civil Rights
78III Federal Remedies in General
78k1353 Liability of Public Officials
78k1355 k. Vicarious Liability and Respondeat Superior in General; Supervisory Liability in General. Most Cited Cases
Section 1983 liability is imposed against supervisory official in his individual capacity for his own culpable action or inaction in training, supervision, or control of his subordinates, for his acquiescence in constitutional deprivations of which complaint is made, or for conduct that showed reckless or cal-

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lous indifference to rights of others. 42 U.S.C.A. § 1983.

[20] Civil Rights 78 ⚖1358

78 Civil Rights
78III Federal Remedies in General
78k1353 Liability of Public Officials
78k1358 k. Criminal Law Enforcement; Prisons. Most Cited Cases
Mayor and police chief, responsible for facially constitutional emergency order, prohibiting access to portions of city's downtown area during international trade conference, could not be held personally liable under § 1983 for allegedly unconstitutional applications of order, absent evidence that they personally took part in alleged constitutional violations or caused constitutional violations through their individual actions. 42 U.S.C.A. § 1983.

[21] Arrest 35 ⚖63.4(2)

35 Arrest
35II On Criminal Charges
35k63 Officers and Assistants, Arrest Without Warrant
35k63.4 Probable or Reasonable Cause
35k63.4(2) k. What Constitutes Such Cause in General. Most Cited Cases
Test for probable cause to arrest is whether facts and circumstances within officer's knowledge are sufficient to warrant prudent person, or one of reasonable caution, to believe, in circumstances shown, that suspect has committed, is committing or is about to commit offense. U.S.C.A. Const.Amend. 4 .

[22] Federal Civil Procedure 170A ⚖2491.5

170A Federal Civil Procedure
170AXVII Judgment
170AXVII(C) Summary Judgment
170AXVII(C)2 Particular Cases
170Ak2491.5 k. Civil Rights Cases in General. Most Cited Cases
Issue of material fact as to arrestee's behavior at time he was arrested for pedestrian interference and obstructing officer precluded summary judgment on his claim that police lacked probable cause to make arrest. U.S.C.A. Const.Amend. 4.

[23] Civil Rights 78 ⚖1351(4)

78 Civil Rights
78III Federal Remedies in General
78k1342 Liability of Municipalities and Other Governmental Bodies
78k1351 Governmental Ordinance, Policy, Practice, or Custom
78k1351(4) k. Criminal Law Enforcement; Prisons. Most Cited Cases
City could not be held liable, under § 1983, for unidentified police officer's allegedly unlawful search of protestor's bag and seizure of protestor's fliers, absent evidence of city policy or custom of committing such unlawful searches and seizures. 42 U.S.C.A. § 1983.

[24] Federal Courts 170B ⚖776

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)1 In General
170Bk776 k. Trial De Novo. Most Cited Cases
District court's grant of qualified immunity from § 1983 liability is reviewed de novo. 42 U.S.C.A. § 1983.

[25] Arrest 35 ⚖71.1(8)

35 Arrest
35II On Criminal Charges
35k71.1 Search
35k71.1(8) k. Search Not Incident to Arrest; Time and Distance Factors. Most Cited Cases
Officer's warrantless seizure of protestor's sign could not be justified as incident to arrest, even if officer had probable cause to make arrest, where no arrest was made. U.S.C.A. Const.Amend. 4.

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[26] Federal Civil Procedure 170A ⚿2491.5

170A Federal Civil Procedure
170AXVII Judgment
170AXVII(C) Summary Judgment
170AXVII(C)2 Particular Cases
170Ak2491.5 k. Civil Rights Cases in General. Most Cited Cases
Issue of material fact as to whether exigent circumstances justified officer's warrantless seizure of protestor's sign precluded summary judgment on protestor's Fourth Amendment claim. U.S.C.A. Const.Amend. 4.

[27] Arrest 35 ⚿63.4(1)

35 Arrest
35II On Criminal Charges
35k63 Officers and Assistants, Arrest Without Warrant
35k63.4 Probable or Reasonable Cause
35k63.4(1) k. Grounds for Warrantless Arrest in General. Most Cited Cases
There is no general exception to Fourth Amendment's warrant requirement for conduct that, absent special needs consistent with Supreme Court's precedents, is asserted to be "reasonable." U.S.C.A. Const.Amend. 4.

[28] Civil Rights 78 ⚿1376(6)

78 Civil Rights
78III Federal Remedies in General
78k1372 Privilege or Immunity; Good Faith and Probable Cause
78k1376 Government Agencies and Officers
78k1376(6) k. Sheriffs, Police, and Other Peace Officers. Most Cited Cases
Reasonable police officer would have understood that his warrantless seizure of protestor's sign without arrest and without exigency offended guarantees of Fourth Amendment, for purpose of determining officer's entitlement to qualified immunity from § 1983 liability. 42 U.S.C.A. § 1983.

[29] Constitutional Law 92 ⚿1845

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(K) Protests and Demonstrations in General
92XVIII(K)1 In General
92k1845 k. In General. Most Cited Cases
(Formerly 92k90.1(4))

Municipal Corporations 268 ⚿189(1)

268 Municipal Corporations
268V Officers, Agents, and Employees
268V(B) Municipal Departments and Officers Thereof
268k179 Police
268k189 Rights, Duties, and Liabilities of Policemen
268k189(1) k. In General. Most Cited Cases
Police officer who seized protestor's sign did not violate protestor's First Amendment rights; only evidence was that sign was seized due to protestor's violation of emergency order, prohibiting protests in portions of city's downtown area during international trade conference, and not out of any opposition to protestor's political beliefs or desire to chill protestor's speech. U.S.C.A. Const.Amend. 1.

***1117** James E. Lobsenz, Carney Badley Spellman, P.S., and Aaron H. Caplan, American Civil Liberties Union of Washington, Seattle, WA, for appellants Victor Menotti, Thomas Sellman, Todd Stedl, and Doug Skove.

Steve W. Berman, Hagens Berman LLP, Seattle, WA, Arthur H. Bryant, Trial Lawyers for Public Justice, Oakland, CA, and Michael E. Withey, Stritmatter Kessler Whelan Withey Coluccio, Seattle, WA, for appellants Kenneth Hankin, Jennifer Hudziec, Stephanie Lane, Denise Cooper, and Nicole Pearson.

Ted Buck, Stafford Frey Cooper, P.C., Seattle, WA,

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for the appellees.

Appeal from the United States District Court for the Western District of Washington; Barbara J. Rothstein, District Judge, Presiding. D.C. Nos. CV-00-00372-BJR, CV-00-01672-BJR.

Before RONALD M. GOULD, RICHARD A. PAEZ, Circuit Judges, and ROSLYN O. SILVER, [FN*] District Judge.

FN* The Honorable Roslyn O. Silver, United States District Judge for the District of Arizona, sitting by designation.

Opinio by Judge GOULD; Partial Concurrence and Partial Dissent by Judge PAEZ.

OPINION

GOULD, Circuit Judge:

In this case we search for the proper balance between, on the one hand, the vibrant rights of free speech and assembly in an open society and, on the other hand, the needs of a city to maintain order and security. We consider the constitutionality of an emergency order prohibiting access to portions of downtown Seattle, Washington, during the 1999 World Trade Organization (WTO) conference. Appellants filed lawsuits in the United States District Court for the Western District of Washington seeking damages for the constitutional*1118 rights that were alleged to be violated by the emergency order. Four of the Appellants also filed individual claims in which they alleged that their constitutional rights were infringed by Seattle police officers in the course of the conference. We determine that the emergency order was a constitutional time, place, and manner restriction on speech on its face, and we affirm the judgment of the district court on that issue. But we also determine that there are genuine issues of material fact whether the emergency order was constitutional as applied to certain Appellants, and we reverse and remand for trial on that issue. As for the Appellants' individual claims, we affirm in part, reverse in part, and remand.

I

On October 2, 2000, Plaintiffs-Appellants Kenneth Hankin, Jennifer Hudziec, Stephanie Lane, Denise Cooper, and Nicole Pearson (the Hankin plaintiffs) [FN1] filed suit against the City of Seattle, then-Seattle Mayor Paul Schell, and then-Seattle Police Chief Norman Stamper in the United States District Court for the Western District of Washington, on behalf of a class defined as:

> All persons who were arrested by the City of Seattle and its police agents or its affiliated police agents on December 1 and 2, 1999, pursuant to the defendants' "no protest" policies and directives which were eventually embodied by the City of Seattle's Local Proclamation of Civil Emergency Order Number 3 (and subsequent revisions) and who were subsequently not convicted of any crime. Included in this class are all persons arrested pursuant to such policies both inside and outside the zone established by Order Number 3.

The Hankin plaintiffs sought damages, alleging that defendants violated their rights under the United States Constitution. The Hankin plaintiffs also requested declaratory relief stating that the emergency order violated the United States Constitution.

FN1. Robert Hickey, Carroll Jackson, and Emily Maloney were also named plaintiffs in the lawsuit, but they are not parties to this appeal.

On March 7, 2000, Victor Menotti, Thomas Sellman, Todd Stedl and Doug Skove (the Menotti plaintiffs) filed a lawsuit against the City of Seattle, Schell, Stamper, and Officer Michael Jennings and Detective Sharon Stevens of the Seattle Police De-

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partment.[FN2] The Menotti plaintiffs filed an amended complaint on January 9, 2002, adding Seattle Police Department Officer Ronald Smith as a defendant. The Menotti plaintiffs alleged that defendants violated their rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution and sought damages. Menotti and Sellman also alleged that defendants committed false arrest.

> FN2. Andrew Russell, Lauren Holloway, and Ronald Matyjas were also plaintiffs in the lawsuit, but they are not part of this appeal. Officer Jennings is also not part of this appeal.

The district court consolidated the two cases for the purpose of resolving legal issues common to all parties. On October 29, 2001, the district court granted the defendants' motion for partial summary judgment regarding the constitutionality of the emergency order, holding that as applied it was a constitutional time, place, and manner restriction on speech. The district court concluded that the emergency order: (1) was content neutral in that it did not exclude speech based on content or viewpoint, (2) was narrowly tailored because it "covered only enough territory for the WTO delegates and the President [of the United States] to move safely from ***1119** their hotels to the convention [center] and lasted only during the conference," (3) served a significant government interest of maintaining order in an emergency situation, and (4) provided ample alternatives for expression because protestors could demonstrate just outside the boundaries of the restricted zone.

The district court denied the plaintiffs' cross-motion for summary judgment on the constitutionality of the emergency order as applied. The district court also granted the City's motion for summary judgment on the Hankin plaintiffs' claims under 42 U.S.C. § 1983 alleging a failure to train or supervise officers, holding that the Hankin plaintiffs had not presented any evidence supporting this contention.

On January 8, 2002, the district court denied the Hankin plaintiffs' motion for class certification. On August 29, 2002, the district court granted summary judgment to all defendants as to the Hankin plaintiffs' remaining claims, based on the district court's ruling of the constitutionality of the emergency order. The district court entered final judgment as to the Hankin plaintiffs pursuant to Fed.R.Civ.P. 54(b) on November 5, 2002.

As for the lawsuit filed by the Menotti plaintiffs, the district court on November 1, 2001, denied the Menotti plaintiffs' motion for partial summary judgment based on the alleged federal constitutional violations. On January 14, 2002, the district court, based on its ruling that the emergency order was constitutional, granted the defendants' motion for summary judgment as to Sellman's claims. However, the district court denied the defendants' motion for summary judgment as to the claims of Skove and Stedl, finding that genuine issues of material fact existed as to the circumstances of their arrests.

On January 14, 2002, the district court also granted defendants' motion to dismiss the Menotti plaintiffs' claims against Schell and Stamper in their individual capacities, holding that the Menotti plaintiffs had not provided any evidence showing that Schell or Stamper were personally involved in the seizure or arrest of these plaintiffs.

On August 15, 2002, the district court granted Officer Smith's motion for summary judgment based on qualified immunity as to Skove's claims. The district court determined that Smith was entitled to qualified immunity on Skove's Fourth Amendment claim because Smith had acted reasonably, and further that Smith was entitled to qualified immunity on Skove's First Amendment claim because no constitutional violation had occurred. The district court denied Skove's cross-motion for summary judgment on the same claims.

Finally, on October 1, 2002, the district court granted summary judgment to the City on Menotti and

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Stedl's claims under 42 U.S.C. § 1983, holding that there was probable cause to arrest Menotti, and that Menotti and Stedl had submitted no evidence of a municipal policy or custom of illegally seizing or searching handbags. The district court entered final judgment as to the Menotti plaintiffs on October 1, 2002.

The Menotti plaintiffs filed a timely notice of appeal on October 23, 2002. The Hankin plaintiffs filed a timely notice of appeal on November 13, 2002. We have jurisdiction under 28 U.S.C. § 1291, and we affirm in part, reverse in part, and remand.

II

In reviewing de novo the district court's grant of summary judgment, where the facts are disputed we view the evidence in the light most favorable to the non-moving party. *United States v. City of Tacoma,* 332 F.3d 574, 578 (9th Cir.2003). We determine whether there are any genuine issues of material fact and whether the district court correctly applied the relevant ***1120** substantive law. We do not weigh the evidence or determine the truth of disputed material facts, but determine only whether there is a genuine issue for trial. *Balint v. Carson City,* 180 F.3d 1047, 1054 (9th Cir.1999) (en banc).

The WTO is an international group comprised of member nations that discuss trade issues and enter into trade agreements.[FN3] In January 1999, the White House announced that the City of Seattle, Washington (the City) had been selected as the location for the first WTO conference to be held in the United States. The conference was to take place from November 30, 1999 to December 3, 1999. Representatives from the 134 WTO-member nations,[FN4] including the President of the United States, were to convene in Seattle.

> FN3. The WTO was established on January 1, 1995, during the Uruguay Round negotiations held pursuant to the General Agreement on Tariffs and Trade. According to its web site, the WTO "is the only global international organization dealing with the rules of trade between nations. At its heart are the WTO agreements, negotiated and signed by the bulk of the world's trading nations and ratified in their parliaments. The goal is to help producers of goods and services, exporters, and importers conduct their business." What is the WTO?, *at* http://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm (last visited Oct. 7, 2004). The WTO's objectives have generated a vigorous opposition by those who believe that the WTO "favor[s] trade expansion over all else." Lynda Gorov, *The Varied Foes of WTO Unite in Seattle Protests,* Boston Globe, Nov. 30, 1999, at A1.
>
> FN4. As of the filing date of this Opinion, the WTO has 148 member nations.

Those who opposed the WTO's agenda and specific activities convened in Seattle well in advance of the opening of the conference, and protest activity began taking place. Three weeks before the opening of the conference, unknown individuals broke windows at a Gap clothing store in downtown Seattle and threw several "Molotov cocktails" [FN5] into the building, causing substantial damage. The "anarchist" [FN6] symbol was spray-painted onto the walls of the Gap store and on the adjoining sidewalk. Other protestors attempted to gain entry into downtown Seattle offices of timber and forest product companies. Protestors trespassed onto downtown Seattle's Old Navy store, and hung a huge protest banner on the face of the storefront. On November 26, 1999, the day after Thanksgiving, a group of fifty to sixty protestors entered a parade without permission to protest the WTO.

> FN5. A "Molotov cocktail" is an explosive device consisting of "a bottle, gasoline, and a rag." *United States v. Simmons,* 83 F.3d 686, 687 (4th Cir.1996).

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> FN6. "The anarchist movement represents a range of groups, from organized and primarily nonviolent groups like the Industrial Workers of the World to loosely knit and more extremist splinter groups...." Ruth Teichroeb, *Fringe Anarchists in Middle of Violent Demonstrations,* Seattle Post-Intelligencer, Dec. 1, 1999, at A15. The "anarchist" symbol consists of the letter "A" in a circle, and the symbol "is one of the most familiar symbols of anarchism and represents the slogan 'Anarchy Is Order.' " *Id.*

Protest activity began to intensify on November 29, 1999, one day ahead of the WTO conference. While most protestors were peaceful, others were violent. The level of violence cannot be considered de minimis and in some cases posed threats to persons. [FN7] Some protestors vandalized property by spray painting buildings and breaking windows. Others pounded on windows of downtown stores and threw ***1121** rocks at police officers. Police formed a security perimeter around the Niketown store in downtown Seattle because of protestors encouraging a crowd to take over the store. Damage to property and risks to individuals on this day were not insignificant, though limited in geographic area to a few blocks in the center of the City, and protestors dispersed late into the evening.[FN8]

> FN7. The dissent, while acknowledging that violence occurred, argues that our "account exaggerates its pervasiveness" because most protestors were peaceful. Dissent at 1160. We of course explicitly recognize that "most protestors were peaceful," but this does not negate the harsh reality and striking import of the widespread violence instigated by those protestors who were not peaceful. Moreover, the description of the WTO riots that follows is not just that of the majority. The whole world witnessed the rampant violence and chaos in the streets of Seattle at the outset of the WTO meeting. The dissent's account misapprehends reality by minimizing the violence and its import. Any fair and objective review of the record would lead to the conclusion that District Judge Barbara J. Rothstein's order granting summary judgment to the City correctly described an emergency situation marked by pervasive vandalism, theft, arson, and assault that overwhelmed law enforcement resources. These acts of violence are undisputed in the record before us. One may disagree on the legal implications of the violence under First Amendment doctrine, and doubtless we and the dissent do so disagree. But to minimize the violence and threat to the City, to visiting foreign dignitaries, and to Seattle's citizens, as our dissenting colleague does, is wrong.
>
> FN8. Appellants have not alleged a negligence cause of action against the City for having advance notice of but failing to prevent the chaos that stemmed from the violence that marred the WTO conference. However, the pattern of protest propagating civil disorder and violence is relevant to understanding the City's interest in restoring and maintaining order to allow the WTO conference to proceed securely. Our dissenting colleague fails to give this interest adequate heed.

The WTO conference opened formally on November 30, 1999, and from law enforcement's perspective, things got worse. Police logs indicate that demonstrators gathered in the downtown area as early as 5:45 a.m. At least some among the protestors had violent intentions. On a videotape introduced as part of the record, a masked protestor says, "50,000 people that really care.... I'm hoping that we can come out here, and get crazy and fucking up shit ..., that every city in the world knows that it can't host the WTO conference and it better

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give control of the city back to the people or that city's going to be torn to pieces."

Those protestors who chose to use violence to disrupt the WTO's conference used an array of weapons, devices, and tactics to obstruct the conference. The disruption of normal city life was so extreme in some locations that it bordered on chaos. Police officers in contemporaneous reports said that they saw protestors carrying bottles filled with flammable liquids, locking down intersections by forming human chains from lightpost to lightpost, breaking windows at retail stores,[FN9] overrunning and looting small retail stores, and jumping on cars. By 8:00 a.m., protestors had cut off vehicular access to the Paramount Theater and the Washington State Convention & Trade Center, the primary meeting venues of the conference. After demonstrators were discovered inside meeting venues, police requested and received a "lock down" [FN10] of the Washington State Convention & Trade Center and the Sheraton Hotel, where many WTO delegates were staying.[FN11] Seattle Police Department, ***1122** *The Seattle Police Department After Action Report, World Trade Organization Ministerial Conference,* Apr. 4, 2000, at 36-39 [hereinafter " *WTO After Action Report*"].

> FN9. Niketown, the site of protest on the prior day, again attracted the attention of violent protestors. Officers received reports that Niketown was being ransacked by protestors, and the officers had to rescue employees through a rear alley door.
>
> FN10. A "lock down" of these facilities meant that no persons could enter or exit.
>
> FN11. The increased level of protection for delegates was necessary for their security. It also was even more important because WTO meeting venues had been designated the equivalents of foreign embassies, mandating heightened security protection.

Some protestors directed violence at law enforcement authorities: Among the violent, there were protestors who assaulted police officers with chemical irritants, and others who vandalized police cars. Some violent protestors threw metal spikes, cans, bottles, signs, empty gas canisters, and pieces of concrete at officers, who were forced to wear riot gear for protection. Other protestors deliberately disregarded police lines and attempted to break through in violent confrontations with police. According to a report of the Seattle City Council prepared after the WTO convention, "officers were put in perilous situations where, often cut off from communication, they were expected to endure physical assaults and taunts for long periods without food, rest, restrooms, or water." Seattle City Council, *Report of the WTO Accountability Review Committee,* Sept. 14, 2000, at 5 [hereinafter " *ARC Report* "]. Some officers were "violently barraged with ball bearings ('pachinko' balls), rocks and bottles,[and] squirted with urine." *Id.* at 10 & n. 14. One police officer on duty suffered a heart attack, and a helicopter evacuation was required because medical units could not break through the gathered crowd to provide medical assistance.

Some officers did not take the passive resistance approach in response to being targeted by violence, and mutual insecurity among police and protestors caused the situation to spiral out of control. In lieu of large-scale arrests, some officers responded with tear gas and similar non-lethal weapons like pepper gas, beanbag guns, and rubber bullets. *Id.* at 4. The gravity of the situation caused some officers to resort to measures characterized later by the City Council as "out of proportion to the threats faced," provoking further disturbance and resistance from violent protestors. [FN12] *Id.* at 4, 11.

> FN12. The dissent focuses on the Seattle Police Department for its response, finding significance in the City Council's remark that officers "likely intensified the situation." Dissent at 1161. The dissent's characterization is incorrect as a description of police conduct as a whole, and in any

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> event is irrelevant to the analysis of Order No. 3's constitutionality. The City Council's *ARC Report* acknowledges that "police officers on the front lines had no basis for confidence that the violence would stop with rocks and bottles," and the report "thankfully endorses the performance of those officers who underwent unnecessary hardship and were the victims of poor planning and leadership in the field." *ARC Report* at 4, 10. Moreover, whether Order No. 3 comports with the First Amendment does not turn on who is to blame for the intensity of the situation that the City faced. *See* discussion *infra* Part III. Whatever the complex of causes, the City was faced with riots and disorder beyond its control that threatened the safety of visiting foreign officials, prompting Order No. 3, and its permissibility must be assessed in light of the crisis facing the City when it was adopted. Finally, it is also likely that most of the time when police attempt to quiet a violent disturbance the situation is intensified, which is a collateral consequence of law enforcement's response to violent protest.

The general public was also at risk. Some violent protestors started fires in the streets and in large dumpsters, and then protestors prevented fire trucks from entering the area. A driver of a garbage truck was pulled from his vehicle and assaulted in the core downtown area. Once police were overwhelmed, some uses of non-lethal weapons, such as chemical irritants, failed to discern law-abiding demonstrators and bystanders from the law-breakers they were intended to disperse. Not only dignitaries from many nations ***1123** worldwide with interest in the WTO's trade conference, but also, regrettably, panic, confusion, and chaos were visiting Seattle.

Some protestors even directly interfered with WTO delegates in an effort to disrupt the progress of the conference. Some violent protestors held, pushed, or tackled WTO delegates to prevent their entry into conference venues. Some WTO delegates were forcibly prevented from leaving conference venues. Some violent protestors stopped one delegate's car and punctured its tires. Reflecting the extreme dangers to delegates, protestors, and the public, at least one WTO delegate drew a gun in response to the protestors' attempts to detain him, requiring immediate police intervention.

Some violent protestors were well-organized, and their actions were coordinated. Some protestors gathered intelligence about police operations during the protest by asking officers questions about law enforcement tactics. Other protestors listened in on squad briefings taking place on city streets. Still others used cellular telephones and "walkie-talkies" to coordinate protestors' activities.[FN13] By one account, Seattle's streets turned into "seeming war zones." *ARC Report* at 4. It is perplexing how our dissenting colleague can rely on the City Council's report, with its acknowledgment of the "war zone" atmosphere in Seattle, and still urge the violence was not pervasive; although the *ARC Report* suggests that violent protestors were less than one percent of the total protestors, this is not a small amount of violence given the activities in which the protestors engaged, and where there were tens of thousands of protestors.

> FN13. On the previous day, a protestor on a bicycle rode ahead of a group of protestors, communicating to the crowd via radio the locations of police officers.

Despite the gravity of these problems, not all protest was violent or disruptive. Much protest activity was ordered and reasonable. Several marches involving primarily peaceful protestors took place in the downtown area on November 30, 1999. These marches, comprised of concerned persons who were not violent and who were not breaking the law, caused the inflow of tens of thousands of persons into downtown Seattle. The largest protest of the day, a march organized by the AFL-

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CIO, was estimated by police to have involved 40,000 persons. Other protest marches involving significant numbers of persons included a march of about 1000 members of the Sierra Club, a march of 500 students from the University of Washington, and a march of 1000 protestors from the Tibetan Rights Association. These marches by non-violent protestors showed the substantial public sentiment opposing the WTO or its activities. Protests such as these are the positive fruits of an open society, and encourage us to scrutinize with care the constitutional issues raised by city and police responses to the breakdown of civic order and security caused by violent protestors seeking to disrupt the WTO conference.[FN14]

> FN14. The dissent's characterization of the decision to enact Order No. 3 as following the realization that the "crowd was simply larger than the police had anticipated" again ignores the violence and riot that threatened the WTO conference. It misapprehends the extent of disorder and insecurity caused by the large crowd: The police "were not going to be able to bring the situation under control without taking some sort of drastic action," and "the only recourse" they had was to "establish the police perimeter" to "provide security for the delegates." *See* Dissent at 1160.

As noted by the Seattle Police Department's *WTO After Action Report,* these largely peaceful demonstrations took place ***1124** amid the chaos and disruption caused by the violent protestors. The report also specified that the combination of heightened security measures required for WTO delegates and the large number of protestors rendered police unable effectively to make individual arrests of those protestors who were breaking the law. The report stated:

> This was a pattern that occurred throughout the conference and presented significant tactical challenges to police commanders. The protestors were establishing a fluid, dynamic method of operation that consisted of rapid deployment and the use of non-criminal protestors to buffer smaller pockets of protestors engaging in significant criminal acts.

WTO After Action Report at 35. One Seattle police captain's report noted that officers "heard and saw numerous incidents of property destruction, burglary, and looting; but we were unable to leave our lines to take enforcement actions."

At about 3:30 p.m. on November 30, 1999, then-Seattle Mayor Paul Schell declared a civil emergency in the City of Seattle, pursuant to Seattle Municipal Code Section 10.02. The Mayor also imposed a general curfew. The governor of the State of Washington then authorized the deployment of, and called out, the National Guard.[FN15]

> FN15. The dissent chastises the City for poor planning driven by political and cost considerations. Dissent at 1161. This condemnation does not control whether Order No. 3 comports with the First Amendment. Our analysis properly focuses on the City's chosen means to restore order once lost to violent protestors bent on preventing the WTO conference from proceeding. *See* discussion *infra* Part III.A.2.

President Clinton arrived at the Westin Hotel in downtown Seattle between 1:30 a.m. and 2:30 a.m. on December 1, 1999. A few hours after the President's arrival, when protest activity had temporarily subsided, Mayor Schell signed "Local Proclamation of Civil Emergency Order Number 3" (Order No. 3). Order No. 3 said, in pertinent part:

> WHEREAS, the Mayor declared a civil emergency exists in the City of Seattle ("the City") in the Proclamation Dated November 30, 1999; and
>
> WHEREAS, after the issuance of the Proclamation and despite the deployment of hundreds of law enforcement officers, the City continued to experience civil disturbances resulting in injury

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to persons and damage to property; and

WHEREAS, the level of city disturbances and danger to persons and property has been highest in those areas in which there are protests in the vicinity of World Trade Organization ("WTO") meetings; and

WHEREAS, the City understands its obligations to permit expressive activity pursuant to reasonable time, place and manner restrictions necessitated by the existing public safety concerns for WTO delegates, dignitaries, citizens, public safety employees and protestors; and

WHEREAS, the Chief of Police and other public safety officials have determined that the safety of WTO delegates, dignitaries, citizens, public safety employees and protestors cannot be preserved without reasonably limiting access to areas used by WTO personnel; and

WHEREAS, it is imminently necessary to use extraordinary measures to protect the public peace, safety and welfare; and

WHEREAS, the civil emergency necessitates the utilization of emergency powers granted to the Mayor pursuant to *1125 Seattle Municipal Code, Chapter 10.02 and [Wash. Rev.Code] Chapter 38.52. Therefore ....

A limited curfew is imposed in the portion of the City within the following boundaries: Starting on the corner of 4th Avenue and Lenora Street, then proceeding south on 4th Avenue to Seneca Street, then east on Seneca Street to the I-5 freeway, then north along the I-5 freeway to Boren Avenue, then north on Boren Avenue to Pine Street, then west on Pine Street to 6th Avenue, then north on 6th Avenue to Lenora Street, then west on Lenora Street to, and concluding at 4th Avenue and Lenora, as shown on the attached map.

The effect of Order No. 3 was that all persons, subject to limited exceptions, were prohibited from entering the portion of downtown Seattle described in the order. The exceptions to the prohibition on entering the restricted zone were granted for: (1) delegates and personnel authorized by the WTO to participate in official WTO functions; (2) employees and owners of businesses within the restricted area and other personnel necessary to the operation of those businesses; and (3) emergency and public safety personnel. [FN16] Violations of Order No. 3 were punishable by a fine of not more than $500 and/or imprisonment of not more than 180 days. At all times, the Washington State Convention & Trade Center and the Paramount Theater were within the restricted zone, as well as the major hotels where WTO delegates were staying (i.e., the Four Seasons Hotel, Cavanaughs, and the Sheraton Hotel). The restricted zone skirted these venues, and in substance provided a protective perimeter. [FN17]

FN16. In an amendment to Order No. 3 issued later that day, additional exemptions were granted for city staff and credentialed members of the press.

FN17. We attach as Appendix A a diagram of the boundaries of the restricted zone that was part of the record in this case.

In the early morning hours of December 1, 1999, Seattle Assistant Chief of Police Harv Ferguson issued an "Operations Order" to implement Order No. 3 and the restricted zone. The Operations Order told officers that "[v]ehicles and/or pedestrians ... are authorized access inside the [restricted zone] if they have a reasonable purpose for entering the perimeter. A reasonable purpose includes work, shopping at a specific location within the [restricted zone], or other like type reasonable activity." Thus, as it was interpreted, Order No. 3 excluded all persons except delegates and personnel authorized by the WTO for its official functions, employees and owners of businesses within the restricted area, their customers, other personnel necessary to the operation of those businesses, and emergency and public safety personnel. Initially, Order No. 3 had not explicitly permitted shoppers to enter, but it had

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allowed business owners and persons necessary to run their businesses to enter, which implicitly supported the interpretation of the Operations Order.

At a press conference on the morning of December 1, 1999, Assistant Seattle Police Chief Edward Joiner[FN18] explained the City's adoption of Order No. 3:

> FN18. Chief Stamper had delegated to Assistant Chief Joiner the task of planning the Seattle Police Department's response to the WTO conference.

> We're going to adopt a policy that's pretty much in line with what's done in other cities around the world when they have an event of this magnitude, and that is, to take the core area where the [WTO] conference is occurring ... and prohibit any demonstrations within that core area for the remainder of the week.

***1126** Seattle Police Captain James Pugel testified in deposition [FN19] that Assistant Chief Joiner had instructed him, in connection with the implementation of Order No. 3 and the Operations Order, "[n]o large protests. No people can come marching through [the restricted zone]. There will be no marches."

> FN19. The Menotti plaintiffs submitted Captain Pugel's deposition testimony in support of their motion for partial summary judgment and in opposition to the City's motion for partial summary judg- ment.

Chief Stamper testified in deposition[FN20] that the effect of the Operations Order was to exclude protestors from entering the restricted zone:

> FN20. The Menotti plaintiffs submitted Chief Stamper's deposition testimony in support of their motion for partial summary judgment and in opposition to the City's motion for partial summary judg- ment.

> From the officer's point of view, we have made it clear that we could not permit large groups to gather to block intersections and so forth, and from their point of view what they're thinking and what they believe is their direction is to make sure that nobody comes into that, into the so-called no-protest zone unless he or she is there to shop or has legitimate business purpose in the downtown area, so from their point of view it effectively meant anybody coming in to protest.

Order No. 3 and the accompanying Operations Order decreased violence and protest within the restricted zone. But it did not stop either violence or protest within the restricted zone. Inside the restricted zone, protestors gathered in open defiance of Order No. 3, and police made about 300 arrests. [FN21]

> FN21. Even outside the restricted zone, there were some problems of violence incidental to protest. Some violent protestors caused property damage, threw debris, blocked the street, and trapped people in their cars. Some protestors jumped onto an officer's patrol car and shook it by its light bar, while others laid in front of the car and prevented the officer from escaping. Some protestors took over the fuel pumps at a gas station and attempted to fill small bottles with gasoline.

President Clinton addressed the WTO conference on December 1, 1999, and departed the next morning. There was no violence immediately incident to his presentation. On December 2, 1999, Mayor Schell amended Order No. 3 by reducing the size of the restricted zone. As modified, the restricted zone was reduced to exclude the Westin Hotel because President Clinton had since departed.[FN22] Police logs indicate that protest violence decreased on December 2, 1999, and through the conclusion of the WTO conference on December 3, 1999. Order No. 3 expired at 7:00 a.m. on the morning of December 4, 1999.

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> FN22. We attach as Appendix B a diagram of the revised boundaries of the restricted zone that was part of the record in this case.

In opposition to the City's motion for summary judgment, plaintiff-appellant Kenneth Hankin submitted a declaration stating that he was arrested for violating Order No. 3 by trespassing inside the restricted zone with the purpose of protest. Hankin testified via declaration that, on the morning of December 1, 1999, he and others participated in a group protest that began in Denny Park, north of downtown Seattle and outside the restricted zone. As their group approached Westlake Park, a downtown shopping plaza and public square within the restricted zone, Seattle police surrounded them. The group responded by sitting on the ground. Hankin testified that, without warning, Seattle police arrested the group of protestors, and then turned to another portion of Westlake Park, where Hankin was standing. Hankin and others beside him were arrested.

***1127** Victor Menotti submitted his deposition testimony in support of his motion for partial summary judgment.[FN23] Menotti testified that he was a credentialed participant in the WTO conference and that, on December 1, 1999, he was standing on a sidewalk talking with a small group about a WTO conference meeting he had just attended. Without warning, police charged the group surrounding Menotti. Menotti ran, believing that police were trying to disperse the crowd, but stopped when he realized he was being pursued. Menotti was arrested for pedestrian interference and obstructing an officer; however, the charges against Menotti were dismissed before a probable cause hearing was held.

> FN23. We consider these depositions because they were part of the record when the district court granted summary judgment to the defendants on the Menotti plaintiffs' claims. Fed.R.Civ.P. 56(c) (stating that summary judgment should be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law").

Thomas Sellman also introduced his deposition testimony and that of Seattle Police Detective Sharon Stevens in support of his motion for partial summary judgment. Sellman testified that he was within the restricted zone on December 1, 1999, distributing leaflets containing a cartoon criticizing the WTO. Stevens testified that she and another officer witnessed Sellman distributing the flyers and asked Sellman what business he had in the zone. When Stevens ascertained that Sellman did not come within one of the exceptions to Order No. 3, Stevens ordered him to leave the restricted zone. When Sellman attempted to hand out another flyer, Stevens placed him under arrest for failing to disperse. Sellman spent two nights in jail and was released thereafter.

Todd Stedl presented deposition testimony in support of his motion for partial summary judgment. Stedl testified that, after hearing about Order No. 3 on December 1, 1999, he decided to enter the restricted zone and distribute leaflets containing the text of the First Amendment. While standing just outside the zone, Stedl tried to hand a leaflet to an officer, who reacted by grabbing the fliers and searching Stedl's bag. When Stedl complained that the officer could not seize his fliers or search his bag without a warrant, the officer told him to contact City Hall and to leave the restricted zone. Stedl asked for the officer's badge number, and the officer told Stedl to leave. The officer later approached Stedl again and told him to leave the area. Stedl told the officer that he thought he already was outside the zone. The officer replied that Stedl should get going. When Stedl asked how far, the officer told him fifteen blocks. Stedl testified that he was too intimidated to return to the zone to pass out

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more leaflets, and felt that if he had returned, he would be arrested. The officer was never identified.

Doug Skove introduced his deposition testimony and video evidence in support of his motion for partial summary judgment. Skove testified that, on December 2, 1999, he decided to go to Seattle after hearing about the restricted zone. He carried a sign that read on one side, "Is the WTO in control of Seattle too?" and on the other side "I have the right to protest non-violently." The video evidence shows that a police officer (later identified as Seattle Police Officer Ronald Smith) saw Skove carrying the sign as Skove walked into a crosswalk. Smith said to Skove, "Hey, what did the Mayor tell you? Other side of Fourth, other side of Seneca." [FN24] As ***1128** Skove finished crossing the street, Smith approached, grabbed Skove's sign and pulled it away from his hands. Skove turned to his right and continued walking across the street and away from Smith, while Smith shouted "Come here, hey pal!" Skove continued walking away. Smith said, "That's alright, that's okay," as Smith walked away, folded Skove's sign, and threw it away. After Skove had another encounter with police where a second sign was seized, Skove was warned he would be arrested if he continued protesting. Skove left the restricted zone.

FN24. This was an instruction from Smith to Skove to exit the confines of the restricted zone.

III

The Hankin and Menotti plaintiffs contend that Order No. 3 was an unconstitutional time, place, and manner restriction on its face, and the Menotti plaintiffs also contend that Order No. 3 unconstitutionally conferred unfettered police discretion for its implementation. The Hankin plaintiffs also contend that Order No. 3 was unconstitutional as applied to them because the City had adopted a policy of arresting only anti-WTO protestors within the restricted zone.[FN25]

FN25. "A facial challenge alleges that any enforcement of the ordinance creates an unacceptable risk of the suppression of ideas. An as-applied challenge alleges that the restriction on speech is unconstitutional as applied to the litigant's particular speech activity, even though the law may be capable of valid application to others." *Kuba v. 1-A Agric. Ass'n,* 387 F.3d 850, 856 (9th Cir.2004) (internal quotation marks and citation omitted).

A

[1] We first address the facial constitutionality of Order No. 3. We have held that "[a]n ordinance is facially unconstitutional if (1) it is unconstitutional in every conceivable application because it is vague or impermissibly restricts a protected activity or (2) it seeks to prohibit such a broad range of protected conduct that it is unconstitutionally overbroad." *Vlasak v. Superior Court,* 329 F.3d 683, 688 (9th Cir.2003) (internal quotation marks and citation omitted). The Supreme Court has held that "particularly where conduct and not merely speech is involved, we believe that the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." *Broadrick v. Oklahoma,* 413 U.S. 601, 615, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973). The Hankin plaintiffs contend that Order No. 3 was facially unconstitutional because it was overbroad. In evaluating this overbreadth challenge, we determine whether Order No. 3's restrictions on speech were content neutral, were narrowly tailored to serve a significant governmental interest, and left open ample alternative means of communication. *Vlasak,* 329 F.3d at 689; *see also Frisby v. Schultz,* 487 U.S. 474, 481, 108 S.Ct. 2495, 101 L.Ed.2d 420 (1988).

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[2][3][4] We address first whether Order No. 3 was

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content neutral. "The principal inquiry in determining content neutrality, in speech cases generally and in time, place, or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys." *Ward v. Rock Against Racism,* 491 U.S. 781, 791, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989). The reason for this rule is to protect and preserve free and unfettered speech for the ultimate good of society. We have expressed this basic reason in varied ways, but it is unassailable that the "fundamental principle" behind content analysis is that "government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial ***1129** views." *City of Renton v. Playtime Theatres, Inc.,* 475 U.S. 41, 48-49, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986) (internal quotation marks and citation omitted). In assessing whether a restraint on speech is content neutral, we do not make a searching inquiry of hidden motive; rather, we look at the literal command of the restraint. Stated another way, we agree with Justice Kennedy's observation in *City of Los Angeles v. Alameda Books, Inc.,* that "whether a statute is content neutral or content based is something that can be determined on the face of it; if the statute describes speech by content then it is content based." 535 U.S. 425, 448, 122 S.Ct. 1728, 152 L.Ed.2d 670 (2002) (Kennedy, J., concurring). Our circuit has adopted this view. *Ctr. for Fair Pub. Policy v. Maricopa County,* 336 F.3d 1153, 1164 (9th Cir.2003).

[5] Applying these principles here, we see Order No. 3 as content neutral on its face. Even when we credit plaintiffs' evidence and give plaintiffs all reasonable inferences, the text of Order No. 3 is not in dispute, and it does not favor one content over another. The purpose of enacting Order No. 3 had everything to do with the need to restore and maintain civic order, and nothing to do with the content of Appellants' message. *See United States v. Griefen,* 200 F.3d 1256, 1260 (9th Cir.2000) ("[A] restriction on expressive activity is content-neutral if it is justified, i.e., based on a non-pretextual reason divorced from the content of the message attempted to be conveyed."). As a matter of law, Order No. 3 was not a regulation of speech content, but rather was "a regulation of the places where some speech may occur." *See Hill v. Colorado,* 530 U.S. 703, 719, 120 S.Ct. 2480, 147 L.Ed.2d 597 (2000). Under Order No. 3, persons could not protest-in support of or against-*any* topic within the restricted zone. *Id.* (holding that restrictions are not content based where they "apply equally to all demonstrators, regardless of viewpoint, and the statutory language makes no reference to the content of the speech") (internal quotation marks and citation omitted). The restricted zone established by Order No. 3 applied equally to persons of all viewpoints. That Order No. 3 predominantly affected protestors with anti-WTO views did not render it content based. *See Madsen v. Women's Health Ctr., Inc.,* 512 U.S. 753, 763, 114 S.Ct. 2516, 129 L.Ed.2d 593 (1994) ("[T]he fact that the injunction covered people with a particular viewpoint does not itself render the injunction content or viewpoint based.").

[6] Further, the City's evidence in testimony of Mayor Schell,[FN26] Police Chief Stamper,[FN27] and Assistant Chief Joiner[FN28] ***1130** was that the City did not implement Order No. 3 because of disagreement with the message of anti-WTO protestors. Instead, the motivating factor in the adoption of Order No. 3, as stated in its text, was the City's observation that "the level of civil disturbances and danger to persons and property ha[d] been highest in those areas in which there [were] protests in the vicinity of [WTO] meetings," and the need to ensure the safety of WTO delegates as well as downtown residents and workers. The plaintiffs did not submit evidence controverting the text of Order No. 3, which is not in dispute, or contradicting the purposes recited by the Mayor and police chief. [FN29]

> FN26. Schell testified in deposition that a "secure zone" was his "primary objective" in enacting Order No. 3, and that the ad-

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vice he received from his staff was that a "secure zone" was necessary in order to assure the safety of downtown residents and WTO delegates.

FN27. Stamper testified in deposition that a paramount goal was maintaining security and avoiding violence. He testified, "I also need to emphasize that we had a crucial intersection blocked completely denying access of emergency vehicles and denying access to the WTO venue itself.... [T]hose were formidable challenges bigger by far than anything, once again, that I had seen in the six years I had been here.... [O]ur concern is the violence could erupt on either side, that a delegate, for example, angered at being denied access could actually resort to violence, in this case, possibly armed violence."

FN28. Joiner testified in deposition that "the only recourse we had was to establish the [restricted zone] where we could provide security for the delegates and so forth." Joiner also testified that "[w]e would not have allowed [peaceful protesters] to stay [within the restricted zone] under the circumstances because we couldn't-we could not be assured that the demonstration would remain peaceful given the experience that we already had."

FN29. Appellants submitted the deposition testimony of Schell and Stamper in an attempt to establish that the City's purpose in adopting Order No. 3 was unlawful, in that the City implemented Order No. 3 with the purpose of eliminating protestors from the downtown area. But this evidence is consistent with the objective of Order No. 3 to eliminate all persons, with limited exceptions, from the downtown area. Even if plaintiffs could establish that the City had an illicit motive in adopting Order No. 3, that would not be dispositive. The Supreme Court has held unequivocally that it "will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive." *United States v. O'Brien,* 391 U.S. 367, 383, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968).

Appellants contend that Order No. 3 was content based because it permitted exemptions for shoppers and downtown workers to enter the restricted zone. We reject this argument because these exemptions did not enable the City to discriminate against ideas it disfavored. *See One World One Family Now v. City and County of Honolulu,* 76 F.3d 1009, 1012 n. 5 (9th Cir.1996) ("Because these exemptions don't enable the city to discriminate against ideas it disfavors, they don't render the ordinance content-based."). The exemptions permitted shoppers and downtown workers to go about their business in the restricted zone and did not enable the City to discriminate against any persons on the basis of their views. Further, there is no evidence that those persons who were permitted to enter the restricted zone were part of the security problem that prompted the adoption of Order No. 3. *See Hill,* 530 U.S. at 723, 120 S.Ct. 2480 ("[A] statute that restricts certain categories of speech only lends itself to invidious use if there is a significant number of communications, raising the same problem that the statute was enacted to solve, that fall outside the statute's scope, while others fall inside.").

We hold that Order No. 3 was content neutral, and proceed to address the other factors necessary for a reasonable time, place, and manner restriction. [FN30]

FN30. We also hold that Order No. 3 was not "viewpoint-based" on its face. Viewpoint discrimination occurs "when the government prohibits speech by particular speakers, thereby suppressing a particular view about a subject." *Giebel v. Sylvester,* 244 F.3d 1182, 1188 (9th Cir.2001) (internal quotation marks and citation omitted). Here, Order No. 3's ban on

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> protests did not prohibit a particular viewpoint, and applied equally to persons who wished to protest about any topic. As in *Hill*, Order No. 3 "applie[d] equally to used car salesmen, animal rights activists, fundraisers, environmentalists, and missionaries." 530 U.S. at 723, 120 S.Ct. 2480 .

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[7] We next assess whether Order No. 3 was narrowly tailored to serve a significant governmental interest. The Supreme Court has held that "[a] statute is narrowly tailored if it targets and eliminates no more than the exact source of the 'evil' it seeks to remedy." *Frisby*, 487 U.S. at 485, 108 S.Ct. 2495. To be narrowly tailored, a statute "need not be the least restrictive means of furthering [the government's] interests, but the restriction ***1131** may not burden substantially more speech than necessary to further the interests." *United States v. Baugh*, 187 F.3d 1037, 1043 (9th Cir.1999). However, "the First Amendment demands that municipalities provide 'tangible evidence' that speech-restrictive regulations are 'necessary' to advance the proffered interest in public safety." *Edwards v. City of Coeur d'Alene*, 262 F.3d 856, 863 (9th Cir.2001). The tailoring of the restraint must of course correspond to the purposes it serves. *Ward*, 491 U.S. at 799, 109 S.Ct. 2746 (holding that the narrowly tailored requirement is satisfied "so long as the [neutral] regulation promotes a substantial government interest that would be achieved less effectively absent the regulation") (quoting *United States v. Albertini*, 472 U.S. 675, 689, 105 S.Ct. 2897, 86 L.Ed.2d 536 (1985)).[FN31]

> FN31. While the City was not required to choose the least restrictive alternative, an assessment of alternatives can still bear on the reasonableness of the tailoring of Order No. 3 and whether it was "narrowly tailored" as required. We have said that "if there are numerous and obvious less-burdensome alternatives to the restriction on [protected] speech, that is certainly a relevant consideration in determining whether the 'fit' between ends and means is reasonable." *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 417 n. 13, 113 S.Ct. 1505, 123 L.Ed.2d 99 (1993) ; *Edwards*, 262 F.3d at 865.

[8] Applying the rule of *Ward* and its standard here, we return to the issue of whether Order No. 3 was narrowly tailored to serve a significant government interest. No one could seriously dispute that the government has a significant interest in maintaining public order; indeed this is a core duty that the government owes its citizens.[FN32] The Supreme Court has declared that "[i]t is a traditional exercise of the States' police powers to protect the health and safety of their citizens." *Hill*, 530 U.S. at 715, 120 S.Ct. 2480 (internal quotation marks and citation omitted); *see also Edwards*, 262 F.3d at 863; *One World One Family Now*, 76 F.3d at 1013. In the face of violent riot, the City had a duty to restore order and to ensure the safety of WTO delegates and the residents of Seattle.[FN33] The City also had an interest in seeing that the WTO delegates had the ***1132** opportunity to conduct their business at the chosen venue for the conference; a city that failed to achieve this interest would not soon have the chance to host another important international meeting.[FN34]

> FN32. The district court was not required to accept the conclusion of Appellants' declarant that the City's only interest was to "transport the delegates to the conference." That was not an accurate summary of the record before the district court. Nor in our analysis were we required to pretend as if the movement of delegates was the City's only interest in the face of riot. The record before the district court showed widespread violence and the breakdown of civic order. On the undisputed facts before the district court, the City's interest in main-

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taining peace and order is fairly presented. The dissent's attempt to reduce the City's interest to transporting delegates is wrong. Our analysis properly focuses on the City's interest when it enacted Order No. 3: restoring order and providing security to the core downtown area to protect the President, visiting world dignitaries, and the general public, and to allow the WTO conference to proceed.

FN33. The dissent argues that our account of the breakdown in public order "does not paint a clear picture of the situation confronting City officials" because the protestors had left the core downtown area and the violence had subsided when Order No. 3 was implemented. Dissent at 1160. But there is no logical connection between an assessment of the violence that occurred when WTO proceedings were ongoing and a temporary cessation of violence after WTO proceedings had concluded for the day. Even a fierce battle may experience a respite of calm, and the calm of an evening can precede a storm in the morning. The City was well aware that some protestors wanted to shut down the WTO conference by violent means and that the WTO conference was to resume the following day, and so there was a strong likelihood that more "organized violence of a serious nature [was] about to occur." *See Collins v. Jordan,* 110 F.3d at 1363, 1373 (1997).

In any event, the dissent's claim, based on a single "sweep of the streets" at 8:00 p.m., that the streets of Seattle were "calm and under control" during the evening of November 30, Dissent at 1160, ignores the undisputed evidence. By 9:00 p.m., officers were in danger of being assaulted and injured by some aggressive protestors who held the advantage of Capitol Hill's higher ground. Ongoing skirmishes continued until 3:30 a.m., with officers fending off "rocks, bottles, golf balls, and ... incendiary devices." *WTO After Action Report* at 42. Moreover, violent protestors had established a pattern of converging, protesting, and then dispersing only to reassemble later at another location. *Id.* at 35. Given the violent protestors' aim to shut down the WTO conference and their pattern of conduct, a realistic depiction of events in the record is that the violence had "temporarily subsided" during the evening of November 30, not that the violence had "ended," as the dissent maintains. Even crediting Appellants' evidence and giving all reasonable inferences to the Appellants, as we must under the summary judgment standard, the record does not permit a rational conclusion that the City should have thought the violence "ended."

FN34. This interest is embraced within the City's asserted interest in restoring order and maintaining security, which are necessary for public safety, effective commerce, and the vitality of the City.

The Appellants nonetheless contend that the safety net cast by the City was too broad, and that it restricted protest unduly in too large of an area, and thus wasn't narrowly tailored.[FN35] We turn to these contentions.

FN35. The Menotti plaintiffs and the Hankin plaintiffs argue that Order No. 3 was not narrowly tailored because the restricted zone was too large, and because the restricted zone banned protected forms of speech. In addition, the Hankin plaintiffs argue that the City should have "expend[ed] the effort necessary to ensure clear passage for the delegates to and from the [WTO conference] venues without infringing unnecessarily on protestors'

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rights."

Here, the City had a tough problem. Violent protestors were damaging the City and jeopardizing the progress of the WTO conference. Yet violent protestors were breaking the law amidst throngs of lawful protestors. In this setting, per evidence that is not materially in dispute, large numbers of non-violent protestors prevented police from curbing effectively the activities of the violent protestors. [FN36] Police reports said that "[t]he protestors were establishing a fluid, dynamic method of operation that consisted of rapid deployment and the use of non-criminal protestors to buffer smaller pockets of protestors engaging in significant criminal acts." *WTO After Action Report* at 35. The violent protestors damaged the City and disrupted the WTO conference, but they were able to elude capture due to the tens of thousands of non-violent protestors in the downtown area. The implementation of Order No. 3 was necessary to permit police to restore and then to maintain order and safety in downtown Seattle, for WTO conference delegates and the public, and to allow officers to execute their law enforcement duties by arresting those breaking the law.[FN37]

FN36. We are concerned here with the *effect* that the large number of peaceful protestors had on the ability of police to quell the significant criminal acts of the violent protestors. The impeding or "buffer" effect of peaceful protestors is undisputed on the record.

FN37. The Hankin plaintiffs contend that "[t]here was no attempt to preserve lawful protest and arrest only those who broke the law, just an attempt to ban all protest." But the record does not support that argument. The restricted zone created by Order No. 3 was implemented only after a full day of protests on November 30, 1999. Before the implementation of Order No. 3, protestors had been allowed in the downtown area, resulting in the City's police force being overwhelmed, as well as significant damage and disruption to the downtown area. If the Hankin plaintiffs contend that there was no attempt to preserve lawful protest on December 1, 1999, then that too is belied by the record. Protestors were allowed access to streets immediately adjacent to the delegates' hotels and conference sites. There was not a total bar to protest, and the scope of the restrictions must be tested under the legal standards identified above for time, place, and manner restrictions on speech.

***1133** Citing the Supreme Court's decision in *Madsen,* as well as our decisions in *Baugh* and *Bay Area Peace Navy v. United States,* 914 F.2d 1224 (9th Cir.1990), Appellants contend that there are cases invalidating restricted protest zones that were smaller in scope than the restricted zone implemented by Order No. 3. This argument misapprehends the case law and ignores the factual circumstances of this case. None of these cases establish a *per se* rule on the boundaries that a city may draw in creating a restricted zone during protest activities. Further, none of these cases dealt with the factual circumstances presented here: a small but dedicated group of violent protestors who inflicted disruption and destruction on city streets and threatened the safety of world leaders, while obscured and sheltered by about 50,000 peaceful protestors, all within a concentrated portion of a metropolitan downtown area. We decline Appellants' invitation to interpret the above cases as defining conclusively the appropriate scope of "narrow tailoring" in the context of establishing a buffer zone on protest activity.[FN38]

FN38. The Menotti plaintiffs also argue that Order No. 3 did not further a significant governmental interest because it permitted entry into the restricted zone of persons not engaged in protest. We disagree. There is no evidence that those permitted in the restricted zone were part of the problem addressed by Order No. 3. Persons

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> who lived, worked, or had other business in the restricted zone could go about their business without impeding the City's ability to maintain a secure environment in the restricted zone. Though Order No. 3 contained exemptions that allowed certain persons to enter the zone, it still furthered a significant governmental interest by excluding from the zone the protest activity that was a security threat to the downtown area.

Appellants' contention that the large size of the restricted zone rendered it constitutionally impermissible ignores significant considerations that confronted City officials. As seen from the diagram of the restricted zone, the various hotels and meeting venues of the WTO conference were spread out across several blocks of downtown Seattle. The size of the restricted zone cannot sensibly be evaluated without considering the size of the area in which delegates were housed and had to move freely in order to do the work of the WTO conference. To achieve the goal of providing secure protection for WTO delegates and ensuring safe transit for delegates between venues and hotels, the City crafted the restricted zone as being bounded by the outermost venues of the conference and the hotels where delegates were staying.[FN39] As the district court saw it, "the ***1134** [restricted] zone covered only enough territory for the WTO delegates and the President to move safely from their hotels to the [WTO] convention and lasted only during the conference." [FN40] We conclude the district court's analysis of this issue was sound and in accord with law.

> FN39. Appellants make much of a declaration submitted by a former law enforcement official, who contended that Seattle police should have used pedestrian tunnels and dedicated roadways to facilitate the movement of WTO delegates. Yet, these contentions do not address the fact that the tunnels in question did not connect all of the hotels and venues being used by WTO delegates. The suggestions in the declaration provide no practical way to stop the behavior of violent protestors in the downtown Seattle area on November 30, 1999. Moreover, Appellants' alternatives were not a feasible means for the City to balance its interest in hosting the WTO conference with reliable safety for delegates, and the demonstrators' interest in expressive activity. *See Kuba,* 387 F.3d at 862 n. 12 (recognizing that suggested alternatives that are "far less restrictive and more precise means of regulating the time, place, and manner of speech" is just the first step in a "narrow tailoring" analysis, and that a court must also consider "whether the alternatives both are feasible and allow substantially more speech"). Even crediting Appellants' declarations and giving all reasonable inferences to Appellants, we cannot say that the alternatives were a feasible means to respond to the prevalent violence that gravely threatened the security of the WTO conference and the peace and order of the City.
>
> FN40. That Order No. 3 protected a " *particular method* " of getting WTO delegates to the conference does not mean, as the dissent argues, that this is the only "interest Order No. 3 actually served." *See* Dissent at 1168 n. 7. As we have explained, Order No. 3 brought order and security to the core downtown area, providing safety for delegates and allowing the WTO conference to proceed as scheduled. *See* discussion *supra* at 1131-32.

We also reject Appellants' contention that the size of the restricted zone enforced by Order No. 3 was an overreaction that needlessly restricted the rights of peaceful protestors. In the context of a massive demonstration with tens of thousands of participants, once a pattern of chaotic violence had been

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established, it was unrealistic to expect police to be able to distinguish, minute by minute, those protestors with benign intentions and those with violent intentions. In this regard, the Supreme Court's decision in *Hill v. Colorado,* 530 U.S. 703, 120 S.Ct. 2480, 147 L.Ed.2d 597 (2000), has particular application. In *Hill,* the Court upheld a Colorado law that made it unlawful for any person within 100 feet of an abortion clinic knowingly to approach within eight feet of another person without that person's consent to provide materials or counseling. The Court reasoned:

> [T]he [restricted zone's] prophylactic aspect is justified by the great difficulty of protecting, say, a pregnant woman from physical harassment with legal rules that focus exclusively on the individual impact of each instance of behavior, demanding in each case an accurate characterization (as harassing or not harassing) of each individual movement within the 8-foot boundary. Such individualized characterization of each individual movement is often difficult to make accurately. A bright-line prophylactic rule may be the best way to provide protection, and, at the same time, by offering clear guidance and avoiding subjectivity, to protect speech itself.

Id. at 729, 120 S.Ct. 2480.

Here, the size of the restricted zone was justified by the difficulty of protecting world leaders in an environment in which a small group of violent protestors were determined to cause chaos and to disrupt the conference proceedings midst tens of thousands of non-violent protestors.[FN41] In different***1135** circumstances, it might be possible for law enforcement authorities, on an individualized basis, to distinguish between peaceful protestors and those with violent intentions. But in these circumstances, after the broad antagonism to the WTO had ripened into pervasive illegal and violent disruptive actions, it would not have been practical to require police, on a continuing basis, to make an accurate determination of each protestor as violent or not violent. Appellants also argue that police should have had more extensive staffing on the street so that they could permit protestors to enter anywhere and simply arrest and remove those who violated the law.[FN42] But we should hesitate to say that the law requires such a solution in an emergency situation like that here where law-breaking and law-abiding protestors were often indistinguishable, and where those abiding the law might have interfered indirectly with enforcement against violent protestors.

> FN41. The dissent is wrong to characterize the City's means as a "poor fit" with the City's interest based on the occurrence of violence outside the restricted zone. It is not required for our legal analysis that the City's measure to restore order where it was most needed had to maintain peace and security perfectly in all areas outside the restricted zone. The dissent's argument that Order No. 3 was not narrowly tailored because it "did not protect anyone outside of the perimeter," Dissent at 1171, ignores or minimizes the core interest addressed by Order No. 3: protecting the President and foreign dignitaries who came to Seattle to conduct the business of the WTO. The City needed to restore and maintain order in the core downtown area to achieve this interest, and Order No. 3 "targets and eliminates no more than the exact source of the 'evil' it seeks to remedy." *Frisby,* 487 U.S. at 485, 108 S.Ct. 2495. We decline the dissent's suggestion that a city's means to achieve its significant interest of restoring and maintaining security can never be narrowly tailored absent a policy completely efficacious in eliminating violence. *See, e.g., Ward,* 491 U.S. at 800, 109 S.Ct. 2746 ("The validity of time, place, or manner regulations does not turn on a judge's agreement with the responsible decisionmaker concerning the most appropriate method for promoting significant government interests *or the degree to which those*

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interests should be promoted. ") (emphasis added); *see also City Council v. Taxpayers for Vincent,* 466 U.S. 789, 807-10, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984) (upholding a ban on posting signs on public streets to achieve the significant public interest of "avoiding visual clutter" even though posted signs only "add somewhat" to the city's visual clutter).

> Similarly, the dissent's argument that the restricted zone's size "allowed" violence to continue in areas outside the zone, Dissent at 1171, is unsupported by and contrary to the record, which places some officers and notes hundreds of arrests outside the zone. As the conference moved toward completion, and the situation calmed, police were able "to escort and monitor non-permitted demonstrations outside the perimeter in a manner consistent with permitted demonstrations." *WTO After Action Report* at 45. Moreover, the district court correctly found that the City reasonably concluded in Order No. 3 that "the level of city disturbances and danger to persons and property [was] highest in those areas in which there are protests in the vicinity of World Trade Organization ('WTO') meetings." Contrary to the dissent's assertion, the perimeter did more than protect WTO delegates; Order No. 3 brought safety and security to the downtown area, protecting businesses, their employees, and the City's citizens as well.

FN42. The Menotti plaintiffs acknowledged that "the primary response of a municipality to crime should be to arrest the criminals," but faulted the City for "fail[ing] to put enough officers on the streets on November 30th to accomplish this task." The Hankin plaintiffs also criticized the City's police department plan for law enforcement, arguing that "common police tactics and planning would have provided a much more secure downtown without sacrificing speech. For example, it is common police practice to establish lines of defense around certain buildings before protestors arrive, [and] to have squads specifically intended to pursue violent individuals within crowds."

Appellants contend that *Collins v. Jordan,* 110 F.3d 1363 (9th Cir.1996), controls the outcome of this case. We disagree. In *Collins,* the Mayor of San Francisco responded to sporadic violent protests by directing police officers to "cause the dispersal and prevent the continuation of any gatherings of people anywhere in the City and County of San Francisco whenever the peace officer on the scene has reason to believe that the gathering endangers or is likely to endanger persons or property." *Id.* at 1367. We affirmed the district court's denial of qualified immunity to the officers, because "it was clear at that time, as it is today, that the occurrence of limited violence and disorder on one day is not a justification for banning all demonstrations, peaceful and otherwise, on the immediately following day (or for an indefinite period thereafter)." [FN43] *Id.* at 1372. ***1136** However, we said in *Collins* that our holding was narrow:

> FN43. Appellants contend that, since there was a decrease in violence in the hours immediately prior to the imposition of Order No. 3, this statement means that here the City acted unlawfully in adopting Order No. 3. We disagree.
>
> > In *Collins,* we described the "limited violence and disorder" that had taken place as involving "a few injuries to people, none of them extensive or life-threatening. The principal incidents involved property damage and appear to have been confined to an area of about four blocks.... [M]ost of the city was free

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> from any form of unlawful conduct." 110 F.3d at 1372. Here, the violence that had taken place was substantially more severe, involving assaults on police and WTO delegates, fires, medical emergencies, evacuation of retail stores, and a general loss of civic order. Moreover, *Collins* invalidated an order that banned *all* demonstrations throughout the *whole* county. In Seattle, however, protestors could still demonstrate in all City areas outside the restricted zone.
>
> *Collins* does not hold that, when a city is confronted with violent, dangerous protests of the type in this case, it must wait for further violence to occur before taking measures to restore civic order. Despite the dissent's characterization of *Collins* as involving "a similar emergency order adopted under analogous circumstances," Dissent at 1169-70, we face a factually and legally distinguishable case, and the weight the dissent places on *Collins* again shows the dissent's minimization of the crisis in Seattle. *See also supra* note 34 (recognizing that, on the undisputed facts, the City had reason to believe and was entitled to believe that the violence attendant to the WTO conference had not ended prior to Order No. 3's enactment, but had just temporarily subsided and would resume contemporaneous with WTO proceedings).

We need not address the question of whether at some point-for example if there is widespread continuing violence that appears to be beyond the ability of the police to control-a time-limited ban on all demonstrations might be lawful. Similarly, we need not decide whether, and under what circumstances, specific, reliable information that organized violence of a serious nature is about to occur might justify a determination that a clear and present danger exists warranting the banning of a particular demonstration. *Id.* at 1373.

The scope of the violence that plagued Seattle on November 30, 1999, and the clear and present risks to world leaders attending the WTO conference, render *Collins* inapposite. In *Collins,* the violence that San Francisco faced before it restricted protest was much less severe than Seattle faced in this case. Further, San Francisco restricted speech throughout the whole county, [FN44] while Seattle merely restricted access within a well-defined security zone to facilitate a public event.[FN45]

> FN44. San Francisco County has a land area of 47 square miles. United States Census Bureau, *California Quick Facts, San Francisco County* (2000), *available at* ht- tp://quickfacts.census.gov/qfd/states/06/06075.html (last revised Feb. 1, 2005).
>
> FN45. The dissent argues that we have allowed the constitutional framework "to be shaped" by our "characterization of the level of violence." Dissent at 1169 n. 12. The dissent misunderstands our application of First Amendment doctrine, which assesses the means the City used in light of the ends the City needed to achieve. We have applied the correct legal framework established by the Supreme Court. *See, e.g., Ward,* 491 U.S. at 799, 109 S.Ct. 2746. Under this precedent, understanding the City's interest is essential to assessing whether Order No. 3 was narrowly tailored to achieve that interest. *See, e.g., id.* at 796-801, 109 S.Ct. 2746. *Collins* also recognized that a heightened city interest to end and prevent violence would require a different analysis:
>
> > Today, we decide only that the violence and disorder that occurred in San Francisco on April 30 falls far short of the

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> type of occurrence that could have led any reasonable official to believe that it would be constitutional to impose a city-wide ban on all demonstrations, and that the law to that effect was clearly established.
>
> 110 F.3d at 1373. In our view, *Collins* does not dictate a conclusion that Order No. 3 is facially unconstitutional because *Collins* addressed a significantly broader restriction on speech enacted in response to a significantly less dire situation.

***1137** Mass demonstrations involving tens of thousands of participants are an important form of political protest and have a great pedigree. Consider Martin Luther King, Jr.'s march on Washington, at which he delivered the "I Have a Dream" speech to a crowd of over 250,000 on the Washington Mall. When a crowd is generally peaceful, large protests do not necessarily create risks to public safety and security, even though the crowd must be managed by a city. But once multiple instances of violence erupt, with a breakdown in social order, a city must act vigorously, and more extensively, to restore order for all of its residents and visitors. Adding large numbers of police on the street might be the solution in some cases, but in other cases could lead to more intense violence. In light of the City's significant governmental interest in restoring and maintaining civic order to the core downtown area, Order No. 3 and the restricted zone it implemented were narrowly tailored. [FN46]

> FN46. The dissent views *Grossman v. City of Portland,* 33 F.3d 1200 (9th Cir.1994), as presenting a "similar problem." Dissent at 1170-71. The dissent's analogy to *Grossman* is off the mark, and reflects the dissent's pervasive misapprehension of the scope of violence and disorder presented in Seattle by the WTO protests. *Grossman* addressed the City of Portland's permitting scheme as applied to a "small, peaceful anti-nuclear protest, involving six to eight people," 33 F.3d at 1201-02, and is factually inapposite to this case which involved tens of thousands of protestors and hundreds of violent and lawbreaking ones.
>
> In addition to being factually inapposite, *Grossman's* reasoning is not persuasive in an analysis of whether Order No. 3 was a reasonable time, place, and manner restriction. Portland's permanent permitting scheme made it unlawful "for any person to conduct or participate in any organized entertainment, demonstration, or public gathering, or to make any address, in a park without ... written permission." *Id.* at 1204. Portland's stated interest was "protecting the safety and convenience of park users," and "maintaining normal quiet in the area adjacent to or near the park." *Id.* at 1205-06 & n. 11. We held this scheme facially invalid in part because the distinction between groups displaying messages and groups not displaying messages was "absolutely empty in terms of the ordinance's stated goals." *Id.* at 1206-07. But *Grossman* did not hold or suggest that such a distinction is necessarily empty in all cases. Here, the record supports the City's distinction: The violence and disorder visiting downtown Seattle during the four days of the WTO conference was incident to the presence of protestors, not emergency personnel, business employees, or shoppers. *Grossman* in no way controls, and is not persuasive on, the constitutionality of a city's necessary but temporary response to a breakdown of civic order in an emergency setting. *Grossman* did not involve such a breakdown in order and is of no help in assessing the City of Seattle's proper response to a crisis that threatened the safety of Seattle's visitors and citizens.

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While it is plausible that Order No. 3 was not the least restrictive means of achieving the City's goal, that is not what Supreme Court precedent requires. There is no question that the governmental interest here (security of the core downtown area) would have been achieved less effectively absent Order No. 3. Our role here is not to inject ourselves into the methods of policing, and we do not do so here. *Albertini,* 472 U.S. at 689, 105 S.Ct. 2897 (holding that the validity of a regulation "does not turn on a judge's agreement with the responsible decisionmaker concerning the most appropriate method for promoting significant government interests"). We conclude that Order No. 3 was narrowly tailored to achieve a significant governmental interest.[FN47]

> FN47. The dissent incorrectly refers to our assessment of the City's interest as "confused and inconsistent" because we list the following: "protecting the president and foreign dignitaries," "maintaining public order," "providing security to the core downtown area," and "seeing that the WTO delegates had the opportunity to conduct their business." *See* Dissent at 1167 n.6. A rational evaluation of our discussion of the City's interest, however, yields a common thread: restoring and maintaining order to the core downtown area so that the WTO conference could proceed safely and securely.
>
> Again, it is incorrect to urge that a city's means of restoring order is not narrowly tailored because the city has not fashioned a remedy aimed at completely eliminating disorder across the entire city. *See supra* note 42. For Order No. 3 to be narrowly tailored, Supreme Court precedent requires only that it target and eliminate "no more [as opposed to no less] than the exact source of the 'evil' it seeks to remedy." *Frisby,* 487 U.S. at 485, 108 S.Ct. 2495. The City was entitled to seek a remedy in its core area where WTO delegates resided and worked.

***1138 3**

[9][10][11] We must also assess whether Order No. 3 left ample alternative channels of communication. We have observed that "[t]he Supreme Court generally will not strike down a governmental action for failure to leave open ample alternative channels of communication unless the government enactment will foreclose an entire medium of public expression across the landscape of a particular community or setting." *Ctr. for Fair Pub. Policy,* 336 F.3d at 1170 (quoting *Colacurcio v. City of Kent,* 163 F.3d 545, 555 (9th Cir.1998)). A time, place, and manner restriction does not violate the First Amendment "simply because there is some imaginable alternative that might be less burdensome on speech." *Albertini,* 472 U.S. at 689, 105 S.Ct. 2897. "Of course, the First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired." *Bay Area Peace Navy,* 914 F.2d at 1229 (quoting *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.,* 452 U.S. 640, 647, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981)). However, an "alternative mode of communication may be constitutionally inadequate if the speaker's 'ability to communicate effectively is threatened.' " *Id.* (quoting *Taxpayers for Vincent,* 466 U.S. at 812, 104 S.Ct. 2118).

[12][13] The application of these principles presents a very difficult question. On the one hand, the restricted zone carved out a portion of the downtown area where protestors could not deliver their message directly to delegates. On the other hand, the protestors were able to demonstrate and express their views immediately outside the restricted zone, including areas directly across the street from the Washington State Convention & Trade Center and the Paramount Theater. The scope of the restriction on protest extended only to the bounds of the restricted zone, and did not apply generally to the City of Seattle. The protestors could reasonably expect their protest to be visible and audible to

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delegates, even if not as proximate as the protestors might have liked.[FN48]

> FN48. It cannot sensibly be argued that protesting outside the restricted zone was not a viable alternative on the mistaken theory that the delegates were not as accessible from that position. The Supreme Court has instructed that the First Amendment does not require that individuals retain the most effective means of communication, only that individuals retain the "ability to communicate effectively." *Taxpayers for Vincent,* 466 U.S. at 812, 104 S.Ct. 2118; *see also Hill,* 530 U.S. at 729, 120 S.Ct. 2480 (upholding a law that prohibited individuals from having a position that maximized accessibility to the target of their speech).

Given the protestors' ability to communicate directly across the street from most WTO venues, and given the violence that Order No. 3 was aimed at preventing, we think the better analysis favors the conclusion that Order No. 3 provided ample alternatives for communication. *See Hill,* 530 U.S. at 729, 120 S.Ct. 2480 ("Signs, pictures, and voice itself can cross an 8-foot gap with ease."). Appellants argue that they were prevented from communicating with WTO delegates at close range, but there is no authority suggesting that protestors have an absolute right to protest at any time and at any place, or in any ***1139** manner of their choosing. *Bl(a)ck Tea Soc'y v. City Of Boston,* 378 F.3d 8, 14 (1st Cir.2004) ("[A]lthough the opportunity to interact directly with the body of delegates by, say, moving among them and distributing literature, would doubtless have facilitated the demonstrators' ability to reach their intended audience, there is no constitutional requirement that demonstrators be granted that sort of particularized access.").[FN49]

> FN49. The district court also held that Order No. 3 provided ample alternative means for communication because protestors "had access to the media and to the public beyond the zone." The First Circuit recently expressed a similar view in resolving a challenge to a demonstration zone established by the City of Boston for the 2004 Democratic National Convention. *Bl(a)ck Tea Soc'y,* 378 F.3d at 14. The First Circuit held that the demonstration zone provided ample alternative channels for communication because "[a]t a high-profile event, such as the [Democratic National] Convention, messages expressed beyond the first-hand sight and sound of the delegates nonetheless have a propensity to reach the delegates through television, radio, the press, the internet, and other outlets." *Id.* Because we hold that there is no constitutional requirement that protestors be allowed to reach their designated audience in the precise manner of their choosing, we do not evaluate this alternative argument.

We do not minimize the value to society of facilitating protest communications. Justice Brandeis in *Whitney v. California* gave us a classic statement on the values of free speech:

> [The Founding Fathers] believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government.

274 U.S. 357, 375, 47 S.Ct. 641, 71 L.Ed. 1095 (1927) (Brandeis, J., concurring), *overruled by Brandenburg v. Ohio,* 395 U.S. 444, 449, 89 S.Ct. 1827, 23 L.Ed.2d 430 (1969). Chief Justice Hughes reinforced these ideas a decade later in *De Jonge v. Oregon:*

> The greater the importance of safeguarding the

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> community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government.

299 U.S. 353, 365, 57 S.Ct. 255, 81 L.Ed. 278 (1937). The Supreme Court over decades has never departed from this commitment to First Amendment values.[FN50]

> FN50. In *Texas v. Johnson,* 491 U.S. 397, 414, 109 S.Ct. 2533, 105 L.Ed.2d 342 (1989), Justice Brennan wrote for the Court, "[i]f there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable. Punishing desecration of the flag dilutes the very freedom that makes this emblem so revered, and worth revering." Justice O'Connor has also remarked that "[t]he hallmark of the protection of free speech is to allow 'free trade in ideas'-even ideas that the overwhelming majority of people might find distasteful or discomforting." *Virginia v. Black,* 538 U.S. 343, 358, 123 S.Ct. 1536, 155 L.Ed.2d 535 (2003).

Perhaps it has not been said with more elegance than in these words of Justice ***1140** Brennan in the landmark decision of *New York Times Co. v. Sullivan*: "[D]ebate on public issues should be uninhibited, robust, and wide-open, and ... it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." 376 U.S. 254, 270, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964).[FN51] However, we do not think that even the most vital First Amendment expressions-and for purposes of our analysis we consider political protest adverse to WTO activities and internationalist philosophy to be political comment at the core of the First Amendment-can be said automatically to overcome the need of a city to maintain order and security for its residents and visitors, in the face of violence. *Burson v. Freeman,* 504 U.S. 191, 197, 112 S.Ct. 1846, 119 L.Ed.2d 5 (1992) ("At the same time, however, expressive activity, even in a quintessential public forum, may interfere with other important activities for which the property is used.... [T]he government may regulate the time, place, and manner of the expressive activity, so long as such restrictions are content neutral, are narrowly tailored to serve a significant governmental interest, and leave open ample alternatives for communication.").

> FN51. Though the singular importance of these First Amendment values could hardly be overstated, it also must be kept in mind that the First Amendment was held to be applicable against the States, and here a local government, through the Fourteenth Amendment's Due Process Clause. *De Jonge,* 299 U.S. at 364, 57 S.Ct. 255; *see also Palko v. Connecticut,* 302 U.S. 319, 325, 58 S.Ct. 149, 82 L.Ed. 288 (1937), (incorporating the First Amendment's protections into the Fourteenth Amendment's Due Process Clause on the view that the First Amendment's protections were "implicit in the concept of ordered liberty"), *overruled on other grounds by Benton v. Maryland,* 395 U.S. 784, 794, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969).

Accordingly, we apply the ample alternatives test with a practical recognition of the dire facts confronting the City in the early morning hours of December 1 during the WTO conference.[FN52] On the evening of the first day of the WTO conference, and shortly before President Clinton was scheduled to arrive, Seattle was tense, its streets were in disar-

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ray from a long day of violent protest, and there was a general disruption of civic order. The "ample alternatives" cannot be taken to mean that *each* protestor has the right to convey his or her message in the manner preferred by that protestor-that would be impossible where, as in this case, protestors numbered in the tens of thousands. The City was required to take action to protect President Clinton and the delegates throughout the three remaining ***1141** days of the conference. If the City had permitted chaos and violence to continue unabated, it would not merely lose its standing as a host city for international conferences, the City might also have sacrificed the safety of the delegates and of its residents. The permissible communications available to protestors under Order No. 3 were substantial, not perfunctory. These available communications, including protesting on the periphery of the restricted zone, were perhaps not ideal for protestors who wanted to present views in the face of delegates, [FN53] but neither did they wholly exclude protestors from the delegates' purview.

> FN52. The dissent challenges our practical recognition of the emergency confronting the City and our pragmatic application of the ample alternatives test as lacking affirmative precedential sanction. *See* Dissent at 1174. Our resolution of this issue is not contrary to established law and reflects the principle that there is no constitutional right to deliver a confrontational message of protest directly to an intended target. *See Hill,* 530 U.S. at 716-18, 120 S.Ct. 2480 ("[W]e have continued to maintain that 'no one has a right to press even "good" ideas on an unwilling recipient.... While the freedom to communicate is substantial, "the right of every person 'to be let alone' must be placed in the scales with the right of others to communicate." ' "); *see also Bl(a)ck Tea Soc'y,* 378 F.3d at 14 ("[A]lthough the opportunity to interact directly with the body of delegates by, say, moving among them and distributing literature, would doubtless have facilitated the demonstrators' ability to reach their intended audience, there is no constitutional requirement that demonstrators be granted that sort of particularized access.").
>
> The dissent's unsupported assertion that *Hill* is inapposite because WTO delegates were not "particularly vulnerable" and faced only "the unpleasantness or inconvenience of a large demonstration," *see* Dissent at 1167 n.6, understates the danger visiting delegates faced from violent protestors determined to derail the WTO conference.
>
> FN53. Some protestors may have preferred the restraints of Order No. 3 as an aid to their own safety, as well as that of delegates. However, for purposes of assessing the constitutionality of Order No. 3, on the dueling summary judgment motions, we may assume that protestors generally disfavored the restraint, and had views similar to those Appellants have asserted.

In the "ample alternatives" context, the Supreme Court has made clear that the First Amendment requires only that the government refrain from denying a "reasonable opportunity" for communication. *City of Renton,* 475 U.S. at 54, 106 S.Ct. 925 ("[T]he First Amendment requires only that Renton refrain from effectively denying respondents a reasonable opportunity to open and operate an adult theater within the city...."). We hold that, because Order No. 3 allowed protestors to demonstrate directly across the street from the Washington State Convention & Trade Center, the Paramount Theater, three out of four major hotels where WTO delegates were staying, and throughout the rest of downtown Seattle, Order No. 3 provided ample alternative channels of communication.[FN54] We recognize that our ***1142** decision takes into account a balance of the competing considerations of expression and order. But we do not think the Constitution requires otherwise.[FN55]

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FN54. The record is void of evidence supporting the dissent's argument that WTO delegates could see and hear protestors *only* within the 25-square block restricted zone. *See* Dissent at 1173. Reason and precedent belie this proposition. *See Hill,* 530 U.S. at 718, 120 S.Ct. 2480 (holding that protestors had ample alternatives to communicate their message even if they could not communicate with their intended audience where they preferred).

The dissent, most likely recognizing the lack of evidence to support its argument, argues that "neither does the record reflect that the delegates *could* see and hear protestors, or that the alternative means of communication available to the protestors were sufficient." Dissent at 1173 n. 16. But contrary to the dissent's assertion, the undisputed facts in the record show that per the terms of Order No. 3 protestors could communicate their views directly outside most of the hotels where delegates were staying. *See* apps. A & B (showing that Order No. 3's boundary bordered delegates' hotels); *WTO After Action Report* at 46 (recognizing that protestors demonstrated at the front door of the Westin Hotel). The ability to so communicate is shown by appendices A and B. It is not disputed that major venues for delegates, as identified on the appendices, included the Four Seasons Olympic, Cavanaughs, the Sheraton, and the Westin hotels. Of these, the Four Seasons Olympic, Cavanaughs, and the Westin were located on the border of the restricted zone. Thus, the appendices show without inference that Order No. 3 did not restrain protestors from making their views known on Fourth Avenue and on Sixth Avenue outside the restricted zone across the street from three of the four identified major venues for delegates situated in the restricted zone; only the Sheraton Hotel is not on the restricted zone's border. Consistent with Order No. 3 is the declaration of protestor Michael Gendler, submitted by the Appellants, which confirms that protest was allowed on the east side of Fourth Avenue. The appendices show that the east side of Fourth Avenue is adjacent to both Cavanaughs and the Four Seasons Olympic hotels. Order No. 3 on its face imposed no limitations on expressive activity outside the restricted zone. *See also WTO After Action Report* at 45 (noting a "group of about 1,000 people" that marched southbound on Fourth Avenue). We draw no inferences in favor of our factual statement; rather, the dissent ignores the undisputed facts that do not fit its legal theory.

Moreover, according to the undisputed declaration of Assistant Chief Clark Kimerer, there were "several downtown hotels not within the buffer zone housing WTO delegates which were excluded" because police believed they could "provide adequate security." It is also undisputed that thousands of protestors did not abandon their demonstrations, but continued them throughout the rest of the downtown area for the duration of the WTO conference. *Id.* at 43-46.

These alternative means of communication taken together are sufficient as a matter of law under Supreme Court precedent because they gave a reasonable opportunity for protestors to communicate. *See City of Renton,* 475 U.S. at 54, 106 S.Ct. 925.

FN55. We reject the City's alternative contention that Order No. 3 was a permissible exercise of municipal control under a the-

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ory of an "emergency exception." Citing to out-of-circuit cases, the City argues that Order No. 3 was valid because it was taken in good faith and there was a factual basis to decide that Order No. 3 was necessary to maintain order. *See Smith v. Avino,* 91 F.3d 105, 109-10 (11th Cir.1996), *abrogated on other grounds by Steel Co. v. Citizens for a Better Env't,* 523 U.S. 83, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998); *United States v. Chalk,* 441 F.2d 1277, 1280 (4th Cir.1971); *Moorhead v. Farrelly,* 723 F.Supp. 1109, 1112-14 (D.Vi.1989). These cases are distinguishable, and the standard that they voice does not permit a sufficiently nuanced review of the First Amendment rights at stake here. *Smith* and *Moorhead* involved natural disasters that provided little or no warning to municipalities. While *Chalk* involved civil unrest, it was the result of an unpredictable clash between police and high school students, in contrast with this case, which involved a world trade conference planned months in advance. Also, these courts employed the emergency analysis in specific and limited contexts different from that here, the contexts of natural disasters or of civil unrest confined in a smaller area, and in each case the government's tool was evening curfew. Our case involves political protest coupled with chaos and violence, followed by a restricted zone covering a large part of downtown Seattle, the core area including convention venues and delegates' hotels, with the restriction applicable, day and night, for the several remaining days of the conference. The legal analysis justifying nighttime curfew in the "emergency" cases is not controlling and does not permit adequate evaluation of the competing interests in the face of the crisis that was presented. *See also* Oren Gross, *Chaos and Rules: Should Responses to Crises Always Be Constitutional?,* 112 Yale L.J. 1011, 1027-42 (2003) (outlining several problems with doctrines of emergency powers). We decline to analyze Order No. 3 based on the "emergency" doctrine, though as we have explained above, the nature of the City's interest in security and safety has been germane to our analysis of the test for a reasonable time, place, and manner restriction.

We hold that Order No. 3 was a constitutional time, place, and manner restriction on speech on its face. [FN56] Because we ***1143** hold that Order No. 3 was a valid time, place, and manner restriction,[FN57] we need not reach Appellants' contention that Order No. 3 was a prior restraint. *Baugh,* 187 F.3d at 1042 ("[E]ven prior restraints may be imposed if they amount to reasonable time, place, and manner restrictions on speech."). [FN58]

FN56. At oral argument, the Hankin plaintiffs also contended that the City should have reevaluated and reduced or eliminated the restricted zone on December 2 or December 3, after the initial imposition of Order No. 3 on December 1 had decreased the violence taking place in Seattle. We do not consider this argument because it was not raised in the Hankin plaintiffs' opening brief. *Collins v. City of San Diego,* 841 F.2d 337, 339 (9th Cir.1988) ("It is well established in this Circuit that claims which are not addressed in the appellant's brief are deemed abandoned."). Even if we were to address this contention, the facts in this case justify the continued imposition of the restricted zone. Although Order No. 3 had the effect of decreasing violence in Seattle on December 1, there was undisputed evidence that violence continued outside the restricted zone on December 2 and December 3, including an incident where protestors surrounded the King County Jail (resulting in a lockdown of the jail). Given

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the events that had taken place on November 30 and the ongoing violence from December 1 to December 3, the City was justified in maintaining the restricted zone to preserve order and security in the downtown area until the WTO conference concluded. The restriction here lasted only four days. Were we faced with such a restriction on public access over weeks or months, a duty to reevaluate surely would arise at some point. But here, the initial evaluation on December 1, in light of the limited duration of the conference, is reasonably proximate to the duration of restraint.

FN57. We also note that the district court exercised supplemental jurisdiction over Appellants' claims under the Washington State Constitution, and dismissed those claims on summary judgment. Viewing these claims as a facial challenge, we note that Washington interprets its free speech clause in its Constitution in a manner parallel to the federal Constitution's First Amendment interpretation, except that Washington courts "diverge from the Supreme Court on the state interest element of the time, place, and manner test, as [the Washington courts] believe restrictions on speech can be imposed consistent with [the Washington Constitution's free speech clause] only upon showing a compelling state interest." *Collier v. City of Tacoma,* 121 Wash.2d 737, 854 P.2d 1046, 1051 (1993) (en banc). We hold that the City's interest in restoring and maintaining safety and security also was a "compelling state interest" within the meaning of Washington law, because "the purpose [is] a fundamental one and [Order No. 3] bear[s] a reasonable relation to the achievement of the purpose." *See id.* at 1054. Thus, we affirm the district court's summary judgment dismissal of Appellants' challenge to the validity of Order No. 3 under the Washington State Constitution.

FN58. The First Circuit recently rejected a similar argument in *Bl(a)ck Tea Soc'y,* 378 F.3d at 12.

B

[14] Appellants contend that Order No. 3 (and Assistant Chief Ferguson's Operations Order) improperly gave unfettered discretion to officers charged with enforcing the Order. The Supreme Court has required that "a time, place, and manner regulation contain adequate standards to guide the official's decision and render it subject to effective judicial review." *Thomas v. Chicago Park Dist.,* 534 U.S. 316, 323, 122 S.Ct. 775, 151 L.Ed.2d 783 (2002). A regulation granting unfettered discretion to officials charged with administering that regulation is impermissible because it creates two dangers. First, such a regulation may "intimidate[ ] parties into censoring their own speech, even if the discretion and power are never actually abused." *City of Lakewood v. Plain Dealer Publ'g Co.,* 486 U.S. 750, 757, 108 S.Ct. 2138, 100 L.E d.2d 771 (1988); *see also Griefen,* 200 F.3d at 1262. Second, unfettered discretion may permit the administering officials "to roam essentially at will, dispensing or withholding permission to speak, assemble, picket, or parade according to their own opinions regarding the potential effect of the activity in question on the 'welfare,' 'decency,' or 'morals' of the community." *Shuttlesworth v. City of Birmingham,* 394 U.S. 147, 153, 89 S.Ct. 935, 22 L.Ed.2d 162 (1969) ; *see also Griefen,* 200 F.3d at 1262.

We addressed this issue in *Griefen.* There, the Forest Service had issued a closure order excluding the public from coming within 150 feet of a portion of the Nez Perce National Forest that was closed for construction and repair. *Griefen,* 200 F.3d at 1258. The closure order had exempted persons with a permit authorizing entry, law enforcement officials, rescue workers, and employees of the construction

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company doing work in the restricted zone. *Id.* Appellants challenged the closure order contending, *inter alia,* that the Forest Service had too much discretion in administering the closure order. *Id.* at 1262. We rejected this contention, explaining that "[i]f a closure of a public forum is for a valid rather than a disguised impermissible purpose, the potential for self-imposed or government censorship ... does not exist." *Id.* We held:

> ***1144** In First Amendment terms, the fact that discretion to authorize entry to a closed area may be unfettered during construction is of no concern. The process of granting authority to enter a lawfully closed zone differs markedly from the process of licensing expressive activity. Such a process does not "engender identifiable risks to free expression...."

Id. at 1263 (quoting *City of Lakewood,* 486 U.S. at 757, 108 S.Ct. 2138).

[15] *Griefen* is instructive in evaluating how Order No. 3 was implemented through the Operations Order.[FN59] We have determined that, on its face, Order No. 3 was a lawful time, place, and manner restriction on speech.[FN60] Thus, portions of downtown Seattle covered by Order No. 3 were lawfully closed with limited exceptions for public safety officials, business owners, managers, or employees, and their customers.

> FN59. The dissent argues that *Griefen* is inapposite because "the area into which the plaintiffs sought entry to protest had temporarily lost its status of public forum." Dissent at 1175 n. 17. The dissent incorrectly reads *Griefen,* taking the sentence it relies upon out of context. In *Griefen* we said that "the immediate area of a construction zone is not an area that *has the attributes* of a public forum." 200 F.3d at 1261 (emphasis added). We also held in *Griefen* that "[w]hen expressive conduct occurs on *public grounds,* like a national forest, the government can impose reasonable time, place, and manner restrictions," *id.* at 1259-60 (emphasis added), and "[i]f a closure of a *public forum* is for a valid rather than a disguised purpose, the potential for self-imposed or government censorship ... does not exist." *Id.* at 1262 (emphasis added). Moreover, we had "no doubt" in *Griefen* that "a government entity may close areas of public forests under construction and repair," just as we had "no doubt" that a city "could temporarily close for good reasons ... a street engulfed in a riot or an unlawful assembly." *Id.* at 1263.
>
> The closure order we addressed in *Griefen* closed part of the Nez Perce National Forest, which doubtless is and was a public forum. In any event, in *Griefen* we analyzed not only the reasonable time, place, and manner issues, *id.* at 1259-62, but also the protestors' unbridled discretion challenge on the premise that the order closed a public forum. *Id.* at 1262-65. Similarly, our analysis in this case of the reasonable time, place, and manner issues raised by the Appellants proceeds on the premise that Order No. 3 closed a public forum. *See* discussion *supra* Part III.A. Likewise, our analysis of Appellants' unbridled discretion challenge proceeds on the premise that Order No. 3 resulted in "a closure of a public forum [ ] for a valid rather than a disguised purpose." *See Griefen,* 200 F.3d at 1259-60.

FN60. The dissent appeals to *Board of Airport Commissioners v. Jews for Jesus,* 482 U.S. 569, 573, 107 S.Ct. 2568, 96 L.Ed.2d 500 (1987), but that case is inapposite as it involved a speech restriction held to be facially unconstitutional under the First Amendment's overbreadth doctrine. Moreover, Order No. 3 did not receive a

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> "virtually open-ended interpretation," but rather contained express limits on whom officers could exclude from the restricted zone, such as WTO personnel, workers, and public safety officials.

That officers had discretion to permit persons with a reasonable purpose to enter the restricted zone does not render Order No. 3 constitutionally deficient.[FN61] Order No. 3 facially restrained officers from excluding certain persons specifically authorized to enter the restricted zone, and the Operations Order clarified the phrase "reasonable purpose" specifically to include***1145** "work, shopping at a specific location ..., or other like type reasonable activity." We have upheld a grant of official discretion to interpret what is "reasonable" in restricting speech to further a significant government interest. *See S. Oregon Barter Fair v. Jackson County,* 372 F.3d 1128, 1139-41 (9th Cir.2004) (rejecting an unfettered discretion argument where the statute gave a governing body power to "charge permit applicants a fee *reasonably* calculated to reimburse the county for its *reasonable* and *necessary* costs in receiving, processing and reviewing applications for permits to hold outdoor mass gatherings" (emphases added)). Should a pattern of abuse result from an official's exercise of discretion, the proper remedy is not to "insist [ ] upon a degree of rigidity that is found in few legal arrangements," but rather is to seek remedy through as-applied challenges. *Chicago Park Dist.,* 534 U.S. at 325, 122 S.Ct. 775; *S. Oregon Barter Fair,* 372 F.3d at 1139.

> FN61. The dissent intimates that any statute that gives an officer discretion to administer speech restrictions is unconstitutional because it provides "the *opportunity* for abuse." *See* Dissent at 1175. Our dissenting colleague overstates the reach of the First Amendment's unbridled discretion doctrine. A literal "opportunity for abuse" may be present whenever an armed officer of the law is given authority to enforce a speech restriction. We are concerned instead with whether Order No. 3's contained "adequate standards to guide the official's decision and render it subject to effective judicial review." *Chicago Park Dist.,* 534 U.S. at 323, 122 S.Ct. 775 (2002).

Persons intending to protest were limited in time, place, and manner of their speech, but were not intimidated into censoring their speech because all protest activity was prohibited for a valid purpose in the restricted zone and speech was not restrained immediately outside the restricted zone. Further, there was no danger on the face of Order No. 3 that officers enforcing the restricted zone could indiscriminately withhold permission to speak. Order No. 3 prohibited protest *on any topic* within the restricted zone. Order No. 3 and the supplemental Operations Order did not give officers administering the Orders discretion to allow persons with "favored" views inside the zone and to exclude those with "disfavored" views. Regardless of topic or viewpoint, protestors were prohibited from the restricted zone, as were others who did not fall within the limited exceptions.

Assistant Chief Joiner's Operation Order gave officers guidance (including specific examples) of which individuals were permitted into the restricted zone.[FN62] The Operations Order said, "[v]ehicles and/or pedestrians ... are authorized access inside the perimeter if they have a reasonable purpose for entering the perimeter. A reasonable purpose includes work, shopping at a specific location within the perimeter, or other like type reasonable activity." [FN63] As in *Chicago Park District,* ***1146** "[t]hese grounds [were] reasonably specific and objective, and [did] not leave the decision to the whim of the administrator." 534 U.S. at 324, 122 S.Ct. 775 (internal quotation marks and citation omitted); *see also S. Oregon Barter Fair,* 372 F.3d at 1132; *cf. Gaudiya Vaishnava Soc'y v. City and County of San Francisco,* 952 F.2d 1059, 1065-66 (9th Cir.1991) ("The ordinance [violates the First Amendment because it] provides no specific grounds for granting or denying permits: no explicit

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limits are placed on the Chief of Police's discretion."). We hold that Order No. 3 and the Operations Order did not provide unfettered discretion to officers who were administering the restricted zone.

FN62. The Menotti plaintiffs contended at oral argument that, under *Hague v. Committee for Indus. Org.*, 307 U.S. 496, 59 S.Ct. 954, 83 L.Ed. 1423 (1939), the fact that officers had any discretion to admit persons into the restricted zone rendered Order No. 3 and the Operations Order unconstitutional. We disagree. In *Hague,* the ordinance allowed a city official to deny a permit for a public meeting for any reason believed by the official to be "proper," provided that the denial was for the purpose of "preventing riots, disturbances, or disorderly assemblage." *Id.* at 502 n. 1, 59 S.Ct. 954; *see also Forsyth County v. Nationalist Movement,* 505 U.S. 123, 133, 112 S.Ct. 2395, 120 L.Ed.2d 101 (1992) (holding that a county's parade ordinance granted excessive discretion to a county administrator as to the proper amount to charge for a parade permit, where there were "no articulated standards either in the ordinance or in the county's established practice" and the city administrator was "not required to rely on any objective factors" to determine the proper fee). These cases do not constitutionally prohibit the grant of any discretion to city officials. Rather, the cases hold that city officials must be guided by objective factors and standards when making decisions pursuant to a city ordinance that restricts speech. Here, officers were instructed to grant entrance into the restricted zone to those persons who had a "reasonable purpose" (defined to include "work, shopping at a specific location within the perimeter, or other like type reasonable activity") to enter the zone. The Menotti plaintiffs' argument on this score is unpersuasive.

FN63. The dissent argues that the Operations Order allowed "officers to determine unilaterally what constitutes a 'reasonable purpose,' with no further elaboration on what might be considered 'other like type reasonable activity' " Dissent at 1176. The dissent's selective quotation ignores the guidance provided by the enumeration of specific activities that constituted a "reasonable purpose," such as working or shopping. That the Operations Order listed these commercial activities served to "guide the official's decision and render it subject to effective judicial review." *Chicago Park Dist.*, 534 U.S. at 323, 122 S.Ct. 775.

C

We next address the plaintiffs' contention that Order No. 3 was unconstitutional "as applied." "An as-applied challenge alleges that the restriction on speech is unconstitutional as applied to the litigant's particular speech activity, even though the law may be capable of valid application to others." *Kuba v. 1-A Agric. Ass'n,* 387 F.3d 850, 852, 856, slip op. 14635, 14645 (9th Cir.2004) (internal quotation marks omitted) (quoting *Foti v. City of Menlo Park,* 146 F.3d 629, 635 (9th Cir.1998)). [FN64] The district court concluded that Order No. 3 as applied to the Hankin plaintiffs was a valid time, place, and manner restriction. The Hankin plaintiffs contend that Order No. 3 was unconstitutional as applied to them because the City had adopted a policy of arresting only anti-WTO protestors within the restricted zone.

FN64. In *Kuba* we addressed a facial and as-applied challenge to a state association's policy that prohibited individuals from demonstrating at the association's rodeo and circus, except in designated "free expression zones." *Kuba,* 387 F.3d at 853-55. We held the policy facially unconstitutional because the association failed to prove

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> how a handful of demonstrators would cause congestion or a danger to safety, *see id.* at 859-60, and because the association's policy was not narrowly tailored when it penned demonstrators in "three small, fairly peripheral areas" and did not "sufficiently match" the interest of preventing congestion that could have been achieved with equal effectiveness but less speech-restrictive alternatives, *see id.* at 861-62. *Kuba* differs from the case before us because *Kuba* did not involve significant prior violence such as had marred Seattle. The corresponding governmental interest in *Kuba,* in preventing congestion with potential impact on safety, before the congestion occurred, was less than Seattle's interest in restoring order, after widespread violence, including vandalism and riot.

Hankin submitted a declaration in opposition to the City's motion for summary judgment in which he testified that, on December 1, 1999, he participated in a group march and protest at Westlake Park within the restricted zone. Hankin testified that police surrounded the group and arrested them without any warning, and without any determination as to whether those persons were within the exemptions to Order No. 3. Hankin testified that, immediately after arresting the large group of protestors Seattle police then turned to another portion of Westlake Park, where Hankin was standing, and arrested him and others beside him without determining whether these persons came within the exemptions to Order No. 3. Accepting Hankin's declaration testimony as true, as we must for the purposes of reviewing the district court's grant of ***1147** summary judgment to the City, Hankin's testimony is evidence that the arrest of this group of persons was a "discriminatory enforcement of a speech restriction amount[ing] to viewpoint discrimination in violation of the First Amendment." *Foti,* 146 F.3d at 635; *see also Police Dept. v. Mosley,* 408 U.S. 92, 95, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972) (invalidating, on Equal Protection grounds, a disorderly conduct ordinance which barred picketing within 150 feet of a school in session, but exempted peaceful picketing of any school involved in a labor dispute, because "the operative distinction is the message on a picket sign").

[16] The City may be held liable for such a violation only if the arresting officers' conduct was a product of City policy or custom. *Monell v. Dep't of Soc. Servs.,* 436 U.S. 658, 691-694, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). As we have explained: "Liability may attach to a municipality only where the municipality itself causes the constitutional violation through 'execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy.' " *Ulrich v. City and County of San Francisco,* 308 F.3d 968, 984 (9th Cir.2002) (quoting *Monell,* 436 U.S. at 694, 98 S.Ct. 2018). A municipal "policy" exists when "a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." *Pembaur v. City of Cincinnati,* 475 U.S. 469, 483, 106 S.Ct. 1292, 89 L.Ed.2d 452 (1986) (plurality opinion); *Fairley v. Luman,* 281 F.3d 913, 918 (9th Cir.2002) (per curiam).

[17] There are three ways to show a policy or custom of a municipality: (1) by showing "a longstanding practice or custom which constitutes the 'standard operating procedure' of the local government entity;" (2) "by showing that the decision-making official was, as a matter of state law, a final policymaking authority whose edicts or acts may fairly be said to represent official policy in the area of decision;" or (3) "by showing that an official with final policymaking authority either delegated that authority to, or ratified the decision of, a subordinate." *Ulrich,* 308 F.3d at 984-85 (internal quotation marks and citations omitted). We have held that a municipal policy "may be inferred from widespread practices or evidence of repeated constitutional violations for which the errant municipal

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officers were not discharged or reprimanded." *Nadell v. Las Vegas Metro. Police Dept.*, 268 F.3d 924, 929 (9th Cir.2001) (internal quotation marks and citation omitted).

Although Schell (as then-Mayor of the City) was the City's chief policymaker at the time Order No. 3 was implemented, he testified in deposition that he had "relied on the [police] officers to carry out [Order No. 3] and make sure we had a secure zone for our-for the safety of our citizens and the safety of the delegates." Thus, Schell can be said to have "delegated that authority to ... a subordinate," in this case, Police Chief Stamper. *See Ulrich*, 308 F.3d at 985. Chief Stamper, in turn, delegated the responsibility of planning the City's response to the WTO protests to Assistant Chief Joiner. Joiner, in explaining the City's implementation of Order No. 3, said that: "We're going ... to take the core area where the [WTO] conference is occurring ... and prohibit any demonstrations within that core area for the remainder of the week."

In support of their contention that the City had adopted a policy of suppressing anti-WTO speech in applying Order No. 3, the Hankin plaintiffs submitted declarations[FN65] from persons stating that police refused to allow them to enter the restricted ***1148** zone, even though they came within one of the exceptions to Order No. 3, unless they removed anti-WTO buttons or stickers.[FN66] Martha Ehman testified in a declaration that on December 1, 1999, officers enforcing the restricted zone permitted her to enter after she said that she was going to work in the restricted zone. She testified that, after being permitted to enter, officers told her to stop and remove a piece of tape from her backpack that had the words "NO WTO" on it, and that officers told her she would be arrested if she did not comply. Ehman removed the tape and was allowed to proceed. Lauren Holloway testified in a declaration that, on December 1, 1999, officers enforcing the restricted zone forcibly removed anti-WTO stickers from her clothing on the basis that she was in the "No Protest Zone." Ronald Matyjas testified that, on December 1, 1999, while walking to his office located in the restricted zone, an officer told him that he could not wear the "No WTO" sign that he had affixed to his jacket, and that another officer tore off the sign without permission. Andrew Russell testified that, on December 1, 1999, he was refused entry into the restricted zone because he was wearing a button that said "No WTO," and only after removing the button was he was allowed into the restricted zone. Rita Herkal testified that, on December 1, 1999, officers forcibly removed anti-WTO stickers from her clothing, and that officers told her "You're not allowed to wear stickers."

> FN65. These declarations were submitted in support of the Menotti plaintiffs' motion for partial summary judgment, and in opposition to the City's motion for partial summary judgment.
>
> FN66. Former-Police Chief Stamper also testified via declaration that "the action of the officers [administering the restricted zone] when confronted with that WTO slash through it ... was, you know, take the symbol away, put it in your backpack, or whatever the solution was to that particular problem."

[18] The statements of Assistant Chief Joiner and the declarants, taken in the light most favorable to Appellants, create a genuine issue of material fact as to whether it was the policy of the City to apply Order No. 3 in a manner that excluded only anti-WTO protestors. Viewing the evidence in the light most favorable to the Hankin plaintiffs, such a policy may be inferred due to the "widespread practices or evidence of repeated constitutional violations" and the absence of evidence that police officers were discharged or reprimanded for making the discard of anti-WTO expressive materials an entry ticket to the restricted zone. *See Nadell*, 268 F.3d at 929 (internal quotation marks and citation omitted). We reverse the district court's grant of summary judgment to the City on the constitutionality of Order No. 3 as applied to the Hankin

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plaintiffs, and we remand this issue for trial. Because we so hold, we reverse the district court's order denying class certification and remand that issue to the district court for reconsideration. [FN67]

> FN67. As Order No. 3 was on its face a reasonable time, place, and manner restriction, it follows that all persons who did not enter or who were excluded from the restricted zone because of that order cannot assert a valid claim individually or as a class member. However, any persons who were excluded solely because of the content of their visible communications without regard to the exemptions within Order No. 3, or those such as employees and shoppers, who came within Order No. 3's exemptions, but who were allowed to enter the restricted zone only after removing visible communications, such as buttons or stickers, hostile to the WTO, may assert an as-applied First Amendment claim. Their ability to assert a claim against the City, as contrasted with a claim against the specific officers with whom they interacted, will depend on the factual determination whether their claim is based on a policy of the City of Seattle, an issue on which we have identified a genuine issue of material fact requiring trial. As to any such claimants, we express no opinion whether the requirements for class action certification may be satisfied, leaving that issue for initial consideration in the district court after any due and appropriate proceedings.

***1149** [19][20] However, we affirm the grant of summary judgment to individual defendants Schell and Stamper regarding the Hankin plaintiffs' claims against them. "Supervisory liability is imposed against a supervisory official in his individual capacity for his own culpable action or inaction in the training, supervision, or control of his subordinates, for his acquiescence in the constitutional deprivations of which the complaint is made, or for conduct that showed a reckless or callous indifference to the rights of others." *Larez v. City of Los Angeles,* 946 F.2d 630, 646 (9th Cir.1991) (internal punctuation, quotation marks, and citations omitted). Here, Appellants have presented no evidence, other than the adoption of Order No. 3 and the Operations Order, that either Schell or Stamper personally took part in the alleged constitutional violations or caused the constitutional violations through their individual actions. We have already held Order No. 3 to be facially constitutional, and without evidence that Schell and Stamper personally played a role in the alleged constitutional violations, either directly or by acquiescence or culpable indifference, there is no basis for liability against them in their individual capacities. The evidence presented by the plaintiffs was not sufficient to establish or create a genuine issue of material fact concerning the supervisory liability of Schell or Stamper.

IV

A

We turn to the individual claims of the Menotti plaintiffs. With regard to Menotti, the district court concluded that Seattle police had probable cause to believe Menotti had committed the crime of pedestrian interference[FN68] and obstructing a police officer.[FN69] The district court granted summary judgment on Menotti's Fourth Amendment claim and state law false arrest claim. The district court also granted summary judgment to the City on Menotti's First Amendment claim, holding that Menotti had failed to present evidence that the officers who arrested Menotti acted under a City policy. Menotti appeals the district court's grant of summary judgment to the City and denial of his motion for summary judgment on these issues.

> FN68. Seattle Municipal Code section 12A.12.015 prohibits pedestrian interference. A person commits pedestrian inter-

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> ference where the person, *inter alia,* "intentionally obstructs pedestrian or vehicular traffic." To "obstruct pedestrian or vehicular traffic" is defined as "to walk, stand, sit, lie, or place an object in such a manner as to block passage by another person or a vehicle, or to require another person or a driver of a vehicle to take evasive action to avoid physical contact." Seattle Mun.Code § 12A.12.015.
>
> FN69. Seattle Municipal Code section 12A.16.010 prohibits obstructing a public officer. A person obstructs a peace officer where the person, *inter alia,* "[i]ntentionally and physically interferes with a public officer" or "[i]ntentionally hinders or delays a public officer by disobeying an order to stop given by such officer." Seattle Mun.Code § 12A.16.010.

[21] We first address whether the police had probable cause for Menotti's arrest. "The test for probable cause is whether facts and circumstances within the officers' knowledge are sufficient to warrant a prudent person, or one of reasonable caution, to believe, in the circumstances shown, that the suspect has committed, is committing or is about to commit an offense." *United States v. Puerta,* 982 F.2d 1297, 1300 (9th Cir.1992) (internal punctuation, quotation marks, and citation omitted). The question presented on Menotti's Fourth Amendment claim is whether a prudent person in the position of the ***1150** officers who arrested Menotti would have believed that Menotti was committing the offenses of pedestrian interference and obstructing an officer.

[22] Menotti submitted video evidence showing that just before his arrest Menotti addressed a small group while pedestrians unaffiliated with the group walked by unimpeded. This evidence is contradicted by the deposition testimony of Seattle Police Officer Christopher Myers, one of the officers who arrested Menotti, who testified that he saw Menotti "causing a group to block both vehicular and pedestrian traffic." We, of course, are not empowered to make factual determinations when faced with conflicting evidence. In this procedural context, where summary judgment was given to the City, we must credit the video evidence submitted by Menotti, and consider all evidence in the light most favorable to Menotti. Menotti's video evidence showed that neither he nor the group he addressed interfered at all with pedestrians, and a reasonable jury could find from this evidence, if the jury failed to credit Officer Myers's testimony, that the officers did not have probable cause to arrest Menotti. A genuine issue of material fact concerning whether pedestrians were impeded by Menotti exists, and requires trial for resolution. *See Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 247-57, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

We also hold that a genuine issue of material fact exists as to whether police had probable cause to arrest Menotti for obstructing an officer. Menotti testified in deposition that when officers approached his group, the officers issued no directives or warnings, and that he ran because the officers wanted the group to disperse. Similarly, the video evidence submitted by Menotti does not show any obvious audible warnings by police immediately before Menotti's arrest. In contrast, Officer Myers testified in deposition that, when officers approached Menotti's group, they yelled "stop, police," and that Menotti started running immediately thereafter. Whatever may be decided by the trier of fact, at the summary judgment stage we must credit Menotti's testimony and conclude that a reasonable jury could determine that there was not probable cause to arrest Menotti for obstructing an officer. A genuine issue of material fact exists whether there was probable cause to arrest Menotti for obstructing an officer, and this issue also must be resolved by trial.

We hold that the district court erred by granting summary judgment for the City on Menotti's Fourth Amendment claim. We reverse the district court's grant of summary judgment dismissing Menotti's §

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1983 claim under the Fourth Amendment and his state law false arrest claim. We remand these claims to the district court for further proceedings.

We turn to Menotti's First Amendment claim. Menotti alleged in his complaint that the City violated his First Amendment rights when officers arrested him. The district court granted summary judgment to the City, reasoning that Menotti "failed to produce sufficiently probative evidence of any City policy or custom that caused a deprivation of his constitutional rights." Based on our ruling above that there is a genuine issue of material fact whether the City had a policy during the WTO conference of suppressing anti-WTO views of persons who might otherwise have qualified for entry into the restricted zone, we reverse the district court's judgment on this issue and remand it to the district court for trial.

B

Sellman was arrested for distributing leaflets within the restricted zone, and the viability of his claims depends entirely on the resolution of his constitutional challenge to Order No. 3. Sellman presented ***1151** no evidence that he was targeted for arrest because of his anti-WTO views. Rather, the undisputed testimony revealed that Sellman was arrested only after Detective Stevens ascertained that Sellman had violated Order No. 3 by being in the restricted zone when he did not come within one of its exceptions, and further that Sellman did not obey an order to disperse. We affirm the district court's grant of summary judgment in favor of defendants on Sellman's claims. [FN70]

> FN70. The parties dispute whether Sellman appeals the district court's grant of summary judgment to Officer Stevens, the officer who arrested Sellman. Sellman's only reference to Officer Stevens in his opening brief was a statement that "[s]ummary judgment should be entered in Sellman's favor, with remand to determine the damages caused by the City, Schell, Stamper, and Stevens." Because this contention was not supported by argument in Sellman's opening brief, we deem it waived. *Humble v. Boeing Co.*, 305 F.3d 1004, 1012 (9th Cir.2002) ("Issues raised in a brief but not supported by argument are deemed abandoned absent manifest injustice."); *see also* Fed. R.App. P. 28(a)(9)(A) (requiring that appellant's brief must contain "appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies").

C

[23] Stedl testified in deposition that his bag was unlawfully searched and his fliers unlawfully seized by an unidentified officer. Stedl contended that the City was liable, based on 42 U.S.C. § 1983, for an unlawful search and seizure. The district court granted summary judgment for the City on Stedl's claim, holding that Stedl had not presented evidence of a City policy to commit unlawful seizures. As we have already explained, to prevail on a theory of municipal liability, Stedl must show that the unidentified officer acted pursuant to an official policy or custom of the City. *Monell*, 436 U.S. at 691-694, 98 S.Ct. 2018; *Ulrich*, 308 F.3d at 984.

There was no evidence of any City policy authorizing the search of backpacks or the seizure of fliers. Stedl argues that such a policy may be inferred from an alleged pattern of such practices by officers during the WTO conference, but he offered deposition testimony of only two persons, himself and one other protestor, who said that police had unlawfully searched their bags. Even viewing the evidence in the light most favorable to Stedl, he has not offered evidence proving the first method of satisfying *Monell's* policy requirement: there was not evidence of a "longstanding practice or custom which constitutes the 'standard operating procedure' of the local government entity." *Ulrich*, 308 F.3d at 984 (quoting *Jett v. Dallas Indep. Sch.*

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Dist., 491 U.S. 701, 737, 109 S.Ct. 2702, 105 L.Ed.2d 598 (1989)). Similarly, Stedl didn't show "that [the unidentified officer] was, as a matter of state law, a final policymaking authority whose edicts or acts may fairly be said to represent official policy in the area of decision." *Id.* at 985 (internal quotation marks omitted). Nor did Stedl's evidence establish that "an official with final policymaking authority either delegated that authority to, or ratified the decision of, a subordinate." *Id.* A showing of constitutional wrong by a single police officer may support a claim against that officer, but a claim against a municipality may proceed only with evidence that the officer acted under the municipality's policy or custom. Here, Stedl did not show that the unidentified officer acted under an official policy or custom of the City.

We affirm the district court's summary judgment in favor of the City on Stedl's claims.

D

Skove brought First Amendment and Fourth Amendment claims against Officer ***1152** Smith for Smith's seizure of Skove's sign.[FN71] The district court concluded that Smith was entitled to qualified immunity on Skove's Fourth Amendment claim because Smith had probable cause to believe that Skove had committed a crime (violating Order No. 3), and because the seizure involved exigent circumstances. The district court also granted summary judgment to Smith on Skove's First Amendment claim, holding that Smith's actions were a valid time, place, and manner restriction on speech. Skove appeals the district court's grant of summary judgment to Smith on both claims.

> FN71. In his complaint, Skove alleged that Order No. 3 was unconstitutional as applied to him, and that Officer Smith violated Skove's First Amendment and Fourth Amendment rights in seizing Skove's sign. Skove did not allege in his complaint that the City was liable under a theory of municipal liability for an alleged Fourth Amendment violation stemming from Smith's seizure of his protest sign.

[24] We review the district court's grant of qualified immunity de novo. *Elder v. Holloway*, 510 U.S. 510, 516, 114 S.Ct. 1019, 127 L.Ed.2d 344 (1994). Under *Saucier v. Katz*, 533 U.S. 194, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001), we take a two-step approach in determining whether Smith is entitled to qualified immunity. First, we determine whether Smith violated Skove's constitutional right. *Id.* at 200-01, 121 S.Ct. 2151. If we answer in the affirmative, we proceed to determine whether that right was "clearly established" such that "it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Id.* at 201-02, 121 S.Ct. 2151. If we determine at the first step that there was no constitutional violation, that ends the qualified immunity inquiry. *Id.*

We address Skove's Fourth Amendment claim and consider whether Smith violated Skove's constitutional rights by seizing Skove's sign. Under the Fourth Amendment, the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. The Supreme Court has held that "in the ordinary case, seizures of personal property are unreasonable within the meaning of the Fourth Amendment, without more, unless ... accomplished pursuant to a judicial warrant issued by a neutral and detached magistrate after finding probable cause." *Illinois v. McArthur*, 531 U.S. 326, 330, 121 S.Ct. 946, 148 L.Ed.2d 838 (2001) (internal quotation marks omitted). However, when faced with "special law enforcement needs," the Supreme Court "has found that certain general, or individual, circumstances may render a warrantless search or seizure reasonable."[FN72] *Id.*

> FN72. Exceptions to the warrant requirement, for example, include administrative searches, *Donovan v. Dewey*, 452 U.S. 594, 598, 101 S.Ct. 2534, 69 L.Ed.2d 262

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(1981), searches incident to arrest, *see United States v. Edwards,* 415 U.S. 800, 802-03, 94 S.Ct. 1234, 39 L.Ed.2d 771 (1974), automobile checkpoint searches, *see Mich. Dep't of State Police v. Sitz,* 496 U.S. 444, 455, 110 S.Ct. 2481, 110 L.Ed.2d 412 (1990), reasonable detention of suspects during the execution of a search warrant, *see Michigan v. Summers,* 452 U.S. 692, 702-05, 101 S.Ct. 2587, 69 L.Ed.2d 340 (1981), limited searches for weapons based on reasonable suspicion, *see Terry v. Ohio,* 392 U.S. 1, 27, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), and exigent circumstances, *see United States v. Place,* 462 U.S. 696, 701, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983). We have defined exigent circumstances to include "those circumstances that would cause a reasonable person to believe that entry ... was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts." *United States v. McConney,* 728 F.2d 1195, 1199 (9th Cir.1984) (en banc).

***1153** [25] Smith contends that his seizure of Skove's sign was lawful because Smith had probable cause to arrest Skove for being in the restricted zone and not within Order No. 3's exemptions. We agree that Smith had probable cause to arrest Skove because, by engaging in protest inside the restricted zone without evidence that he was exempt, Skove had violated Order No. 3. However, it is uncontested that Smith did not arrest Skove. Had Skove been arrested, ample precedent would permit a search or seizure "incident to arrest." *Knowles v. Iowa,* 525 U.S. 113, 116-17, 119 S.Ct. 484, 142 L.Ed.2d 492 (1998) (noting that the two historical rationales for the search incident to arrest exception are "(1) the need to disarm the suspect in order to take him into custody, and (2) the need to preserve evidence for later use at trial"). We decline to extend the doctrine of "search incident to arrest" to give protection for a warrantless search or seizure when no arrest is made. It may be that Officer Smith declined to arrest Skove because Skove walked away and Officer Smith decided to maintain his post. Whatever Officer Smith's reason for not making the arrest, the seizure cannot be justified as incident to an arrest. Had an arrest been made, Smith could argue the sign was seized as evidence, *McArthur,* 531 U.S. at 331-32, 121 S.Ct. 946, but without an arrest, we do not see how Smith legitimately could be concerned about a need to preserve evidence of a crime from being destroyed.[FN73]

FN73. Smith argues that Skove voluntarily abandoned Skove's interest in the sign when he walked away from Smith after the seizure. This argument misses the point. The sign was seized before Skove walked away. The lawfulness of the seizure had to be shown based on evidence existing before or at the time of the seizure. Skove's departure after the sign's seizure is not material on this score.

There is some merit to the argument that where there is probable cause to arrest, evidence of the crime may be seized and the seizure considered valid even if the arrest is not completed. *See Roaden v. Kentucky,* 413 U.S. 496, 504, 93 S.Ct. 2796, 37 L.Ed.2d 757 (1974) (recognizing that "the probable cause for an arrest might justify the seizure of weapons, or other evidence or instruments of a crime, without a warrant"). A supporting reason would be that police in some settings might have to disregard competing duties to pursue and complete an arrest where, as here, a suspect walks away. Yet, we reject this position because, if police aims to arrest are so weak that they do not detain a suspect, then it seems incongruous to say that a seizure of evidence can be lawfully made without a warrant. We decline to extend the exception to warrant requirements for seizures incident to arrest to instances in which a police officer seizes evidence of a crime, but makes no arrest.

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[26] Viewing the evidence in the light most favorable to Skove, as we must in reviewing the district court's grant of summary judgment to Smith based on qualified immunity, when Smith encountered Skove there was no exigency requiring seizure of Skove's sign without a warrant. When the encounter took place on December 2, 1999, Seattle police had met with tens of thousands of non-violent and violent protestors who had inflicted severe damage on the downtown, which led to the City's promulgation of Order No. 3. The City's law enforcement resources (and officers themselves) had been taxed severely. But Smith faced a relatively calm situation at the point and time he encountered Skove on December 2. The City did not present evidence that Smith was dealing with violent protestors when he encountered Skove. By contrast, Smith's deposition testimony indicated that, just before ***1154** he saw Skove, Smith was talking with a fellow officer and "taking in the atmosphere." Viewing the evidence in the light most favorable to Skove, Smith when seizing Skove's sign was not then actively engaged in preventing others from entering the restricted zone, nor was he immediately engaged in combating violence. In fact, Skove submitted video evidence that, in the light most favorable to Skove, shows that others were not immediately present and the circumstances were not exigent when Smith confronted Skove and seized his sign.

[27] We also decline to establish a general exception to the Fourth Amendment's warrant requirement for conduct that, absent special needs consistent with the Supreme Court's precedents, is asserted to be "reasonable." It has long and consistently been the law that exceptions to the warrant requirement preceding searches and seizures are for defined categorical circumstances. *See McArthur*, 531 U.S. at 330-31, 121 S.Ct. 946 (listing examples of exceptions to the warrant requirement). Because an arrest was not made, and no established exception justifies the warrantless seizure on undisputed facts, we conclude that there is a genuine issue of material fact bearing on exigency and whether Smith's seizure of Skove's sign violated the Fourth Amendment's protection against unreasonable seizures.

We proceed to the second step of qualified immunity analysis, under which we must determine whether the right was clearly established. *Saucier*, 533 U.S. at 201, 121 S.Ct. 2151. We have held:

> Whether a right is "clearly established" for purposes of qualified immunity is an inquiry that must be undertaken in light of the specific context of the case, not as a broad general proposition. In other words, "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right."

Graves v. City of Coeur D'Alene, 339 F.3d 828, 846 (9th Cir.2003) (quoting *Saucier*, 533 U.S. at 201-02, 121 S.Ct. 2151) (alteration in original).

[28] The question before us then becomes whether a reasonable officer in Smith's position would have understood that he could not lawfully seize Skove's sign absent an arrest of Skove or exigent circumstances. We have rejected the position that a seizure could be made based on probable cause to arrest, when the arrest was not completed. Moreover, viewing the evidence in the light most favorable to Skove, we cannot say that the circumstances were indisputably exigent at the time and place Officer Smith confronted Skove and seized his sign. Because the exceptions to the Fourth Amendment's warrant requirement have been categorically defined, and because "in the ordinary case, seizures of personal property are unreasonable within the meaning of the Fourth Amendment ... unless ... accomplished pursuant to a judicial warrant issued by a neutral and detached magistrate after finding probable cause," *McArthur*, 531 U.S. 326, 330-31, 121 S.Ct. 946, 148 L.Ed.2d 838 (internal quotation marks omitted), we hold that a reasonable officer in Smith's position would have understood that his warrantless seizure of Skove's sign without an arrest and without exigency offended the guarantees of the Fourth Amendment. We therefore reverse the

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district court's grant of qualified immunity to Smith on Skove's Fourth Amendment claim.[FN74]

> FN74. Skove contends that he is entitled not only to reversal of the summary judgment given Smith, but also to a grant of summary judgment establishing Smith's liability for the seizure of Skove's sign. On this requested summary relief for Skove, we view the evidence in the light most favorable to Smith, rather than as we have viewed it above most favorably to Skove. Smith testified by declaration that when he seized Skove's sign he intended to "detain Mr. Skove to determine whether he was authorized to be in the zone." Smith also said in his declaration that "[g]iven the nature and extent of the protests in the area and my assignment, I decided not to pursue Mr. Skove to detain him or arrest him for violating [Order No. 3] and ignoring my directives." Viewing the evidence in the light favorable to Smith, we conclude that there are genuine issues of material fact whether the circumstances at the time and place of the seizure showed sufficient exigency to justify warrantless seizure. *See, e.g., McConney,* 728 F.2d at 1199. The factual issue of exigency must be presented to a trier of fact.

***1155** [29] As for Skove's First Amendment claim against Smith, we determine that the district court properly granted summary judgment to Smith. To prevail on his First Amendment claim, Skove must provide evidence showing that Smith "deterred or chilled [Skove's] political speech and such deterrence was a substantial or motivating factor in [Smith's] conduct." *Sloman v. Tadlock,* 21 F.3d 1462, 1469 (9th Cir.1994). Smith testified in deposition that he approached Skove and seized Skove's sign because Skove was engaged in protest, an activity Smith knew to be prohibited by Order No. 3. Skove submitted no evidence to the district court to establish that Smith's actions were motivated by opposition to Skove's political beliefs or that Smith's actions were motivated by a desire to chill Skove's speech. Viewing the evidence in the light most favorable to Skove, we conclude that the district court properly granted summary judgment to Smith on Skove's First Amendment claim, and we affirm the district court on this issue.

E

We reverse the district court's grant of summary judgment to the City on Menotti's Fourth Amendment and false arrest claims and remand those claims for trial. We also reverse the district court's grant of qualified immunity to Officer Smith, and remand for trial the issue of Smith's liability for the seizure of Skove's sign. We affirm the district court's dismissal of all other claims asserted by Menotti, Sellman, Stedl, and Skove.

V

Justice Stewart once observed for the Supreme Court, in no uncertain terms, that "[t]he guarantees of the First Amendment have never meant that people who want to propagandize protests or views have a constitutional right to do so whenever and however and wherever they please." *Greer v. Spock,* 424 U.S. 828, 836, 96 S.Ct. 1211, 47 L.Ed.2d 505 (1976) (quoting *Adderley v. Florida,* 385 U.S. 39, 47-48, 87 S.Ct. 242, 17 L.Ed.2d 149 (1966)).[FN75] When a city is charged with the critically important responsibility of hosting a convention of world leaders, a setting in which the eyes of the world are on the city and our country, and our nation's reputation is at stake as well, the city must have the power to maintain civic order in a responsible way that does not unduly interfere with the gathered convention or with civil liberties. In balancing desired freedom of expression and the need for civic order, to accommodate both of these essential values, a measure of discretion necessarily must be permitted to a city, on the scene with direct knowledge, to fashion remedies to restore order once

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lost. It may be that a violent subset of protestors who disrupt civic order will by their actions impair the scope and manner of how law-abiding protestors are able to present their views.

> FN75. Justice Stewart's quoted observation was made in the context of the Court's decision restricting protest on a military base. The same idea, however, animates the permissibility of reasonable time, place, and manner restrictions on protest in a public forum.

***1156** Given the breakdown of public order that confronted Seattle, we decline to hold unconstitutional the City's implementation of procedures necessary to restore safety and security to its residents and to the visiting world leaders. As occurred in this case, a city hosting an important meeting may be besieged with tens of thousands of persons, some with lawful intentions in the best tradition of civic protest, but others with violent and disruptive aims. When violent protestors substantially disrupt civic order, there must necessarily be consequences for all if a city is to satisfy its superordinate duty to provide safety and security. While respecting the liberty of protestors, a city must be permitted to act reasonably, within the bounds of the Constitution, to fulfill its responsibilities of providing physical security and the maintenance of order that is required for all of a city's residents and visitors.

We reject the facial challenges to Order No. 3, as well as the general challenge to police discretion implementing it under the Operations Order. In most respects, and particularly in regard to the permissibility of the City's adoption of Order No. 3 and its accompanying Operations Order, we affirm the judgment of the district court. However, as explained above, viewing the evidence in the light most favorable to Appellants, in some instances police conduct may have gone too far and infringed certain individual protestors' constitutional rights by making the content of their expressed views the test for their entry into the restricted zone. We reverse and remand to the district court the Hankin plaintiffs' as-applied challenge to Order No. 3, as well as the issue of class certification. We also reverse and remand to the district court identified issues regarding the arrest of Menotti and the seizure of Skove's personal property. On the record before us, we conclude that trial of disputed facts is necessary on the claims for which we reverse and remand.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

***1357**

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409 F.3d 1113, 05 Cal. Daily Op. Serv. 4630, 2005 Daily Journal D.A.R. 6366
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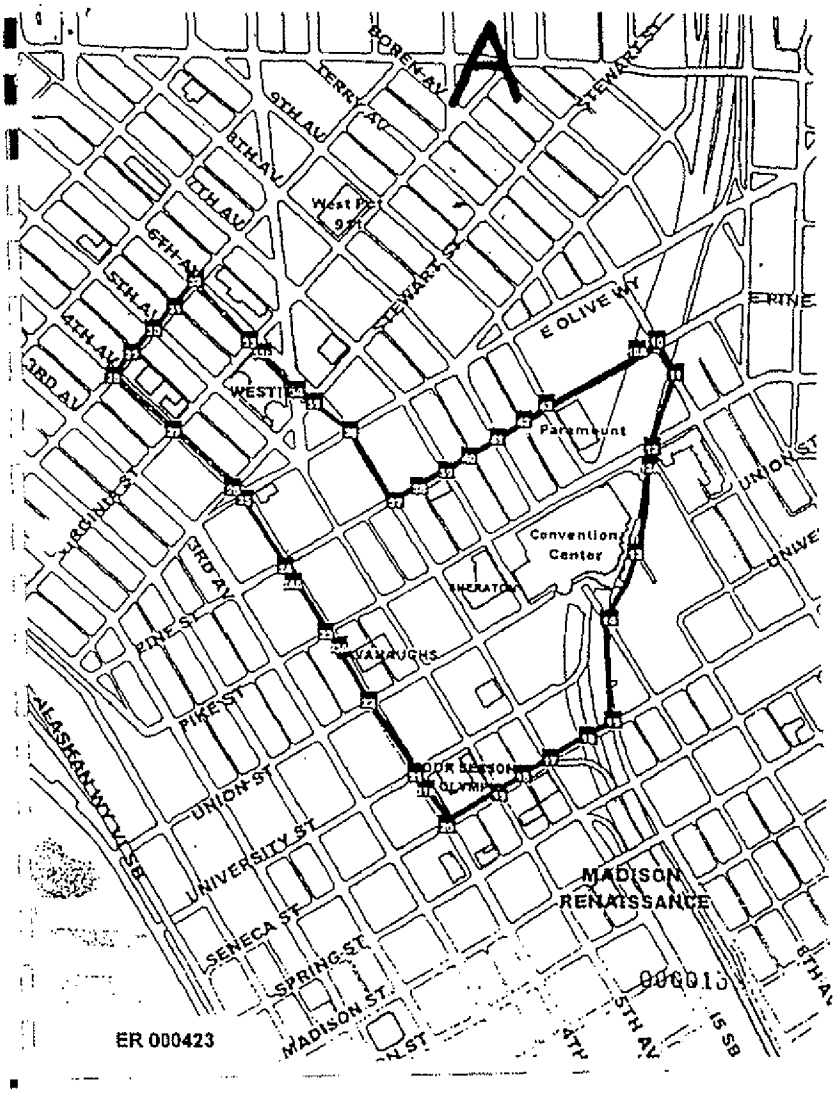

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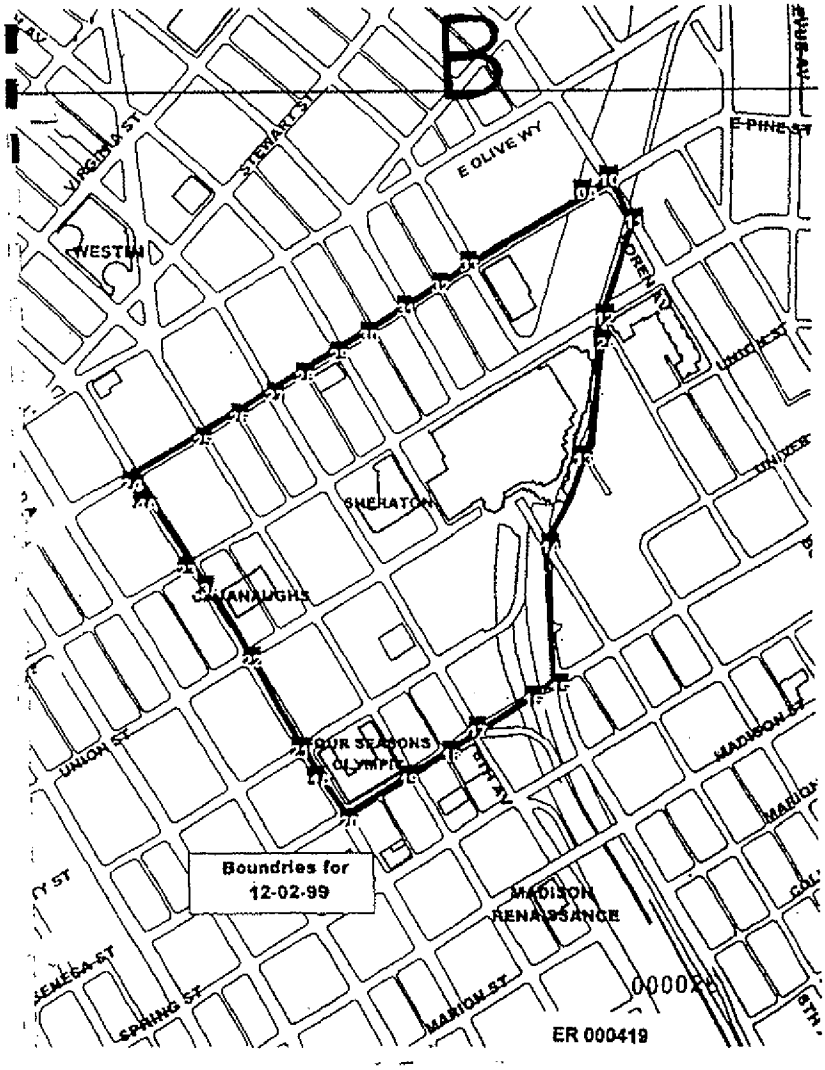

PAEZ, Circuit Judge, concurring and dissenting:

I concur in the majority's holding that Seattle's Civil Emergency Order Number 3 (Order No. 3) was content-neutral and served a significant government interest. I cannot agree, however, that Order No. 3 was narrowly tailored and left open ample alternative channels of communication. I also disagree with the majority's determination that Order No. 3 provided adequate guidance to the law enforcement officers who were assigned the task of maintaining the perimeter of the "No Protest Zone." [FN1] Accordingly, I respectfully dissent from *1159 Parts III.A.2-3 and III.B of the majority's opinion.

FN1. According to Assistant Seattle Police Chief Harvey Ferguson, "that was the term that was being used" until "word came out ... that was an inappropriate term" and the name was changed to "restricted zone." As I explain in Part I.B., below, the City's policy was to keep this area protest-free. City officials, police, and demonstrators all used the term "No Protest Zone" to refer to the area, and therefore I use that term throughout this dissenting opinion.

Assuming that Order No. 3 had been a valid time, place, and manner restriction on protected speech, I agree with the majority that the *Hankin* class action plaintiffs have raised material triable issues of fact

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regarding their claim that City officials enforced Order No. 3 to suppress the First Amendment speech of those individuals who sought to protest the World Trade Organization's policies. The *Hankin* class action plaintiffs should be permitted to proceed with their challenge to the Order as applied, and I therefore concur in Part III.C. of the majority opinion.[FN2]

> FN2. Because I would hold that Order No. 3 is constitutionally invalid, I would reverse the district court's adverse ruling as to Thomas Sellman and remand for further proceedings. I therefore dissent from Part IV.B. As I explain in more detail in Part III, *infra,* I concur in Parts IV.A and D of the majority opinion that Victor Menotti and Doug Skove have presented sufficient evidence to create material factual disputes for trial. I dissent, however from Part IV.C, affirming the summary judgment ruling against Todd Stedl.

The heart of my disagreement with the majority is its conclusion that Order No. 3 was narrowly tailored, that it left ample alternative avenues of expression and that, as implemented, it gave sufficient guidance to law enforcement officers to determine who could be admitted into the No Protest Zone. The majority concludes that the City's ban on all expressive activity in the 25 square blocks surrounding the WTO convention and hotels that housed WTO delegates passes our searching First Amendment review. I cannot agree, and in my view that conclusion is inconsistent with our long tradition of protecting free speech even when that protection may seem inconvenient.

The majority is correct that our inquiry into the content neutrality of Order No. 3 focuses only on the face of the Order itself. But in evaluating whether Order No. 3 is narrowly tailored and leaves open ample alternative avenues of expression, we look deeper than the text. Instead, "we must consider the [City]'s authoritative constructions of the ordinance, *including its own implementation* and interpretation of it." *Forsyth County v. Nationalist Movement,* 505 U.S. 123, 132, 112 S.Ct. 2395, 120 L.Ed.2d 101 (1992) (emphasis added). While the text of Order No. 3 may be content neutral, the City's policy was to apply the law selectively such that it was not narrowly tailored to serve its asserted non-speech-related interest of preserving safety and order. As the Seattle City Council put it, "while [Order No. 3] might have met legal scrutiny on paper, [it] resulted in actions that were explicitly intended to limit protest." Report of the WTO Accountability Review Committee, Seattle City Council, at 5 (Sept. 14, 2000) (hereinafter "ARC Report").

I. Facts

A.

The picture painted in the majority's version of the events surrounding the WTO convention in Seattle fails to capture the full story. I agree with the majority that the violent protestors created a dangerous, even chaotic situation in Seattle that warranted substantial responsive measures by the City to restore order. The City surely had a significant interest in taking remedial action. Even in light of the serious violence, however, the City's response-cordoning off a 25-square-block area of downtown Seattle to restrict all forms of protest-was not constitutionally justified.[FN3] The majority opinion omits ***1160** several crucial facts that undermine its portrayal of a city in crisis. First, contrary to the majority's assumption, Order No. 3 was not justified by "the dire facts confronting the City in the early morning hours of December 1 during the WTO conference." *Maj. op.* at 1140. As Assistant Seattle Police Chief Edward Joiner's deposition testimony made clear, the decision to declare a state of emergency and to impose the police perimeter around the downtown area was *not* made in direct response to the violence and vandalism. That decision instead followed the realization that many of

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the peaceful protestors from the large, well-organized labor march would not be leaving Seattle. The crowd was simply larger than the police had anticipated. Joiner testified that

> [a]s the march concluded and it became evident that a sizeable portion of the marchers were not going to leave the downtown area as we anticipated and it became clear that we were not going to be able to bring the situation under control without taking some sort of drastic action, I made the decision that the only-the only recourse we had was to establish the police perimeter where we could provide security for the delegates and so forth.
>
> Making the decision to impose the police perimeter, the City drew no distinction between peaceful protestors and those likely to cause violence-Joiner, for example, testified that during this process, the concept of peaceful and non-peaceful protestors "merged."

Second, although I do not suggest that the violence confronting the City was insignificant, the majority's account exaggerates its pervasiveness. The ARC Report, for example, noted that even according to the highest estimates, only "well under one percent" of the demonstrators in Seattle engaged in acts of vandalism or violence. ARC Report at 3. Mayor Paul Schell agreed that he had "expected the vast majority of the protestors to be peaceful, and, in fact, it turned out that the vast majority of protesters were peaceful." At a press conference at approximately 5:00 p.m. on November 30, Mayor Schell maintained that the protestors for the most part "were friendly-they were our sons and daughters, they were our neighbors, they were the people who we work with. And there's no reason to be afraid of them." The peaceful protestors even made efforts to prevent the violence by, for example, blocking vandals from access to store windows they attempted to break.

Further, the majority does not paint a clear picture of the situation confronting City officials at the time they adopted the Order. The violence of November 30 had ended before Order No. 3 was implemented. The nighttime curfew-not challenged here-had gone into effect and the streets of downtown Seattle were calm and under control. On Tuesday night, at roughly 8:00 pm, the police did a sweep of the streets and, according to Joiner's testimony, discovered that "[a]t that time all of the demonstrators had left. The situation was under control. It was quite peaceful."[FN4]

> FN3. The majority states that "[t]he whole world witnessed the rampant violence and chaos in the streets of Seattle at the outset of the WTO meeting." *Maj. op.* at 1120 n. 7. But as the Seattle City Council suggested, those images may not have accurately reflected the situation in Seattle, as peaceful political demonstrators "were drowned out by press coverage of disturbances." ARC Report at 4.

> FN4. The majority's warning that "[e]ven a fierce battle may experience a respite of calm, and the calm of an evening can precede a storm in the morning[,]" *maj. op.* at 1131 n. 33, is alarmism supported by neither the evidence nor the law. The fact that violence had ended and Seattle's streets were calm when the Mayor issued the Order is undisputed in the record. Nonetheless, the majority provides the City "reason to believe ... that the violence attendant to the WTO conference had not ended prior to Order No. 3's enactment, but had just temporarily subsided and would resume contemporaneous with WTO proceedings." *Id.* at 45 n. 44. At the summary judgment stage, however, we must view the evidence in the light most favorable to the nonmoving party. *Balint v. Carson City,* 180 F.3d 1047, 1054 (9th Cir.1999) (en banc). Only by viewing the evidence in the light most favorable to the *City* can the majority conclude that the violence had "temporarily subsided." With this improp-

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> er factual determination, the majority sidesteps binding circuit law, which holds that "the occurrence of limited violence and disorder on one day is not a justification for banning all demonstrations, peaceful and otherwise, on the immediately following day (or for an indefinite period thereafter)." *Collins v. Jordan*, 110 F.3d 1363, 1372 (9th Cir.1996).

***1161** As the violence on November 30 erupted, the police responded with force that, as the City Council's report concluded, likely intensified the situation. "As authorities lost control of the streets they resorted to methods that sometimes compromised the civil rights of citizens *and often provoked further disturbance.* " ARC Report at 3. The police response "was sometimes out of proportion to the threats faced" and included "seemingly gratuitous assaults on civilians." *Id.* at 4. Plaintiffs' expert Robert Klotz, the former Commander of the Special Operations and Traffic Division in the Washington, D.C. police force, concluded that "the state of emergency declared on November 30, 1999 was to a large extent an emergency of the City's own making." Klotz continued,

> Being seen and heard is why demonstrators come to the event, and if they feel they are barred from doing so, it will simply make the crowd angry and more dangerous. It also makes the police the object of dissatisfaction, rather than the original source of protest. It can also motivate some people to protest police activity who never wanted to be involved originally.

One consequence "was to bring sleepy residents out of their homes and mobilize them as 'resistors.' " ARC Report at 11.

City officials were apprised of the large number of protestors planning on coming to Seattle well in advance of the conference. Klotz stated in his declaration that "[t]he preconference estimates of the size of the crowds were generally consistent with the number of people who actually attended." At a police training on demonstration management and crowd control that Seattle Police Captain Jim Pugel attended in July 1999, officials "said on a scale of 1 to 10 the WTO rated about a high 8." Furthermore, the violence that occurred in the weeks leading up to the conference should have put the City on notice that they would need to plan well for the event. *See maj. op.* at 1120. According to Captain Pugel's own After Action Report, police officials were aware by at least November 28-if not earlier-that protest groups were "intent on facilitating between 500 and 1,500 'civil disobedience' arrests" on November 30. They also knew at that time that they had insufficient resources and "that we might not be able to sustain the arrest of so many persons." There should have been no surprises.

According to the ARC Report, however, "[p]lanning for the WTO was driven by political and cost considerations that undermined the city's ability to cope with the disorders that ensued." ARC Report at 8. The Report found that the "city government failed its citizens through careless and naive planning, poor communication of its plans and procedures, confused and indecisive police leadership, and imposition of civil emergency measures in questionable ways." *Id.* at 3. Klotz similarly concluded that the City "did not adequately plan or train for the WTO conference," focusing its attention on highly unlikely events rather than "events that were, according to the available intelligence, quite likely to occur (i.e., organized civil disobedience and some vandalism)."

***1162 B.**

The manner in which the City implemented Order No. 3 is also worthy of more searching inquiry than the majority affords. The plaintiffs submitted a great deal of evidence to undermine the City's claim that Order No. 3 was necessary to contain and prevent the violence of November 30. Notably, the Order allowed anyone who did not visibly display opposition to the WTO to enter the zone, without regard to dangerousness or likelihood of violence.

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While the police scoured for "No WTO" signs and buttons, there was no evidence that officers checked bags for crowbars, weapons, or bombs. Lauren Holloway, for example, stated in her declaration that the officers she encountered at the perimeter "did not search me for weapons or ask for ID. They were only interested in our signs and stickers, which they either confiscated or forced us to remove." Andrew Russell recounted a similar experience in his declaration. But this "selective or partial" No Protest Zone did not serve the City's safety and security interests, as Klotz explained:

> [I]t does not serve security goals to have a supposedly secure area where a very large number of inessential people are allowed to enter and roam at will. By giving a free pass to people who claimed to live, work, or even shop at locations within the zone, the City's orders allowed a very large number of people into this supposedly secure area.... Serious terrorists or other people bent on breaking the law will have no trouble taking off their anti-WTO stickers at the boundary and pursue their plans once inside the zone.

The plaintiffs also presented significant evidence that even as members of the general public were permitted entry, protestors were turned away from the No Protest Zone. Police Chief Norman Stamper testified that, under the Operations Order that implemented Order No. 3, "a reasonable purpose does not include coming into the area for protests, so I think the language itself gives rise to the claim that this had become a no-protest zone." At least as late as Friday, December 3, official documents referred to the area as the " 'No protest' zone." Seattle Police Officer Christopher Myers in his deposition testimony referred to it as "the protest zone. There was where protesters were allowed. There was where protesters weren't allowed." And testimony from several protestors reveals that police officers guarding the perimeter used the term "No Protest Zone" when speaking with the public.

Stamper clarified in his deposition that "[f]rom [the line officers'] point of view it effectively meant anybody coming in to protest" would be excluded from the zone. Joiner testified that City officials even considered the idea of allowing in peaceful demonstrators but rejected it, "because I think at that time it had been made very clear there were not going to be peaceful demonstrations within that area." If a person attempting to enter the zone did so, not for the purpose of shopping, but instead intended, individually, to peacefully protest, "she would not have been allowed in."

According to the City Council's report, "officers in the field were briefed with instructions that there would be no protests allowed." ARC Report at 15. Seattle Police Officer Ron Smith testified that, according to "the briefing [he] was given," protesting was not a legitimate reason to enter the zone. The State Patrol, one of the cooperating law enforcement agencies, made that policy explicit: its response plan for December 1 stated that "[o]nly people with legitimate business will be allowed to enter, (working in the area, live, etc.) [sic]. Obvious protesters, people *1163 without legitimate business, or people that refuse to give information will not be allowed in the area." In a televised public address, Joiner warned, "Anyone that goes into that area to protest will be arrested immediately."

Even those who should have been granted access to the zone according to the plain terms of the Order, such as people who lived or worked in the zone, were denied entry if they wore "No WTO" stickers or carried protest signs. Officer Smith testified that the policy as conveyed to him by the Mayor was that "[e]ven if you live there, you are not supposed to be protesting" because "the protest area is down south of Seneca and west the Fourth [sic]. That's what the Mayor said." The plaintiffs offered numerous examples of Seattle police enforcing just such a policy. Michael Louis Evanson, for example, stated in his declaration that while on his way to a tuxedo fitting on 4th Avenue, he was stopped by police officers who snatched his hat and ripped off a sticker that read: "WTO: If it doesn't work for working families, it doesn't work." An officer also reached

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under Evanson's poncho without permission, grabbed papers he was holding and would not return them. The papers were invitations to a party at the Methodist Church that had nothing to do with the protest.

Martha Ehman, an attorney who worked within the zone, declared that she passed through the perimeter by following the same route she normally took to walk to work every day. She saw three people in business suits pass through the perimeter without being stopped, but she was dressed casually and officers asked her where she was going. They let her pass when she told them where she worked, but as she walked away the officers yelled for her to stop when they noticed that the words "No WTO" were written in masking tape on her backpack. They asked her to remove it and she refused; they then informed her if she did not remove the tape she would be arrested. To avoid arrest, Ehman did as the officers instructed.

Ronald Matyjas also worked downtown, at his architect office just north of the Pike Place Market. He stated in his declaration that on December 1, he wore his typical work attire "with one difference: I had a[n 8.5 x 11"] sign attached to the back of my raincoat that said "No WTO." As he was walking to work, he attempted to pass through the perimeter but he was stopped by an officer who asked him why he was walking through the area. Matyjas replied that he was on his way to work. The officer told him he could not go downtown with that sign on his coat; another officer tore the sign off without Matyjas's permission. Matyjas noted that "[t]he other officers standing nearby did nothing to stop or correct the officers that confronted [him]."

Ehman, Matyjas, and Andrew Russell all stated in their declarations that once they took off their political signs, for the remainder of the week they were not stopped by police. They were *only* stopped for wearing political messages.

Michael W. Gendler, another Seattle attorney, was a partner at a law office located on the edge of the zone at Fourth Avenue and Pike Street. He declared that he and three of his employees left their office carrying three protest signs which read, respectively, "Downtown Workers Against the WTO," "Protect Free Speech!," and "Say No to WTO" with the words "No Sale" imposed over a picture of the globe. When they attempted to enter the zone, police stopped them and refused entry even after Gendler showed the officers his business card and address. Gendler cited Order No. 3 and told the officer that he had a right to enter because he was an "owner of a business within the ***1164** limited curfew area." The group was not allowed to enter. Gendler then got rid of his sign and the group walked one block further to another entrance, where Gendler (no longer displaying any anti-WTO messages) simply walked through the perimeter "without being stopped or questioned by any of the officers." His employees, however, still held their signs and they were stopped by officers who told them "they would not be allowed to proceed because they were attempting to enter a 'no protest zone.' " They again displayed their business cards and again were denied entry. "Both were informed that they could proceed without their signs, but not with them." They abandoned their signs and proceeded to enter the zone.

In many other cases, police officers simply made no attempt to determine whether or not an individual was authorized to enter the zone once they spotted any anti-WTO protest material. Andrew Russell, for example, was stopped by an officer as he attempted to enter the zone wearing a "No WTO" button. An officer told him that he could not wear his button inside the "No Protest Zone. He used that specific term." Russell was allowed to enter the zone and keep the button only after removing it from his clothes and putting the button away.

Liad Kantorowicz and her friend Lauren Holloway were stopped by the police at the perimeter. Kantorowicz held a sign and wore three stickers; two "No WTO" stickers and one sticker on her chest which read, "Attention Police Enforcement Officer,

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I refuse ... to speak to you. I demand to have my phone call. I demand to call a lawyer." The sticker also included phone numbers of lawyers. An officer noticed Kantorowicz's sign and asked to take it away. When she refused to give it to the officer, Kantorowicz recounted,

> he just grabbed the sign from me and took it, threw it over his shoulder. And I said, "Can I have my sign back? It's my property." Maybe at that point he said, "No. This is a no-protest zone."

An officer then grabbed Kantorowicz and removed the stickers from her clothing.

Holloway carried a sign that read, "It's Our Duty, It's Our Right, To Fight the Power." She also wore stickers with various WTO-related slogans. When she approached the perimeter, officers grabbed her sign, crumpled it up, and threw it away behind a line of police. They told her and Kantorowicz that they were in the "No Protest Zone" and that they would have to take off every anti-WTO sticker or they would be arrested. When an officer grabbed Holloway's arm, she told him she would remove the stickers herself "[t]o get him to leave me alone."

Sue Bastian, a schoolteacher who traveled to downtown Seattle for the WTO protests, recounted, "I was just a little old lady on my way to the Methodist church carrying these signs in a bag, and I was simply walking down the street on my way to the church." In a bag, she carried one sign that read "Free Trade is Slave Trade" and another that read "Global Cops for Global Corps." She was outside the police perimeter and she did not believe that she was within the zone established by Order No. 3. Nonetheless, she stated in her declaration that a police officer approached her and blocked her pas- sage,

> and then I was surrounded by four or five others. One of them-or somebody took my WTO sticker off my rain jacket. The sticker was underneath my backback. And one of the police took my signs away from me and looked at them and handed them to another policeman, who took them over onto the sidewalk and broke them.

The officers told her she was not allowed in the zone, refused to return her signs ***1165** and told her "if you don't be quiet and leave, I will have you arrested."

Rita Herkel had a similar experience on her way to the Methodist Church. At the northeast corner of Fourth and Spring, Herkel and her friends were waiting for the light to change so they could cross the street when three police officers approached them. Herkel and her friends were wearing lime green stickers approximately 3 x 5" that read "No to WTO." The officers said, "You're not allowed to wear stickers," and began tearing the stickers off of Herkel's clothes without permission. They searched her friend's backpack, also without permission, but did not say what they were looking for. While forcibly removing the stickers from another woman in the group, the officers tore her coat.

Harold Green, an attorney in Seattle, heard on television that a "no protest zone" had been established downtown. As he stated in his declaration, "[t]hat struck me as an unconstitutionally broad edict, so I determined to learn from personal experience what the scope of the edict was." He wrote the words "I PROTEST!" on the back of one of his business cards and, wearing a suit and tie, approached an officer at the perimeter and

> asked politely, "If I ask you a question, will I be subject to arrest?" He said that I would not. I then pulled my business card from my pocket, showed him the side which said "I PROTEST!," and asked him, "If I were to cross this line and display this card, would I be subject to arrest?"
>
> He immediately responded that I was subject to arrest at that moment. I then asked him, " Am I in a zone where what I am doing is illegal?," and he repeated that I would be arrested if I did not leave.

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> I was immediately confronted by two or three other riot police officers with visored helmets and long night sticks who began to shout repeatedly at me, "Go!", "Just Go!" ... As I did not want to be arrested, I put the card back in my pocket and walked back down (west) Spring Street.

Plaintiff Doug Skove similarly went downtown to protest after hearing a news broadcast describe the zone as a "no protest zone." He went inside the zone carrying a sign that said "I have the right to protest non-violently." Skove testified at his deposition that Officer Ron Smith grabbed the sign out of his hand without Skove's permission, saying "I'm going to take that" before any other communication between the two. Smith told him to come over but Skove instead walked away and was not pursued. This incident was captured on videotape.[FN5] Officer Smith never ascertained whether Skove was authorized by the Operations Order to be within the zone before tearing the sign away from him. Smith testified in deposition that he determined only that Skove "appeared not to belong there" because "[h]e was walking around with a sign." Skove then went to the corner of Fifth Avenue and Pike Street and took out a second sign, where another unidentified officer again took the sign from his hands without permission and without any prior verbal exchange.

> FN5. The videotape shows Smith approaching Skove and asking, "What did the Mayor tell you? Okay? Other side of Fourth, other side of Seneca, right?" Smith then ran toward Skove, who was crossing the street, and grabbed his sign out of his hands. As previously noted, however, on the City's motion for summary judgment, we take the evidence in the light most favorable to the plaintiffs and therefore credit Skove's recollection of the event. *Balint*, 180 F.3d at 1054.

Other people were stopped by the police while attempting to more actively protest ***1166** within the zone, confirming the City policy that protesting was not a "reasonable purpose" within the meaning of the Order. Thomas Sellman, a plaintiff in this appeal, heard on the news that Seattle had adopted a "no protest zone" where people could enter for any reason other than protest. He went downtown "basically to find out what was really meant and whether the broadcasters in some way had accurately described the intent of the Mayor and the City of Seattle." He walked down the sidewalk, within the zone, and distributed leaflets criticizing the WTO's ability to overrule endangered species laws. He was stopped by Detective S.D. Stevens, who determined that Sellman's activity was "obviously" not "legitimate business" within the scope of the Operations Order. Stevens told him he needed to go two blocks south in order to protest. Instead of leaving, Sellman handed one of his flyers to a WTO delegate as he walked by. Stevens then placed Sellman under arrest for failure to disperse.

Plaintiff Todd Stedl went to the zone to hand out copies of the First Amendment; if an officer stopped him he "planned on saying 'I'm not protesting; I'm educating.' " Stedl testified at his deposition that the officer who first stopped him at Fourth Avenue and Seneca Street reacted by saying, " 'not with this you're not,' and he grabbed the fliers that I was holding on to and then proceeded to dig into the bag where I had the remaining fliers.... As he reached into the cloth sack, I said, 'you need a search warrant to take those.' ... He said, I believe-he said something to the effect of, 'no, I don't.' " His remaining fliers were seized but Stedl was not arrested. When Stedl asked the officer for his badge number, he was told to "get going." He then left and continued to protest only outside of the zone. Stedl testified that "I was intimidated to the point that I felt that if I had returned to the no protest zone to hand out the First Amendment, that I would most likely get arrested, yeah, and that was not my intent ...."

After many months of investigation, the Seattle City Council concluded that "Seattle was not sufficiently mindful ... of the need to create an environment protecting the rights to speech and assembly."

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ARC Report at 5. The City's policies in implementing Order No. 3 targeted expressive activity but did not seek to distinguish between violent and non-violent protestors or to better-tailor the fit between Seattle's security problems and a legitimate solution.

II. Restrictions on Time, Place, and Manner of Speech

A. Narrow Tailoring

If a regulation restricting speech in a public forum is content neutral, our standard for determining whether it is narrowly tailored is more relaxed. *Perry Education Ass'n v. Perry Local Educators' Ass'n,* 460 U.S. 37, 45, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983). The policy adopted "need not be the least restrictive or least intrusive means" available to survive this intermediate level of constitutional scrutiny. *Ward v. Rock Against Racism,* 491 U.S. 781, 798, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989). But a government entity is not free to adopt any regulation that serves its interests more effectively than no regulation at all; a restriction may not burden "substantially more speech" than necessary to further the government interest at stake. *Id.* at 799, 109 S.Ct. 2746; *see also Kuba v. 1-A Agricultural Ass'n,* 387 F.3d 850, 861 (9th Cir.2004). "A statute is narrowly tailored if it targets and eliminates no more than the exact source of the 'evil' it seeks to remedy." *Frisby v. Schultz,* 487 U.S. 474, 485, 108 S.Ct. 2495, 101 L.Ed.2d 420 (1988); *see also Ward,* 491 U.S. at 799, 109 S.Ct. 2746 ("Government may not regulate expression in such a manner that a substantial portion of the ***1167** burden on speech does not serve to advance its goals."). This is so even if the rule is completely effective in eliminating the targeted evil. *Id.* at 799 n. 7, 109 S.Ct. 2746.

The 25 square blocks of downtown Seattle cordoned off by Order No. 3 were plainly a public forum; indeed, city streets are "quintessential public forums" which " 'have immemorially been held in trust for the use of the public, and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.' " *Perry Education Ass'n,* 460 U.S. at 45, 103 S.Ct. 948 (quoting *Hague v. CIO,* 307 U.S. 496, 515, 59 S.Ct. 954, 83 L.Ed. 1423 (1939)); *see also ACLU of Nevada v. City of Las Vegas,* 333 F.3d 1092, 1099 (9th Cir.2003). "No particularized inquiry into the precise nature of a specific street is necessary; all public streets are held in the public trust and are properly considered traditional public fora." *Frisby,* 487 U.S. at 481, 108 S.Ct. 2495.

Our inquiry into whether Order No. 3 was narrowly tailored should begin by analyzing the government's asserted interests in responding to the violence confronting Seattle on November 30. *See Kuba,* 387 F.3d at 858. Without doubt, a city has a significant interest in preserving the safety of its residents and visitors, and in preventing violence and vandalism on city streets.[FN6] *See, e.g., Perry v. Los Angeles Police Dep't,* 121 F.3d 1365, 1369 (9th Cir.1997) ("Government interests in promoting public safety and the orderly movement of pedestrians, and in protecting the local merchant economy are ... substantial."). A city cannot, however, use a concededly-legitimate interest in "security" to justify a rule drawn as broadly as it wishes. *See Bl(a)ck Tea Soc'y v. City of Boston,* 378 F.3d 8, 13 (1st Cir.2004) ("Security is not a talisman that the government may invoke to justify *any* burden on speech (no matter how oppressive)." (emphasis in original)). Here, Klotz's declaration suggests, "[t]he City's goal should have been to transport ***1168** the delegates to the conference, not necessarily to protect a particular method of getting them to the conference (walking individually, without any designated route)." Viewing the City's interest in this broader context,[FN7] it becomes clear that such a sweeping prohibition on speech as Order No. 3 imposed was not justified.[FN8]

FN6. The majority's assessment of the City's significant interests is confused and

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inconsistent, and changes subtly depending upon the argument the majority seeks to bolster. At times, the majority cites "the core interest" as protecting the president and foreign dignitaries. *See maj. op.* at 1134-35 n.41. But it also claims that the City's interest was in "maintaining public order," *id.* at 1131, "providing security to the core downtown area," *id.* at 1131 n. 32, and "seeing that the WTO delegates had the opportunity to conduct their business," *id.* at 1132.

In my view, the City had a significant interest in protecting the public safety. That broad interest required that the City protect the public (including President Clinton and foreign dignitaries) both inside and outside the No Protest Zone, and provide safe transport for delegates to and from the convention. Order No. 3 helped serve those interests, but it was a sledge-hammer solution where a more tailored response would have preserved First Amendment protections. Moreover, the City did not have a constitutionally significant interest in sheltering delegates from the unpleasantness or inconvenience of a large demonstration. The Order itself was justified by a need "to protect the public peace, safety, and welfare" and to preserve the safety of "delegates, dignitaries, citizens, public safety employees and protestors" alike.

The City now argues, relying on *Hill v. Colorado,* 530 U.S. 703, 718, 120 S.Ct. 2480, 147 L.Ed.2d 597 (2000), that it had a significant interest in protecting the delegates' "right to be left alone." In *Hill,* the Supreme Court upheld a law that prohibited any person from knowingly approaching within 8 feet of another person to protest, within designated areas near medical facilities. *Id.* But in *Kuba,* we clarified that *Hill* "did not 'protect a potential listener from hearing a particular message,' but only 'from the potential physical and emotional harm suffered when an unwelcome individual delivers a message by physically approaching an individual at close range.' " 387 F.3d at 861 n. 10 (quoting *Hill,* 530 U.S. at 718-19 n. 25, 120 S.Ct. 2480). As in *Kuba,* the audience here was not "particularly vulnerable," *id.,* and therefore did not need "to be left alone."

FN7. The majority mischaracterizes my assessment of the City's interest as one more narrow than the situation required. *Maj. op.* at 1131 n. 33. That is inaccurate. The City's significant interest in safely transporting delegates to the convention sites is certainly broader than the interest Order No. 3 actually served: "to protect a *particular method* of getting [delegates] to the conference...." The vast size of the zone was only crucial to that more narrow interest. *C.f. maj. op.* at 1134. The majority recognizes that the City had an interest in "ensuring safe transit for delegates between venues and hotels," *id.,* but offers no convincing rationale for rejecting the plaintiffs' less-restrictive alternatives.

FN8. The majority further maintains that "[t]he City also had an interest in seeing that the WTO delegates had the opportunity to conduct their business at the chosen venue for the conference; a city that failed to achieve this interest would not soon have the chance to host another important international meeting." *Maj. op.* at 1131. I am not convinced that a city's interest in hosting such an event is "significant" for purposes of this analysis. Because it is not asserted as an interest on appeal, we should not provide this justification for the

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City.

Like a hypothetical ban on handbilling, *see Ward,* 491 U.S. at 799 n. 7, 109 S.Ct. 2746, Seattle's ban on all protesting within a large area of downtown Seattle might have effectively quelled violence and improved safety. Nonetheless, because it "burden[ed] substantially more speech than [was] necessary to further the government's legitimate interests[,]" *Kuba,* 387 F.3d at 861, Order No. 3 was not narrowly tailored. The City's solution was a poor fit in several respects.

First, Order No. 3 was geographically larger than justified.[FN9] Protestors were banned from a 25-square-block area of downtown Seattle that purposely encompassed every place they could hope to communicate to delegates. [FN10] Mayor Schell testified in his deposition that he never scrutinized or questioned why the zone needed to be that large-simply, "the concept was to enclose all of the delegate hotels." But as Klotz pointed out, the size of the No Protest Zone actually impeded law enforcement anywhere other than the perimeter, since "[i]t takes more officers to secure a larger space than a smaller one." The majority cites no case in which a court has upheld a similarly-large prohibition; in fact, we have struck down restricted zones of much smaller scale.[FN11]

FN9. Order No. 3 also lasted longer than necessary. The City had the right to "act vigorously, and more extensively, to restore order," *maj. op.* at 1137, but as noted above, order *already* had been restored. *See supra* at 1160-61 & n. 4. The Mayor signed Order No. 3 in the early morning hours of December 1, long after both violence and protest activity had subsided. *See maj. op.* at 1124. Again, as we stated in *Collins,* 110 F.3d at 1372, "the occurrence of limited violence and disorder on one day is not a justification for banning all demonstrations, peaceful and otherwise, on the immediately following day (or for an indefinite period thereafter)."

FN10. The size of the No Protest Zone was reduced considerably on December 2. The new zone excluded the Westin Hotel after President Bill Clinton departed Seattle. *Maj. op.* at 1158, *see also* Appendix B.

FN11. *See, e.g., Bay Area Peace Navy v. United States,* 914 F.2d 1224, 1227 (9th Cir.1990) (holding that a 75-yard buffer zone surrounding naval ships in a parade, which the city claimed served its interest in safety and security, was too large and a 25-yard zone would serve that interest just as effectively); *United States v. Baugh,* 187 F.3d 1037, 1044 (9th Cir.1999) (holding that a 150 to 175-yard restriction on protestors from the entrance of a visitor center was too far); *Kuba,* 387 F.3d at 862 (holding that a policy "which relegates communication activity to three small, fairly peripheral areas" was too broad in relation to the government's interest).

***1169** Second, the Order banned *all* protesting without regard to the likelihood that it would lead to violence or disorder. Not only that, but any individual intent on causing harm could easily enter the zone simply by asserting that he or she fell within one of the Operations Order's exceptions. Order No. 3 banned peaceful expressive activity without regard to the City's stated safety-related goals. The majority concludes that it would have been too burdensome to require police to make case-by-case distinctions between "those protestors with benign intentions and those with violent intentions." *Maj. op.* at 1134 (citing *Hill,* 530 U.S. at 729, 120 S.Ct. 2480). This case is significantly different from *Hill:* the police established a perimeter around the No Protest Zone precisely so they could make case-by-case determinations as to who would be allowed in the restricted area. The majority would allow the police to search people they suspected of carrying stickers and handbills, but concludes that it "would not have been practical" for police to search for crowbars or spray paint. *Id.* at 1135. I see no basis

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for that conclusion.

In *Collins,* we evaluated a similar emergency order adopted under analogous circumstances.[FN12] After the verdict was announced in the first Rodney King beating trial, San Francisco found itself amidst a number of demonstrations-both peaceful and violent. 110 F.3d at 1367. Those demonstrations led to "a number of violent incidents," which caused property damage and minor injuries. *Id.* In response, then-Mayor Jordan declared a state of emergency and issued an order, approved by the Board of Supervisors, authorizing the police to disperse any gatherings "anywhere in the City and County of San Francisco whenever the peace officer on the scene has reason to believe that the gathering endangers or is likely to endanger persons or property." *Id.* The order was thus specifically targeted to bar only demonstrations that would likely lead to violence. We nonetheless held not only that the order was facially unconstitutional, but that the law was so clearly established than no reasonable officer could believe it would be constitutional. *Id.* at 1374.

> FN12. The majority is too quick to dismiss and marginalize *Collins.* By asserting that the violence confronting Seattle was worse than the violence San Francisco faced, the majority concludes that *Collins* is simply "inapposite." *Maj. op.* at 1136. But the majority's analysis of *Collins* focuses on the factors it finds favorable and ignores other important distinctions that ought to inform our judgment. For example, the majority characterizes San Francisco's emergency order as "significantly broader," *id.* at 1136 n. 45, dismissing the fact that the order was narrowly targeted to apply only to gatherings "likely to endanger persons or property." The circumstances in Seattle were clearly analogous to *Collins* and the majority is far too eager to sidestep binding circuit law.
>
> Moreover, the constitutional narrow tailoring analysis accounts for violence as part of the City's interest weighed against its tailored response. I decline to adopt the majority's approach that allows the legal framework to be shaped and distorted by its characterization of the level of violence.

In making that determination, we noted that "the proper response to potential and actual violence is for the government to ensure an adequate police presence and to arrest those who actually engage in such conduct, rather than to suppress legitimate First Amendment conduct as a prophylactic measure." *Id.* at 1372. Similarly, in *Baugh,* we noted that "[t]he Park Service, in lieu of restraining the expressive activity by refusing to issue the permit, should have issued the permit for the lawful expressive activity and then arrested the demonstrators if and when they trespassed." ***1170** 187 F.3d at 1044. The plaintiffs here argue that "police should have had more extensive staffing on the street so that they could permit protestors to enter anywhere and simply arrest and remove those who violated the law." *Maj. op.* at 1135. Yet in the face of our clear precedent, the majority asserts "we should hesitate to say that the law requires such a solution" where a city confronts actual lawbreakers. *Id.* at 1135. That hesitation is plainly contrary to our circuit's law.

Third, even those who were *exempt* under the plain terms of the Order were denied entry if they displayed any visible signs, stickers, or messages related to the WTO. The City's policy was clear: protesting was not a "legitimate purpose" for entering the No Protest Zone. This restriction cannot survive constitutional scrutiny. In *Virginia v. Hicks,* the state housing authority similarly attempted to ban "any person" from the streets of a public low-income housing development "when such person is not a resident, employee, or such person cannot demonstrate *a legitimate business or social purpose* for being on the premises." 539 U.S. 113, 116, 123 S.Ct. 2191, 156 L.Ed.2d 148 (2003) (emphasis in

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original). Again like here, the policy was enacted "in an effort to combat the rampant crime" that had infected the area. *Id.* at 115, 123 S.Ct. 2191. The Supreme Court upheld the policy under the First Amendment only after interpreting "legitimate business" to *include* expressive activity. *Id.* at 122, 123 S.Ct. 2191; *see also Hodgkins v. Peterson,* 355 F.3d 1048, 1059 (7th Cir.2004). Seattle's clear policy of excluding any form of protest from its definition of "legitimate purposes" disregards the primacy we afford such core political speech under the First Amendment.

We considered a similar problem in *Grossman v. City of Portland,* where we invalidated a law forbidding organized demonstrations in a public park without a permit.[FN13] 33 F.3d 1200, 1203 (9th Cir.1994). Like Seattle's interpretation of Order No. 3, whether an individual was subject to arrest under the statute depended entirely on whether that individual was displaying a message.

> FN13. Again, the majority dismisses *Grossman* by distinguishing the level of violence facing the City. But the legal framework is not altered by an assessment of the City's interest as more or less important; the extent of the City's interest is accounted for inherently within the narrow tailoring inquiry. *See supra* note 12. Although the facts in *Grossman* clearly differ in certain respects from the facts at issue here, that does not render its reasoning inapplicable to this context. Indeed, where the majority finds it useful to rely on cases involving minimal violence, the majority freely relies on such authority. *See, e.g., maj. op.* at 1134 (discussing *Hill,* 530 U.S. at 729, 120 S.Ct. 2480); *id.* at 1138-39 (citing *Bl(a)ck Tea Soc'y,* 378 F.3d at 14).

> Consider this: if [the plaintiff] and his companions had been standing in a group in the park after meeting unexpectedly, and had been discussing gardening, or the Portland Trailblazers, the [plaintiff] would not have been arrested. While the addition of signs-or T-shirts, or an "address"-would have occasioned the application of [the challenged ordinance], the distinctions are absolutely empty in terms of the ordinance's stated goals.
> *Id.* at 1207. Order No. 3 operated in exactly the same way, and we should not condone that affront to First Amendment protections.

The majority's conclusion to the contrary is plainly wrong. Finding *Grossman* "inapposite," the majority states that Seattle's "distinction between groups displaying messages and groups not displaying messages" was appropriate because protestors-and "not emergency personnel, ***1171** business employees, or shoppers"-caused the violence. *Maj. op.* at 1137 n. 46. The majority, however, overlooks two important points: First, a distinction between protestors and non-protestors was not at the heart of Order No. 3. The Order instead aimed to preserve the public safety by implementing a limited curfew, which would alleviate the disorder and chaos in the downtown area. *See id.* at 18-19 (quoting Order No. 3 pmbl). But the majority is also wrong as a factual matter. People within the zone (*including* employees and shoppers) who simply displayed messages were no more likely to cause violence than those without messages. *See id.* at 15 (describing an incident where a *delegate,* not a protestor, drew a gun against the crowd). Whether or not an individual wore a "No WTO" button should have had no bearing on her treatment by the police.

Fourth, the Order completely disregarded any interest in maintaining peace and security in areas *outside* the zone. While the Order may have served to protect delegates, it did not protect anyone outside of the perimeter. "[P]olice operations ... should convey a perception of even-handed commitment to protecting demonstrators as well as the larger public[;]" the City's response to the demonstrations in Seattle did not serve that goal. ARC Report at 4. The majority recognizes the poor fit between the City's asserted interests and the means it chose to respond to the violence:

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> Even outside the restricted zone, there were some problems of violence incidental to protest. Some violent protestors caused property damage, threw debris, blocked the street, and trapped people in their cars. Some protestors jumped onto an officer's patrol car and shook it by its light bar, while others laid in front of the car and prevented the officer from escaping. Some protestors took over the fuel pumps at a gas station and attempted to fill small bottles with gasoline.

Maj. op. at 1126 n. 21. The majority acknowledges that a Seattle police captain's report "noted that officers 'heard and saw numerous incidents of property destruction, burglary, and looting; but we were unable to leave our lines to take enforcement actions.' " *Id.* at 1124. The large perimeter created by Order No. 3 could only be maintained by a substantial police presence; its size thereby allowed the violence in areas outside the No Protest Zone to continue. The perimeter in fact served *only* the goal of protecting WTO delegates. It therefore violated *Ward's* requirement that "[t]he tailoring of the restraint must of course correspond to the purposes it serves." *Id.* at 1131 (citing *Ward,* 491 U.S. at 799, 109 S.Ct. 2746).

Finally, and fundamentally, Order No. 3 was not narrowly tailored to the City's interests because, as Klotz put it, "it was sought to pursue the wrong goal...." That is, the Order guaranteed that WTO delegates could walk safely from their hotels to the Convention Center on city sidewalks. But as noted above,[FN14] the City's significant interest was not so narrow; the City had less-restrictive alternatives available that would have served its interest in safety and security equally well. We have stated that "while the City need not employ the least restrictive alternative in promoting its interest in public safety, 'if there are numerous and obvious less-burdensome alternatives to the restriction on [protected] speech, that is certainly a relevant consideration in determining whether the "fit" between ends and means is reasonable.' " *Edwards v. City of Coeur d'Alene,* 262 F.3d 856, 865 (9th Cir.2001) (quoting *1172*City of Cincinnati v. Discovery Network, Inc.,* 507 U.S. 410, 418 n. 13, 113 S.Ct. 1505, 123 L.Ed.2d 99 (1993)) (alteration in original). Here, the plaintiffs suggested several.

FN14. *See supra* note 7.

The majority concludes that because Seattle's pedestrian "tunnels ... did not connect all of the hotels and venues being used by WTO delegates[,]" the plaintiffs' suggestions were not "feasible." *Maj. op.* at 1134 n. 39. Even assuming the pedestrian tunnels were an inadequate solution, the plaintiffs in fact suggested various other worthwhile alternatives. First and foremost, "the City should have developed a plan to ensure that delegates could get to the convention." As Assistant Police Chief Clark Kimerer explained in his declaration, the City was aware that "[a]n avowed and announced goal of some of the protestors was to shut down the WTO convention, i.e., prevent the delegates from reaching their venues[;]" therefore, transportation should have been an important part of the City's response. [FN15] Klotz suggested, for example, "planned bus and van service routes or controlled access routes" for the delegates; instead, "the only transportation option for delegates was to walk from their various hotels to [the] Convention Center through routes of their own choosing." Klotz suggested several concrete alternatives:

> FN15. Contrary to the majority's assertion, I do not "attempt to reduce the City's interest to transporting delegates...." *Maj. op.* at 1131 n. 32. The City's interest extended to protecting the public safety broadly. But as this discussion demonstrates, the measures employed by the City served a much narrower interest and thus were not narrowly tailored. This list of alternative measures simply demonstrates that fact.

A dedicated drive called Convention Way runs underneath the Convention Center from approximately Ninth and Pike to Seventh and Union. It is designed to accommodate tour busses and has

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> an easily protected indoor entrance to the facility.... Thus, one transportation method that should have been explored was sending buses from the hotels out to the Interstate, and into the Convention Center through this entrance. This route is indirect, but it avoids almost all protest points.
>
> Another transportation option that I did not see explored is the pedestrian tunnel that runs from the Rainier Square building ... and exiting only a few yards from a well protected off-street entrance to the Convention Center. Mayor Schell testified in his deposition that he used this route without incident on the afternoon of November 30.
>
> Further, the City could have used "flying squads," or mobile teams without responsibility for maintaining police lines, that could have pursued and arrested vandals and violent protestors. Although the City originally planned on pursuing this strategy, "[w]hen the day arrived, the flying squads were pulled off that duty to join the fixed police lines. As a result, the relatively small number of vandals could destroy property without threat of arrest." Lieutenant Neil Low, who was responsible for deploying flying squads, stated in his internal WTO After Action report that "[i]n concept, we were to work along with Lt. Joe Kessler's plain-clothes squad in locating and arresting hardcore protestors committing criminal acts. In actuality, we became involved in crowd control within one hour of being on the street, continuing with that for the remainder of the week."

"[T]he First Amendment demands that municipalities provide 'tangible evidence' that speech-restrictive regulations are 'necessary' to advance the proffered interest in public safety." *Edwards,* 262 F.3d at 863. As this list of alternative possibilities demonstrates, Order No. 3, as written, was not necessary to advance that interest, ***1173** nor did the City provide any tangible evidence of such a requirement. The Order was not narrowly tailored and the majority's contrary conclusion disregards these important considerations.

B. Ample Alternatives

Not only was Order No. 3 not narrowly tailored to serve the significant government interest in safety and security, it also failed to leave open ample alternative methods of communication. An entire medium of speech was foreclosed and the WTO protestors were silenced and relegated to the sidelines. "If an ordinance effectively prevents a speaker from reaching his intended audience, it fails to leave open ample alternative means of communication." *Id.* at 866 (citing *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.,* 452 U.S. 640, 654, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981)); *see also Bay Area Peace Navy,* 914 F.2d at 1229 ("An alternative is not ample if the speaker is not permitted to reach the 'intended audience.' "). Order No. 3 prevented protestors from entering the 25-square block area where WTO delegates could see and hear them. It confined all demonstrations to outside areas where the message the protestors sought to convey may never have reached the intended audience.[FN16]

> FN16. The majority points out that the record is "void of evidence" that protestors could not be seen or heard by delegates within the No Protest Zone. *Maj. op.* at 1141 n. 54. But neither does the record reflect that the delegates *could* see and hear protestors, or that the alternative means of communication available to the protestors were sufficient. Since it is unclear whether the message could be heard in any recognizable form, at a minimum the plaintiffs have established a genuine issue of material fact such that summary judgment is inappropriate. *Balint,* 180 F.3d at 1054. The majority states that "the undisputed facts in the record show that per the terms of Order No. 3 protestors could communicate their views directly outside most of the hotels where delegates were staying." *Maj. op.* at

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> 1141 n.54. I am at a loss to find *any* evidence in the record to support that statement; nothing in the record or in the majority opinion supports the conclusion that protestors could "communicate" anything to delegates within the No Protest Zone. The majority supports its factual assertion by drawing inferences in favor of the City. As previously noted, this is improper at the summary judgment stage. I am not prepared on this limited record to conclude as a matter of law that Order No. 3 left ample alternative avenues of expression.

In *Bay Area Peace Navy,* we found that a 75-yard security zone "rendered the [plaintiffs'] ... demonstration completely ineffective and that passing out pamphlets on land or demonstrating at the entrance to the pier are not viable alternatives because the invited visitors, who are the [plaintiffs'] intended audience, are not accessible from those positions." 914 F.2d at 1229 (quotation marks omitted). And in *Baugh,* we held that forcing demonstrators to an area 150 to 175 yards away from their intended audience "[did] not provide a reasonable alternative means for communication of [the plaintiffs'] views." 187 F.3d at 1044. Because the regulation at issue in *Baugh* was not tailored "narrowly to allow for lawful demonstrations," it did not leave open ample alternative means of communication. *Id.* Similarly, Order No. 3, which forced protestors to the sidelines and back entrances to the WTO conference venues, did not provide viable alternatives.

City officials all but conceded that the avenues of expression left open were insufficient to allow for meaningful communication. Before the conference began, Seattle police negotiated with organized protest groups to set up "established protest areas." As Assistant Chief Joiner testified,

> In establishing those sites we had tried to make sure that they were well located or that they met the needs of the protest ***1174** groups, that they were visible, that they could see whatever event that they were protesting. In other words, they would be located very close to them. And so we had tried to do everything we could to accommodate peaceful protests on the front side. Obviously that-those agreements broke down on Tuesday morning.

After the agreements broke down and the Mayor issued Order No. 3, Joiner explained that "we had to move people out of that area." In other words, the carefully-crafted protest areas, which would have allowed protestors to see the delegates and be seen by them, were eliminated. Instead, protestors were relegated to the inaccessible areas where no WTO delegates would be bothered by their presence.

Without citing any authority, the majority concludes that the ample alternatives test should be applied "with a practical recognition of the dire facts confronting the City...." *Maj. op.* at 1140. Nowhere in our case law, however, have we even suggested that courts should balance this factor against a city's asserted need to restrict speech. Rather, we require that ample alternative avenues of expression be available in order for a time, place, and manner restriction to withstand First Amendment scrutiny. There is no exception for exigency.

The City asks us to adopt the rule advocated by the Second Circuit in *Bl(a)ck Tea Society.* There, the court noted that demonstrators' messages at "a high-profile event"-the 2004 Democratic National Convention-may reach delegates even if speech is curtailed, "through television, radio, the press, the internet, and other outlets." 378 F.3d at 14. Because the majority concludes that the ample alternatives requirement was met in any event, it does not address this argument. *Maj. op.* at 1139 n. 49. The district court, however, relied on this argument to conclude that Order No. 3 did not foreclose reasonable alternative avenues of expression. The district court was mistaken and we should dispel any notion that media interest in an event can be a substitute for constitutionally-required alternative avenues of communication. As the Seventh Circuit stated in *Hodgkins,* "there is no internet connection, no telephone call, no television coverage that can compare

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to attending a political rally in person...." 355 F.3d at 1063. Public protests are at the heart of the First Amendment and are critical for incubating civic engagement and encouraging spirited debate.

We evoked this concern in *Grossman,* 33 F.3d at 1205 n. 8, and reiterated the particular importance of preserving parks as forums for public debate precisely because ordinary people lack reliable access to the media. The need to protect the average citizen's ability to be heard "is increasingly significant now, when the extremely rich have an enormous variety of privately-owned media through which to reach the public.... At present, more democratic means of communication-demonstrations in parks, bumper stickers, signs in the windows of homes-must be jealously protected." *Id.* The City would place the demonstrators at the mercy of the media industry. There is no way to guarantee that the message protestors seek to convey would be heard in any recognizable format. The First Amendment cannot allow a city to require that subjugation.

C. DISCRETION

Even a content-neutral time, place, and manner restriction will not survive First Amendment scrutiny if it allows for unduly broad discretion on the part of the official charged with enforcing the regulation. Thus, a regulation that restricts speech must "contain adequate standards to guide the official's decision and render it subject to effective judicial review." ***1175***Thomas v. Chicago Park District,* 534 U.S. 316, 323, 122 S.Ct. 775, 151 L.Ed.2d 783 (2002). This rule applies even outside the traditional context of licensing schemes. For example, in *Board of Airport Commissioners v. Jews for Jesus,* the Supreme Court held unconstitutional a city ordinance that prohibited all "First Amendment Activities" at Los Angeles International Airport, even if the law were read to apply only to expressive activity that was not "airport-related." 482 U.S. 569, 575, 576, 107 S.Ct. 2568, 96 L.Ed.2d 500 (1987). The Court refused to validate a law that would

> give LAX officials alone the power to decide in the first instance whether a given activity is airport related. Such a law that confers on police a virtually unrestrained power to arrest and charge persons with a violation of the resolution is unconstitutional because the opportunity for abuse, especially where a statute has received a virtually open-ended interpretation, is self-evident.

Id. (quotation marks omitted).

The First Amendment forbids even the *opportunity* for abuse, not just policies that encourage preference for a favored view. *See City of Lakewood v. Plain Dealer Publ'g Co.,* 486 U.S. 750, 757, 108 S.Ct. 2138, 100 L.Ed.2d 771 (1988). If that opportunity is present, the regulation " 'creates an unacceptable risk of the suppression of ideas.' " *Kuba,* 387 F.3d at 856 (quoting *Foti v. City of Menlo Park,* 146 F.3d 629 (9th Cir.1998)). Order No. 3, however, clearly afforded officers the opportunity for abuse, and was therefore constitutionally infirm. [FN17] According to Mayor Schell's deposition testimony, the decision whether to arrest peaceful, lawful protestors within the zone "would depend on the judgment of the officers and people charged with the responsibility of carrying out that order."

> FN17. Relying on *United States v. Griefen,* 200 F.3d 1256, 1263 (9th Cir.2000), the majority concludes that, because Order No. 3 was a lawful time, place, and manner restriction, the discretion it afforded officers to allow or deny entry into the zone "does not render Order No. 3 constitutionally deficient." *Maj. op.* at 1144. *Griefen,* in which we upheld the closure of a construction site to all but essential personnel, is inapposite, as the area into which the plaintiffs sought entry to protest had temporarily lost its status of public forum as a result of the construction activity. 200 F.3d at 1261 ("The immediate area of a construction zone is not an area that has the attributes of a public forum, or even a limited public forum, where people are en-

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> titled to exercise their rights of free speech."). The 25-block area in Seattle cordoned off by Order No. 3, on the other hand, affected a quintessentially public forum-city streets and sidewalks-and therefore the Order is subject to a higher degree of scrutiny. *See supra* at 1166-67; *see also Collins,* 110 F.3d at 1371; *ACLU of Nevada,* 333 F.3d at 1098 ("The ability to restrict speech in public forums ... is 'sharply circumscribed.' ").

Chief Stamper acknowledged that Order No. 3 and the Operations Order interpreting it were "sufficiently vague that it made it difficult from a working cop's point of view to distinguish between who should and who should not be left out." Stamper himself "honestly [didn't] know the answer" whether peaceful protest was a "reasonable purpose" under the Order. And Officer Smith testified at his deposition that he and his fellow officers were never given "a laundry list of activities which would be deemed to be legitimate." Instead, he was told simply to apply "what a reasonable person would think legitimate business is." In sum, the plaintiffs presented evidence that individuals with disfavored views-namely, anyone wearing a "No WTO" sticker or button-were systematically excluded from the zone, whether or not the individual should have been allowed entry under an exception to the Order.[FN18] Furthermore, officers were permitted***1176** complete discretion to determine who was a "protestor" and what was a "reasonable purpose," and therefore who would be excluded. The majority's conclusion that "there was no danger on the face of Order No. 3 that officers enforcing the restricted zone could indiscriminately withhold permission to speak," *maj. op.* at 1145, is flatly contrary to the evidence.

FN18. *See supra* Part I.

The majority concludes that under *Chicago Park District,* the guidelines contained in the Operations Order were sufficiently "specific and objective, and [did] not leave the decision to the whim of the administrator." *Id.* at 1146 (quoting 534 U.S. at 324, 122 S.Ct. 775). But the discretion provided here is quite different-and clearly broader-than the ordinance upheld in *Chicago Park District.* That case involved a licensing scheme that allowed the district to deny a permit

> when the application is incomplete or contains a material falsehood or misrepresentation; when the applicant has damaged Park District property on prior occasions and has not paid for the damage; when a permit has been granted to an earlier applicant for the same time and place; when the intended use would present an unreasonable danger to the health or safety of park users or Park District employees; or when the applicant has violated the terms of a prior permit.

534 U.S. at 324, 122 S.Ct. 775. In light of these highly objective criteria, the Supreme Court held that the disqualifying grounds were "reasonably specific and objective" to defeat a claim of unbridled discretion. *Id.* The Court has never held that a regulation allowing officers to determine unilaterally what constitutes a "reasonable purpose," with no further elaboration on what might be considered "other like type reasonable activity," provides sufficient guidance.[FN19] Even if Order No. 3 were in fact a reasonable time, place, and manner restriction, it would nonetheless fail to satisfy the First Amendment's requirements foreclosing unbridled discretion in enforcement.[FN20]

> FN19. Relying on *S. Oregon Barter Fair v. Jackson County,* 372 F.3d 1128, 1139-41 (9th Cir.2004), the majority suggests that we have in fact found sufficient guidance in similarly-drafted statutes. *Maj. op.* at 1144-45. But clearly the determination of "a fee reasonably calculated to reimburse the county for its reasonable and necessary costs," *S. Oregon Barter Fair,* 372 F.3d at 1140, vests far less discretion in the enforcement officer than determining what constitutes "other like type reasonable activity." The majority's attempt to equate

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the two is not persuasive.

FN20. While noting the relevant facts, the majority concludes that they give rise only to a challenge to Order No. 3 as applied to particular plaintiffs. *See maj. op.* at 1144-46. The discretion conferred by Order No. 3, however, rendered it facially unconstitutional, *Chicago Park District,* 534 U.S. at 323, 122 S.Ct. 775, and incapable of any valid application. *Kuba,* 387 F.3d at 856. In *Chicago Park District,* the Court limited plaintiffs to an as-applied challenge only *after* determining that the challenged permitting scheme contained "adequate standards to guide the official's decision and render it subject to effective judicial review." 534 U.S. at 323, 122 S.Ct. 775. Because the standards provided police officers to guide enforcement of Order No. 3 were not "reasonably specific and objective," *id.* at 324, 122 S.Ct. 775, the majority incorrectly confines the plaintiffs to an as-applied challenge here. *Maj. op.* at 1148-49.

III.

As for Menotti, Stedl, and Skove's Fourth Amendment claims, I would reverse the district court's grant of summary judgment. I agree that Menotti has presented sufficient evidence to create a material factual dispute whether he impeded pedestrians and whether he obstructed an officer in the performance of his duties. Whether the police officers had probable cause to arrest Menotti turns on the resolution*1177 of these factual issues. *See, e.g., United States v. Valencia,* 24 F.3d 1106, 1108 (9th Cir.1994). I would also reverse the district court's summary judgment ruling against Stedl, because there is sufficient evidence in the record to create a genuine factual dispute whether the City had a policy of authorizing unlawful searches and seizures of those who sought to express any opposition to the WTO. *See Oklahoma City v. Tuttle,* 471 U.S. 808, 817, 105 S.Ct. 2427, 85 L.Ed.2d 791 (1985). Finally, I agree with the majority that Skove has alleged a violation of his Fourth Amendment rights and defendant Smith is not entitled to qualified immunity.

* * * * * *

Because Order No. 3 was not narrowly tailored, did not leave open ample alternative means of communication, and afforded individual officers unbridled discretion in its enforcement, it is facially unconstitutional. I would therefore reverse the district court's grant of summary judgment against all *Hankin* plaintiffs, *cf. maj. op.* at 1149 n. 67, and against Menotti, Sellman and Skove on their First Amendment claims. I would also reverse the district court's summary judgment against Menotti, Stedl, and Skove as to their Fourth Amendment claims.

C.A.9 (Wash.),2005.
Menotti v. City of Seattle
409 F.3d 1113, 05 Cal. Daily Op. Serv. 4630, 2005 Daily Journal D.A.R. 6366

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177 F.3d 954, 12 Fla. L. Weekly Fed. C 912
(Cite as: 177 F.3d 954)

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United States Court of Appeals,
Eleventh Circuit.
James Dale SMITH, personally and on behalf of all others similarly situated, Plaintiff-Appellant,
v.
CITY OF FORT LAUDERDALE, FLORIDA, Defendant-Appellee.
No. 98-4973.

June 2, 1999.

Class of homeless persons brought First Amendment action challenging regulation of City of Fort Lauderdale, Florida proscribing begging on five-mile strip of beach and two attendant sidewalks. The United States District Court for the Southern District of Florida, No. 93-6970-CV-NCR, Norman C. Roettger, Jr., J., entered summary judgment for City. Class appealed. The Court of Appeals, Hull, Circuit Judge, held that regulation was narrowly tailored to serve City's interest in providing safe, pleasant environment and eliminating nuisance activity on beach, and thus did not violate free speech guarantees.

Affirmed.

West Headnotes

[1] Constitutional Law 92 ⚿1761

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1761 k. Parks and Forests. Most Cited Cases
(Formerly 92k90.1(4))
Five-mile strip of beach and two attendant sidewalks in Fort Lauderdale, Florida was "public forum" for purposes of First Amendment challenge to regulation restricting begging. U.S.C.A. Const.Amend. 1.

[2] Constitutional Law 92 ⚿1880

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(M) Soliciting, Canvassing, Pamphletting, Leafletting, and Fundraising
92k1880 k. Begging or Panhandling. Most Cited Cases
(Formerly 92k90.1(1.1))
Like other charitable solicitation, begging is speech entitled to First Amendment protection. U.S.C.A. Const.Amend. 1.

[3] Constitutional Law 92 ⚿1735

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1732 Public Forum in General
92k1735 k. Justification for Exclusion or Limitation. Most Cited Cases
(Formerly 92k90.1(4))
Even in a public forum, the government may enforce regulations of the time, place, and manner of expression which: (1) are content-neutral; (2) are narrowly tailored to serve a significant government interest; and (3) leave open ample alternative channels of communication. U.S.C.A. Const.Amend. 1.

[4] Constitutional Law 92 ⚿1880

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(M) Soliciting, Canvassing, Pamphletting, Leafletting, and Fundraising
92k1880 k. Begging or Panhandling. Most Cited Cases

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Exhibit 6

(Formerly 92k90.1(4))

Vagrancy 399 ⚿1

399 Vagrancy

399k1 k. Nature and Elements of Offenses. Most Cited Cases

Regulation proscribing begging on five-mile strip of beach and two attendant sidewalks in City of Fort Lauderdale, Florida was narrowly tailored to serve City's significant government interest in providing safe, pleasant environment and eliminating nuisance activity on beach, and thus did not violate free speech guarantees; City determined that begging in such area adversely impacted tourism, begging was allowed in other public fora throughout City, and proffered alternatives of proscribing only hostile or aggressive begging or confining begging to specific parts of beach did not demonstrate that regulation was substantially broader than necessary. U.S.C.A. Const.Amend. 1.

***955** Bruce S. Rogow, Beverly A. Pohl, American Civil Liberties Union, Ft. Lauderdale, FL, for Plaintiff-Appellant.

Lisa N. Hodapp, Ft. Lauderdale, FL, for Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Florida.

Before COX and HULL, Circuit Judges, and COHILL [FN*], Senior District Judge.

FN* Honorable Maurice B. Cohill, Senior U.S. District Judge for the Western District of Pennsylvania, sitting by designation.

HULL, Circuit Judge:

A Plaintiff-Appellant class of homeless people appeals the district court's decision granting summary judgment for the City of Fort Lauderdale on the class's First Amendment challenge to a City regulation proscribing begging on a certain five-mile strip of beach and two attendant sidewalks. We hold the challenged restrictions on speech are narrowly tailored to serve the City's legitimate interests and thus affirm.

The controversy in this case began when the City of Fort Lauderdale enacted Rules and Park Regulations for City Parks and Beaches, intended "to provide citizens with a safe environment in which recreational opportunity can be maximized." Pursuant to this purpose, the City included in its regulations Rule 7.5, which prescribes regulations "to eliminate nuisance activity on the beach and provide patrons with a pleasant environment in which to recreate." Rule 7.5(c) states, "Soliciting, begging or panhandling is prohibited." [FN1]

FN1. It is undisputed that "soliciting," "begging," and "panhandling" are interchangeable terms. We use the term "begging" to encompass all three.

Plaintiffs challenge Rule 7.5(c)'s application to a five-mile strip of beach, a new, one-and-a-half-mile promenade sidewalk between that beach and Highway A1A, and the commercial-area sidewalk on the opposite side of Highway A1A-hereinafter collectively called the "Fort Lauderdale Beach area." The parties stipulate as follows:

> The Fort Lauderdale Beach area is an essential part of the Fort Lauderdale tourism experience. Tourism is one of Florida's most important economic industries, and Fort Lauderdale is the premiere tourist location of Broward County. The Beach area is Fort Lauderdale's number one tourist attraction. Approximately four million tourists, many of whom are from foreign countries, visit the Fort Lauderdale area, and most of them at one time or another visit the Fort Lauderdale Beach area. City attendance records reflect that almost three million people visit the beach ***956** annually (August, 1993-July, 1994 estimated figures).
>
> The improvement of the Beach area was a high

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priority in the City's plan to expand the economic base of the community by attracting new investment. Creating an attractive infrastructure was designed to encourage quality development in the Beach area.

[1][2] As an initial matter, we note that Rule 7.5(c)'s limitations on begging in the Fort Lauderdale Beach area restrict speech in a public forum. Like other charitable solicitation, begging is speech entitled to First Amendment protection.[FN2] *See Loper v. New York City Police Dept.*, 999 F.2d 699, 704 (2d Cir.1993) (holding "begging is at least 'a form of speech' " because of the lack of material distinctions between begging and other forms of charitable solicitation); *see also Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 632, 100 S.Ct. 826, 63 L.Ed.2d 73 (1980) (holding charitable organizations' solicitations for contributions are protected speech).

> FN2. The parties do not raise-and thus we do not address-the issue of whether begging is commercial speech entitled to a lower level of First Amendment protection.

Additionally, this Court's precedent conclusively establishes that the Fort Lauderdale Beach area covered by Rule 7.5(c)-consisting of beach and sidewalk spaces-is a public forum. *See One World Family Now v. City of Miami Beach*, 175 F.3d 1282 (11th Cir.1999) (holding an oceanfront strip of public sidewalk in the historic Art Deco district of Miami Beach to be a "quintessential public forum"); *International Caucus of Labor Committees v. City of Montgomery*, 111 F.3d 1548, 1550 (11th Cir.1997) (confirming the longstanding principle that "[a] sidewalk, although specifically constructed for pedestrian traffic, also constitutes a public forum"); *Naturist Society, Inc. v. Fillyaw*, 958 F.2d 1515, 1521-23 (11th Cir.1992) (holding John D. MacArthur Beach State Park to be a public forum).

[3][4] Nonetheless, Rule 7.5(c)'s restrictions on begging in the Fort Lauderdale Beach area[FN3] survive Plaintiffs' First Amendment challenge. Even in a public forum, the government may "enforce regulations of the time, place, and manner of expression which [1] are content-neutral, [2] are narrowly tailored to serve a significant government interest, and [3] leave open ample alternative channels of communication." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983); *see also One World Family Now*, 175 F.3d at 1287. Plaintiffs do not dispute that Rule 7.5(c) is content-neutral and leaves open ample alternative channels of communication. Plaintiffs also expressly concede that the City's interest in providing a safe, pleasant environment and eliminating nuisance activity on the beach is "a significant government interest." Plaintiffs argue only that Rule 7.5(c)'s begging restrictions are not narrowly tailored to serve that interest. We disagree.

> FN3. On appeal, Plaintiffs challenge Rule 7.5(c) only as applied to begging in the Fort Lauderdale Beach area.

Rule 7.5(c)'s restrictions on begging in the Fort Lauderdale Beach area are narrowly tailored to serve the City's interest in providing a safe, pleasant environment and eliminating nuisance activity on the beach. The City has made the discretionary determination that begging in this designated, limited beach area adversely impacts tourism. Without second-guessing that judgment, which lies well within the City's discretion, we cannot conclude that banning begging in this limited beach area burdens "substantially more speech than is necessary to further the government's legitimate interest." *One World Family Now*, 175 F.3d at 1287 (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 789, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989)). Rule 7.5(c)'s suppression of begging in the ***957** Fort Lauderdale Beach area is materially mitigated by the allowance of begging in streets, on sidewalks, and in many other public fora throughout the City. *Cf. Loper*, 999 F.2d at 701 (assessing a statute applicable to any "public place" in the state of New York).

Moreover, Rule 7.5(c)'s restrictions on begging in

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the Fort Lauderdale Beach area are not rendered unconstitutional by the possible availability of less-speech-restrictive alternatives. Plaintiffs assert that the City's interest might be served by proscribing only hostile or aggressive begging or by confining begging to specific parts of the beach. But Rule 7.5(c) need not be the "least restrictive or least intrusive means" of serving the City's interest in order to qualify as "narrowly tailored." *Ward*, 491 U.S. at 788-89, 109 S.Ct. 2746. "So long as the means chosen are not substantially broader than necessary to achieve the government's interests ... the regulation will not be invalid simply because a court concludes that the government's interest could be adequately served by some less-speech-restrictive alternative." *Id.* at 799, 109 S.Ct. 2746. Plaintiffs' proffered alternatives fall far short of demonstrating that Rule 7.5(c)'s prohibition of begging in this Fort Lauderdale Beach area is "substantially broader than necessary."

Thus, Rule 7.5(c)'s restrictions on begging in the Fort Lauderdale Beach area do not run afoul of the First Amendment, and the district court's grant of summary judgment for the City is AFFIRMED.

C.A.11 (Fla.),1999.
Smith v. City of Fort Lauderdale, Fla.
177 F.3d 954, 12 Fla. L. Weekly Fed. C 912

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225 F.3d 899
(Cite as: 225 F.3d 899)

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United States Court of Appeals,
Seventh Circuit.
Jimmy GRESHAM, on his own behalf and on behalf of a class of those similarly situated, Plaintiff-Appellant,
v.
Bart PETERSON, in his official capacity as Mayor of the City of Indianapolis, Indiana, and the City of Indianapolis, Indiana, Defendants-Appellees.
No. 99-3770.

Argued March 30, 2000.
Decided Aug. 31, 2000.

Homeless person brought suit challenging ordinance that limited street begging in public places and prohibited entirely activities defined as "aggressive panhandling." The United States District Court for the Southern District of Indiana, S. Hugh Dillin, J., granted summary judgment for city, and plaintiff appealed. The Court of Appeals, Kanne, Circuit Judge, held that: (1) ordinance did not violate First Amendment, and (2) ordinance was not vague in defining aggressive panhandling.

Affirmed.

West Headnotes

[1] Federal Courts 170B ⚿776

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)1 In General
170Bk776 k. Trial De Novo. Most Cited Cases
Court of Appeals reviews de novo question of whether state law violates Constitution.

[2] Constitutional Law 92 ⚿1512

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1511 Content-Neutral Regulations or Restrictions
92k1512 k. In General. Most Cited Cases
(Formerly 92k90(3))

Constitutional Law 92 ⚿1514

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1511 Content-Neutral Regulations or Restrictions
92k1514 k. Narrow Tailoring Requirement; Relationship to Governmental Interest. Most Cited Cases
(Formerly 92k90(3))

Constitutional Law 92 ⚿1515

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1511 Content-Neutral Regulations or Restrictions
92k1515 k. Existence of Other Channels of Expression. Most Cited Cases
(Formerly 92k90(3))
Under First Amendment, governments may enforce regulations of time, place and manner of expression which are content neutral, are narrowly tailored to serve significant government interest, and leave open ample alternative channels of communication. U.S.C.A. Const.Amend. 1.

[3] Constitutional Law 92 ⚿1512

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92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1511 Content-Neutral Regulations or Restrictions
92k1512 k. In General. Most Cited Cases
(Formerly 92k90(3))
Inquiry, under First Amendment, into whether regulation of speech is content neutral in context of time, place or manner restrictions turns on government's justification for regulation. U.S.C.A. Const.Amend. 1.

|4| Constitutional Law 92 ⚿1880

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(M) Soliciting, Canvassing, Pamphletting, Leafletting, and Fundraising
92k1880 k. Begging or Panhandling. Most Cited Cases
(Formerly 92k90.1(4), 92k90.1(1.1))

Vagrancy 399 ⚿1

399 Vagrancy
399k1 k. Nature and Elements of Offenses. Most Cited Cases
Panhandling ordinance that prohibited solicitation of cash at night and near public transportation vehicle or facility, parked or stopped vehicle, sidewalk cafe or bank did not violate First Amendment; ordinance was narrowly tailored to promote city's legitimate interest in safety and convenience of its citizens on public streets, and ordinance allowed many feasible alternatives to reach both daytime and nighttime downtown crowds. U.S.C.A. Const.Amend. 1.

|5| Constitutional Law 92 ⚿1505

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1505 k. Narrow Tailoring. Most Cited Cases
(Formerly 92k90(3))
Government regulation can be considered narrowly tailored, for First Amendment purposes, so long as regulation promotes substantial government interest that would be achieved less effectively absent the regulation; accordingly, regulation need not be perfect fit for government's needs, but cannot burden substantially more speech than necessary. U.S.C.A. Const.Amend. 1.

|6| Constitutional Law 92 ⚿1509

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1508 Time, Place, or Manner Restrictions
92k1509 k. In General. Most Cited Cases
(Formerly 92k90(3))
Time, place or manner restriction need not be least restrictive means of achieving government purpose, for First Amendment purposes, so long as it can be considered narrowly tailored to that purpose.

|7| Constitutional Law 92 ⚿1509

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1508 Time, Place, or Manner Restrictions
92k1509 k. In General. Most Cited Cases
(Formerly 92k90(3))
Adequate alternative channel of communication, for

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First Amendment purposes, does not have to be speaker's first or best choice, or one that provides same audience or impact for speech, but alternative must be more than merely theoretically available. U.S.C.A. Const.Amend. 1.

|8| Constitutional Law 92 ⚿1509

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1508 Time, Place, or Manner Restrictions
92k1509 k. In General. Most Cited Cases
(Formerly 92k90(3))

To be adequate alternative channel of communication, for First Amendment purposes, alternative cannot totally foreclose speaker's ability to reach one audience even if it allows speaker to reach other groups. U.S.C.A. Const.Amend. 1.

|9| Constitutional Law 92 ⚿4509(8)

92 Constitutional Law
92XXVII Due Process
92XXVII(H) Criminal Law
92XXVII(H)2 Nature and Elements of Crime
92k4502 Creation and Definition of Offense
92k4509 Particular Offenses
92k4509(8) k. Disorderly Conduct and Breach of the Peace. Most Cited Cases
(Formerly 92k258(3.1))

Vagrancy 399 ⚿1

399 Vagrancy
399k1 k. Nature and Elements of Offenses. Most Cited Cases

Ordinance prohibiting "aggressive panhandling" was not vague, in violation of due process, in defining aggressive panhandling as "[f]ollowing behind, ahead or alongside a person who walks away from the panhandler after being solicited," or "[u]sing profane or abusive language, either during the solicitation or following a refusal to make a donation, or making any statement, gesture, or other communication which would cause a reasonable person to be fearful or feel compelled"; reasonable interpretation by state court could render provisions constitutional. U.S.C.A. Const.Amend. 14.

|10| Statutes 361 ⚿47

361 Statutes
3611 Enactment, Requisites, and Validity in General
361k45 Validity and Sufficiency of Provisions
361k47 k. Certainty and Definiteness. Most Cited Cases

Void-for-vagueness doctrine forbids enforcement of law that contains terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application.

|11| Statutes 361 ⚿47

361 Statutes
3611 Enactment, Requisites, and Validity in General
361k45 Validity and Sufficiency of Provisions
361k47 k. Certainty and Definiteness. Most Cited Cases

Under void-for-vagueness doctrine, legislative enactments must articulate terms with reasonable degree of clarity to reduce risk of arbitrary enforcement and allow individuals to conform their behavior to requirements of law.

|12| Constitutional Law 92 ⚿4505

92 Constitutional Law
92XXVII Due Process
92XXVII(H) Criminal Law
92XXVII(H)2 Nature and Elements of Crime

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92k4502 Creation and Definition of Offense
92k4505 k. Certainty and Definiteness in General. Most Cited Cases
(Formerly 92k258(2))
Statute that vests virtually complete discretion in hands of police fails to provide minimal guidelines required for due process. U.S.C.A. Const.Amend. 14.

|13| Constitutional Law 92 ⚖1013

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k1006 Particular Issues and Applications
92k1013 k. Vagueness in General. Most Cited Cases
(Formerly 92k47)
In assessing constitutionality of allegedly vague state law or ordinance, federal court must consider any limiting construction that state court or enforcement agency has proffered.

|14| Federal Courts 170B ⚖386

170B Federal Courts
170BVI State Laws as Rules of Decision
170BVI(B) Decisions of State Courts as Authority
170Bk386 k. State Constitutions and Statutes, Validity and Construction. Most Cited Cases

Injunction 212 ⚖85(2)

212 Injunction
212II Subjects of Protection and Relief
212II(E) Public Officers and Entities
212k85 Enforcement of Statutes, Ordinances, or Other Regulations
212k85(2) k. On Ground of Invalidity. Most Cited Cases
Rule that federal courts should defer to state court interpretations of state laws also discourages federal courts from enjoining statutes that could be easily narrowed by state court to avoid constitutional problems.

|15| Constitutional Law 92 ⚖1013

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k1006 Particular Issues and Applications
92k1013 k. Vagueness in General. Most Cited Cases
(Formerly 92k48(4.1))
Court of Appeals will not hold vague statute unconstitutional if reasonable interpretation by state court could render it constitutional in some application.

|16| Statutes 361 ⚖47

361 Statutes
361I Enactment, Requisites, and Validity in General
361k45 Validity and Sufficiency of Provisions
361k47 k. Certainty and Definiteness. Most Cited Cases
Laws must contain reasonable degree of clarity so that people of common intelligence can understand their meaning; furthermore, because penalties for noncompliance are less severe, laws imposing civil rather than criminal penalties do not demand same high level of clarity.
***901** Kenneth J. Falk (Argued), Indiana Civil Liberties Union, Indianapolis, IN, for Plaintiff-Appellant.

Anthony Scott Chinn (Argued), Office of the Attorney General, Indianapolis, IN, Thomas E Satrom, Office of Corporation Counsel, Indianapolis, IN, for Defendants-Appellees.

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Before WOOD, Jr., EASTERBROOK and KANNE, Circuit Judges.

KANNE, Circuit Judge.

Jimmy Gresham challenges an Indianapolis ordinance that limits street begging in public places and prohibits entirely activities defined as "aggressive panhandling." Gresham believes that the ordinance infringes his First Amendment right to free speech and his Fourteenth Amendment right to due process. The city considers the ordinance a reasonable response to the public safety threat posed by panhandlers. The district court found that a state court could construe the ordinance in such a way to render it sufficiently clear and specific and granted the city summary judgment on Gresham's request for a permanent injunction. We affirm.

I. HISTORY

The parties have stipulated to the relevant facts, which for the purposes of reviewing a summary judgment motion, we accept as true. *See Cable v. Ivy Tech State College*, 200 F.3d 467, 476 (7th Cir.1999). In June 1999, the City of Indianapolis amended an ordinance regarding solicitation in public places. The ordinance, which became effective on July 6, 1999, reads as follows:

> (a) As used in this section, *panhandling* means any solicitation made in person upon any street, public place or park in the city, in which a person requests an immediate donation of money or other gratuity from another person, and includes but is not limited to seeking donations:
>
> (1) By vocal appeal or for music, singing, or other street performance; and,
>
> (2) Where the person being solicited receives an item of little or no monetary value in exchange for a donation, under circumstances where a reasonable person would understand that the transaction is in substance a donation. However, panhandling shall not include the act of passively standing or sitting nor performing music, singing or other street performance with a sign or other indication that a donation is being sought, without any vocal request other than in response to an inquiry by another person.
>
> (b) It shall be unlawful to engage in an act of panhandling on any day after sunset, or before sunrise.
>
> (c) It shall be unlawful to engage in an act of panhandling when either the panhandler or the person being solicited is located at any of the following locations; at a bus stop; in any public transportation vehicle or public transportation facility; in a vehicle which is parked or stopped on a public street or alley; in a sidewalk caf[e]; or within twenty (20) feet in any direction from an automatic teller machine or entrance to a bank.
>
> (d) It shall be unlawful to engage in an act of panhandling in an aggressive manner, including any of the following actions:
>
> (1) Touching the solicited person without the solicited person's consent.
>
> (2) Panhandling a person while such person is standing in line and waiting ***902** to be admitted to a commercial establishment;
>
> (3) Blocking the path of a person being solicited, or the entrance to any building or vehicle;
>
> (4) Following behind, ahead or alongside a person who walks away from the panhandler after being solicited;
>
> (5) Using profane or abusive language, either during the solicitation or following a refusal to make a donation, or making any statement, gesture, or other communication which would cause a reasonable person to be fearful or feel compelled; or,

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(6) Panhandling in a group of two (2) or more persons.

(e) Each act of panhandling prohibited by this section shall constitute a public nuisance and a separate violation of this Code. Each violation shall be punishable as provided in section 103-3 of the Code, and the court shall enjoin any such violator from committing further violations of this section.

City-County General Ordinance No. 78 (1999), Revised Code of Indianapolis and Marion County § 407-102. Section 103-3 provides that a person convicted of violating the ordinance will be fined not more than $2,500 for each violation. The ordinance does not provide for imprisonment of violators, except, of course, a past offender who violates the mandatory injunction provided in Paragraph (e) could be jailed for contempt.

Jimmy Gresham is a homeless person who lives in Indianapolis on Social Security disability benefits of $417 per month. He supplements this income by begging, using the money to buy food. He begs during both the daytime and nighttime in downtown Indianapolis. Because different people visit downtown at night than during the day, it is important to him that he be able to beg at night. Gresham approaches people on the street, tells them he is homeless and asks for money to buy food. Gresham has not been cited for panhandling under the new ordinance, but he fears being cited for panhandling at night or if an officer interprets his requests for money to be "aggressive" as defined by the law.

Gresham filed this class action shortly after the ordinance took effect, requesting injunctive and declaratory relief. Gresham moved for a preliminary injunction barring enforcement of the ordinance on the grounds that it was unconstitutionally vague and violated his right to free speech. The district court, after hearing oral argument, notified the parties that it would convert its order on the preliminary injunction into an order on the merits. The parties filed additional memoranda of law, but no additional evidence. On September 28, 1999, the court entered a final order denying the motion for preliminary injunction and dismissing the case.

In the order, the district court construed the list of six actions that constitute aggressive panhandling as exclusive, eliminating the danger that someone could be cited for other, unenumerated acts. The court further ruled that the proscription in Paragraph (d)(5) against actions that make a person "fearful or feel compelled" was not unconstitutionally vague because it could be interpreted to mean "fear for his safety or feel compelled to donate." The court held that because the ordinance was civil in nature and the actions prohibited under aggressive panhandling were not related to speech interests, no intent element was necessary. Finally, the court found the ordinance to be a valid content-neutral regulation under *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983).

II. ANALYSIS

[1] On appeal, Gresham raises two principal arguments. First, he contends that the provisions defining aggressive panhandling are vague because they fail to provide clear criteria to alert panhandlers and authorities of what constitutes a violation and because they fail to include an ***903** intent element. Second, he argues that the statute fails the test for content-neutral time, place and manner restrictions on protected speech. We review *de novo* the question of whether a state law violates the Constitution. *See Scariano v. Justices of Supreme Court of Ind.*, 38 F.3d 920, 924 (7th Cir.1994).

A. The First Amendment

Laws targeting street begging have been around for many years, but in the last twenty years, local communities have breathed new life into old laws or passed new ones. Cities, such as Indianapolis, have tried to narrowly draw the ordinances to target the most bothersome types of street solicitations and

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give police another tool in the effort to make public areas, particularly downtown areas, safe and inviting.

While the plaintiff here has focused the inquiry on the effects of the ordinance on the poor and homeless, the ordinance itself is not so limited. It applies with equal force to anyone who would solicit a charitable contribution, whether for a recognized charity, a religious group, a political candidate or organization, or for an individual. It would punish street people as well as Salvation Army bell ringers outside stores at Christmas, so long as the appeal involved a vocal request for an immediate donation.

The ordinance bans panhandling by beggars or charities citywide on any "street, public place or park" in three circumstances. First, it would prohibit any nighttime panhandling § 407-102(b). Second, it would prohibit at all times-day or night-panhandling in specified areas. § 407-102(c). Third, it would prohibit "aggressive panhandling" at all times. § 407-102(d)(1)-(6). The defendants emphatically point out that the ordinance allows a great deal of solicitation, including "passive" panhandling, which does not include a vocal appeal, street performances, legitimate sales transactions and requests for donations over the telephone or any other means that is not "in person" or does not involve an "immediate donation." Under the ordinance, one could lawfully hold up a sign that says "give me money" and sing "I am cold and starving," so long as one does not voice words to the effect of "give me money."

Several courts before us, as well as many commentators, have grappled with understanding panhandling laws in light of the First Amendment guarantee of free speech and the constitutional right to due process. *See, e.g., Smith v. City of Fort Lauderdale,* 177 F.3d 954 (11th Cir.1999); *Loper v. New York City Police Dep't,* 999 F.2d 699 (2d Cir.1993). To this point, the Supreme Court has not resolved directly the constitutional limitations on such laws as they apply to individual beggars, but has provided clear direction on how they apply to organized charities, not-for-profits and political groups. *See Riley v. National Fed'n of the Blind of North Carolina, Inc.*, 487 U.S. 781, 789, 108 S.Ct. 2667, 101 L.Ed.2d 669 (1988); *Secretary of State of Md. v. Joseph H. Munson Co.*, 467 U.S. 947, 959-60, 104 S.Ct. 2839, 81 L.Ed.2d 786 (1984); *Village of Schaumburg v. Citizens for a Better Environment,* 444 U.S. 620, 632, 100 S.Ct. 826, 63 L.Ed.2d 73 (1980).

To the extent the Indianapolis ordinance could be enforced against organized charities, such as the United Way, Salvation Army or others, the Supreme Court's holding in *Schaumburg* would control resolution of the case. In *Schaumburg,* the Supreme Court considered a local prohibition on solicitation by charities that did not use a certain percentage of their contributions for charitable purposes. 444 U.S. at 623-24, 100 S.Ct. 826. As a threshold consideration, the Court determined that solicitations by organized charities were entitled to First Amendment protection. *Id.* at 632, 100 S.Ct. 826. The Court found that charities often engage in core First Amendment speech while soliciting donations, and that without such appeals for support, the flow of information on many social, economic, political and cultural topics***904** would cease. As such, the solicitations by organized charities were "within the protection of the First Amendment" although "subject to reasonable regulation." *Id.*

The Court placed charitable solicitations by organizations in a category of speech close to the heart of the First Amendment, and distinguished it from "purely commercial speech" which is "primarily concerned with providing information about the characteristics and costs of goods and services." *Id.* Commercial speech, on the other hand, has been placed lower in the First Amendment food chain, somewhere between political speech and pornography. It deserves protection, but authorities are more free to regulate commercial speech than core-value speech.

Other courts examining issues similar to those at

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hand did not distinguish between solicitation for organized charities and solicitation by individual beggars. The Eleventh Circuit held that "[l]ike other charitable solicitation, begging is speech entitled to First Amendment protection." *Smith*, 177 F.3d at 956 (citing *Schaumburg*, 444 U.S. at 632, 100 S.Ct. 826). The Second Circuit likewise held that for First Amendment purposes, the distinction between begging for a charity and begging for one's self is not significant. *Loper*, 999 F.2d at 704. "We see little difference between those who solicit for organized charities and those who solicit for themselves in regard to the message conveyed." *Id.* Both *Smith* and *Loper* held that limitations on panhandling must be analyzed under the same *Schaumburg* framework as limitations for charities. *Smith*, 177 F.3d at 956; *Loper*, 999 F.2d at 704.

Indeed, the Court's analysis in *Schaumburg* suggests little reason to distinguish between beggars and charities in terms of the First Amendment protection for their speech. Solicitation, the Court reasoned, "is characteristically intertwined with informative and perhaps persuasive speech" which the First Amendment protects. *Schaumburg*, 444 U.S. at 632, 100 S.Ct. 826. Because they are intimately connected, solicitation cannot be restricted without also risking the flow of information. Importantly, the *Schaumburg* Court expressly rejected the suggestion that the message and the solicitation could be considered severable. *Id.* at 628-32, 100 S.Ct. 826. The village had argued that the ordinance prohibited only the request for money and left the charity free to propagate its views, but the Court called this view of the First Amendment protection for solicitors "too limited." After extensively reviewing its own case law on the subject, the Court held that restrictions on a charity's request for money necessarily implicate restrictions on speech itself. *Id.* at 632, 100 S.Ct. 826.

Similarly, the Indianapolis ordinance protects the communication of ideas by solicitors and limits only the bare request for cash. Yet the two can be closely intertwined. Beggars at times may communicate important political or social messages in their appeals for money, explaining their conditions related to veteran status, homelessness, unemployment and disability, to name a few. Like the organized charities, their messages cannot always be easily separated from their need for money. While some communities might wish all solicitors, beggars and advocates of various causes be vanished from the streets, the First Amendment guarantees their right to be there, deliver their pitch and ask for support. *See Schaumburg*, 444 U.S. at 632, 100 S.Ct. 826 ("[C]haritable appeals for funds, on the street or door to door, involve a variety of speech interests ... that are within the protection of the First Amendment."). Neither the parties to this appeal nor any authorities found by this Court suggest we should distinguish between restrictions on organized charities and individuals for purposes of understanding the First Amendment guarantees. Therefore, assuming for the purposes of this appeal that some panhandler speech would be protected by the First Amendment, we find that *Schaumburg* ***905** provides the appropriate standard to analyze this claim.[FN1]

FN1. As an aside, we note that the Court in *Schaumburg* distinguished solicitation from commercial speech, which is "primarily concerned with providing information about the characteristics and costs of goods and services." 444 U.S. at 632, 100 S.Ct. 826. The Eleventh Circuit, noting that the parties did not raise the argument, declined to reach the issue of whether panhandling could be considered commercial speech and therefore subject to more regulation. *See Smith*, 177 F.3d at 956 n. 2. We too will follow that prudent approach and not decide an issue the parties declined to raise. *See generally* Robert C. Ellickson, *Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows, and Public-Space Zoning*, 105 Yale L.J. 1165, 1229 (1996) (discussing possibility of treating begging

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> as commercial speech). In any event, considering the Supreme Court's definition of commercial speech as outlined in *Schaumburg,* we doubt panhandling falls into this classification.

[2] After recognizing a First Amendment right to solicit money in public places, the *Schaumburg* Court held that a government may enact "reasonable regulations" so long as they reflect "due regard" for the constitutional interests at stake. 444 U.S. at 632, 100 S.Ct. 826. The parties assume that the proper analysis to determine whether the Indianapolis ordinance is one such reasonable regulation is that set out for "time, place and manner" restrictions in *Perry,* 460 U.S. at 45, 103 S.Ct. 948. Because the Indianapolis ordinance does not ban all panhandling, we agree that the law could be understood as a time, place or manner regulation. *See Cantwell v. Connecticut,* 310 U.S. 296, 304, 60 S.Ct. 900, 84 L.Ed. 1213 (1940). Under *Perry,* governments may "enforce regulations of the time, place and manner of expression which are content neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." 460 U.S. at 45, 103 S.Ct. 948. Other courts considering restrictions on solicitation also have applied the time, place, manner analysis from *Perry. See Smith,* 177 F.3d at 956; *ISKCON of Potomac, Inc. v. Kennedy,* 61 F.3d 949, 953 (D.C.Cir.1995); *Loper,* 999 F.2d at 704-05 .

[3] Colorable arguments could be made both for and against the idea that the Indianapolis ordinance is a content-neutral time, place or manner restriction. The Supreme Court has held that "[g]overnment regulation of expressive activity is content neutral so long as it is '*justified* without reference to the content of the regulated speech.' " *Ward v. Rock Against Racism,* 491 U.S. 781, 791, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989) (citation omitted). To help apply this somewhat circular definition, the Court instructed that the principal inquiry is "whether the government has adopted a regulation of speech because of disagreement with the message it conveys." *Id.* In *City of Cincinnati v. Discovery Network, Inc.,* 507 U.S. 410, 428-29, 113 S.Ct. 1505, 123 L.Ed.2d 99 (1993), the Court held that a ban on newsracks containing commercial handbills but not newspapers was content-based because "whether any particular newsrack falls within the ban is determined by the content of the publication resting inside that newsrack." Similarly here, whether a solicitor violates the ordinance depends on whether he asked for cash rather than for something else. On one side of the argument, the city ordinance does not prohibit all solicitation on city streets, only solicitations for immediate cash donations. One could, for instance, ask passers-by for their signatures, time, labor or anything else, other than money. Only by determining the specific content of a solicitor's speech could authorities determine whether they violated the ordinance, which would seem to be a content-based restriction. *See id.* at 429, 113 S.Ct. 1505; *Ward,* 491 U.S. at 791, 109 S.Ct. 2746. But as *Ward* and more recently *Hill v. Colorado,* 530 U.S. 703, ----, 120 S.Ct. 2480, 2491, 147 L.Ed.2d 597 (2000), emphasized, the inquiry into content neutrality in the context of time, place or manner restrictions turns on the government's***906** justification for the regulation. Because the parties here agree that the regulations are content neutral, we need not decide whether the Indianapolis ordinance can be justified without reference to the content of the regulated speech. Thus the Indianapolis ordinance should be upheld if it is narrowly tailored to achieve a significant governmental purpose and leaves open alternate channels of communication.

[4][5][6] The city has a legitimate interest in promoting the safety and convenience of its citizens on public streets. *See Madsen v. Women's Health Center,* 512 U.S. 753, 768, 114 S.Ct. 2516, 129 L.Ed.2d 593 (1994) (holding that the state "also has a strong interest in ensuring the public safety and order, in promoting the free flow of traffic on public streets and sidewalks ..."); *Heffron v. International Soc. for Krishna Consciousness, Inc.,* 452 U.S. 640, 650,

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101 S.Ct. 2559, 69 L.Ed.2d 298 (1981) (recognizing state interest in safety and convenience of citizens using public fora); *Cox v. New Hampshire*, 312 U.S. 569, 574, 61 S.Ct. 762, 85 L.Ed. 1049 (1941) (recognizing state interest in safety and convenience on public roads); *Ayres v. City of Chicago*, 125 F.3d 1010, 1015 (7th Cir.1997) ("There are unquestionable benefits from regulating peddling, First Amendment or otherwise, [including] the control of congestion."). The plaintiff concedes this much, but argues that a total nighttime ban on verbal requests for alms is substantially broader than necessary and therefore cannot be considered narrowly tailored. However, a government regulation can be considered narrowly tailored "so long as the ... regulation promotes a substantial government interest that would be achieved less effectively absent the regulation." *Ward*, 491 U.S. at 799, 109 S.Ct. 2746. This means the regulation need not be a perfect fit for the government's needs, but cannot burden substantially more speech than necessary. *Id.* at 800, 109 S.Ct. 2746. Furthermore, a time, place or manner restriction need not be the least restrictive means of achieving the government purpose, so long as it can be considered narrowly tailored to that purpose. *Id.* at 797, 109 S.Ct. 2746.

The city determined that vocal requests for money create a threatening environment or at least a nuisance for some citizens. Rather than ban all panhandling, however, the city chose to restrict it only in those circumstances where it is considered especially unwanted or bothersome-at night, around banks and sidewalk cafes, and so forth. These represent situations in which people most likely would feel a heightened sense of fear or alarm, or might wish especially to be left alone. By limiting the ordinance's restrictions to only those certain times and places where citizens naturally would feel most insecure in their surroundings, the city has effectively narrowed the application of the law to what is necessary to promote its legitimate interest.

[7][8] Finally, the plaintiff contends that the statute fails to provide ample alternative channels of communication. We disagree. An adequate alternative does not have to be the speaker's first or best choice, *see Heffron*, 452 U.S. at 647, 101 S.Ct. 2559, or one that provides the same audience or impact for the speech. *See Ward*, 491 U.S. at 802, 109 S.Ct. 2746; *Cornelius v. NAACP Legal Defense and Educational Fund, Inc.*, 473 U.S. 788, 809, 105 S.Ct. 3439, 87 L.Ed.2d 567 (1985) (holding that in context nonpublic forum, an ample alternative does not need to be the most efficient one for speaker's purposes). However, the Court has "shown special solicitude for forms of expression that are much less expensive than feasible alternatives," *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 812 n. 30, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984), and so an alternative must be more than merely theoretically available. It must be realistic as well. *See Linmark Assocs., Inc. v. Township of Willingboro*, 431 U.S. 85, 93, 97 S.Ct. 1614, 52 L.Ed.2d 155 (1977). Furthermore, an adequate alternative***907** cannot totally foreclose a speaker's ability to reach one audience even if it allows the speaker to reach other groups. *See Bery v. City of New York*, 97 F.3d 689, 698 (2d Cir.1996) (holding that total ban on sidewalk art does not leave open alternative means of communication because alternative display in galleries or museums would not reach the same audience.)

The Indianapolis ordinance allows many feasible alternatives to reach both the daytime and nighttime downtown Indianapolis crowds. Under the ordinance, panhandlers may ply their craft vocally or in any manner they deem fit (except for those involving conduct defined as aggressive) during all the daylight hours on all of the city's public streets. Gresham contends that soliciting at night is vital to his survival, a fact we do not dispute, but the ordinance leaves open many reasonable ways for him to reach the nighttime downtown crowd. He may solicit at night, so long as he does not vocally request money. He may hold up signs requesting money or engage in street performances, such as playing music, with an implicit appeal for support. Although

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perhaps not relevant to street beggars, the ordinance also permits telephone and door-to-door solicitation at night. Thus to the extent that "give me money" conveys an idea the expression of which is protected by the First Amendment, solicitors may express themselves vocally all day, and in writing, by telephone or by other non-vocal means all night. Furthermore, they may solicit in public places on all 396.4 square miles of the city, except those parts occupied by sidewalk cafes, banks, ATMs and bus stops. This is a far cry from the total citywide ban on panhandling overturned by the court in *Loper*, 999 F.2d at 705 ("[A] statute that totally prohibits begging in all public places cannot be considered 'narrowly tailored.' "), or the total ban on panhandling in a five-mile area of public beach upheld by the court in *Smith*, 177 F.3d at 956.

B. Vagueness

[9] Gresham next challenges certain provisions of the ordinance as unconstitutionally vague. Specifically, he contends that the definition of aggressive panhandling in sections (d)(4) and (d)(5) are not sufficiently clear to direct authorities on the enforcement of the law, nor to allow panhandlers such as Gresham to avoid violating the law. Section (d)(4) prohibits "[f]ollowing behind, ahead or alongside a person who walks away from the panhandler after being solicited." Gresham argues hypothetically that police could cite a person for inadvertently violating this section merely by walking in the same direction as the solicited person, without intending to engage in "aggressive panhandling." Also, section (d)(5) refers to making a person "fearful or feel compelled" without defining what the terms mean in relation to panhandling. A generalized guilt at economic inequality might make one "feel compelled" even by the meekest request for money.

[10][11][12] The void-for-vagueness doctrine forbids the enforcement of a law that contains "terms so vague that [persons] of common intelligence must necessarily guess at its meaning and differ as to its application." *Roberts v. United States Jaycees*, 468 U.S. 609, 629, 104 S.Ct. 3244, 82 L.Ed.2d 462 (1984) (quoting *Connally v. General Construction Co.*, 269 U.S. 385, 391, 46 S.Ct. 126, 70 L.Ed. 322 (1926)). Legislative enactments must articulate terms "with a reasonable degree of clarity" to reduce the risk of arbitrary enforcement and allow individuals to conform their behavior to the requirements of the law. *Id.* A statute that "vests virtually complete discretion in the hands of the police" fails to provide the minimal guidelines required for due process. *See Kolender v. Lawson*, 461 U.S. 352, 358, 103 S.Ct. 1855, 75 L.Ed.2d 903 (1983).

[13][14][15] In assessing the constitutionality of an allegedly vague state law or ordinance, "a federal court must, of course, ***908** consider any limiting construction that a state court or enforcement agency has proffered." *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494 n. 5, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982) ("*Hoffman Estates*"); *see also Roberts*, 468 U.S. at 630-31, 104 S.Ct. 3244; *Kolender*, 461 U.S. at 355 & n. 4, 103 S.Ct. 1855. In this case, the Indiana courts have not yet had an opportunity to interpret the terms of the Indianapolis ordinance, and so we have no authoritative judicial construction of its terms. *See generally, Brownsburg Area Patrons Affecting Change v. Baldwin*, 714 N.E.2d 135, 141 (Ind.1999) ("We have regularly said that courts have an overriding obligation to construe our statutes in such a way as to render them constitutional if reasonably possible.") (internal quotation and citations omitted). However, the rule that federal courts should defer to state court interpretations of state laws, *see City of Chicago v. Morales*, 527 U.S. 41, 119 S.Ct. 1849, 144 L.Ed.2d 67 (1999), also discourages federal courts from enjoining statutes that could be easily narrowed by a state court to avoid constitutional problems. *See Erznoznik v. City of Jacksonville*, 422 U.S. 205, 216, 95 S.Ct. 2268, 45 L.Ed.2d 125 (1975) ("[A] state statute should not be deemed facially invalid unless it is not readily subject to a narrowing construction by

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the state courts.") (citing *Dombrowski v. Pfister*, 380 U.S. 479, 497, 85 S.Ct. 1116, 14 L.Ed.2d 22 (1965)). Therefore, we will not hold a vague statute unconstitutional if a reasonable interpretation by a state court could render it constitutional in some application.

[16] Laws must contain a "reasonable degree of clarity" so that people of "common intelligence" can understand their meaning. *Roberts*, 468 U.S. at 629, 104 S.Ct. 3244. Furthermore, because the penalties for noncompliance are less severe, laws imposing civil rather than criminal penalties do not demand the same high level of clarity. *See Hoffman Estates*, 455 U.S. at 498-99, 102 S.Ct. 1186. Like the civil sanction at issue in *Hoffman Estates*, Gresham faces only a fine for noncompliance with the Indianapolis law. However, this lowered burden is mitigated by the fact that the Indianapolis ordinance potentially interferes with the right of free speech, suggesting that a "more stringent vagueness test should apply." *Id.* at 499, 102 S.Ct. 1186 (citing *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162, 92 S.Ct. 839, 31 L.Ed.2d 110 (1972) and *Grayned v. City of Rockford*, 408 U.S. 104, 109, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972)).

The challenged provisions in this case define what the City Council meant by the term "aggressive panhandling" and must be read in that context. The district court was rightly concerned that Paragraph (d) could be construed as offering an incomplete list of examples of prohibited behavior, leaving open the possibility that other unspecified actions might also be considered illegal, which would raise serious due process concerns. The district court suggested that the list might be exclusive rather than illustrative, a reasonable interpretation which, if adopted by the Indiana courts, would save it from a vagueness challenge.

Likewise, Paragraphs (d)(4) and (d)(5) are subject to reasonable interpretations that answer the vagueness challenge. A state court interpreting Paragraph (d)(4) may read it to prohibit "following" only in the context of a continued request for money such that the victim reasonably interprets the behavior as a threat. A continuing request for a donation coupled with "following" would be prohibited, but walking in the same direction as the solicited person would not be against the law if the walking were divorced from the request. Construed this way, the statute would prohibit the type of harassing behavior that governments routinely outlaw. *See, e.g.*, Ind.Code § 35-45-2-1 (prohibiting as intimidation a threat by words or action that forces a person to engage in conduct against their will); Ind.Code § 35-45-10-1 (prohibiting as stalking a "course of conduct***909** involving repeated or continuing harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened."); *Johnson v. State*, 648 N.E.2d 666, 670 (Ind.Ct.App.1995) (upholding stalking statute against vagueness challenge). Numerous cases hold that governments may proscribe threats, extortion, blackmail and the like, "despite the fact that they criminalize utterances because of their expressive content." *United States v. Hayward*, 6 F.3d 1241, 1259 (7th Cir.1993) (Flaum, J., concurring); *see, e.g., Watts v. United States*, 394 U.S. 705, 707, 89 S.Ct. 1399, 22 L.Ed.2d 664 (1969) (upholding constitutionality of law against threatening life of the President); *United States v. Velasquez*, 772 F.2d 1348, 1357 (7th Cir.1985) (holding that threats of physical violence are not protected by First Amendment); *see also R.A.V. v. City of St. Paul*, 505 U.S. 377, 420, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992) (Stevens, J., concurring) (quoting Frederick Schauer, *Categories and the First Amendment: A Play in Three Acts*, 34 Vand. L.Rev. 265, 270 (1981)) ("Although the First Amendment broadly protects 'speech,' it does not protect the right to 'fix prices, breach contracts, make false warranties, place bets with bookies, threaten, [or] extort.' ").

Paragraph (d)(5) could be construed to prohibit "any statement, gesture, or other communication" that makes a reasonable person feel they face danger if they refuse to donate, that they are being compelled out of physical fear. The possibility that

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a polite request for a donation might be heard as a threatening demand by an unusually sensitive or timid person is eliminated by the "reasonable person" standard included in the ordinance. A statement that makes a reasonable person feel compelled to donate out of physical fear amounts to a prohibition on robbery or extortion, which of course would be constitutional. While it is not a certainty that the state courts would adopt constitutional interpretations of the panhandling provisions, they are entitled to the opportunity to do so, and we will not interfere with that right. The district court did not err in refusing to enjoin the ordinance based on the vagueness concerns.

III. CONCLUSION

For the foregoing reasons, we Affirm the district court's denial of a permanent injunction and dismissal of Gresham's complaint.

C.A.7 (Ind.),2000.
Gresham v. Peterson
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154 F.3d 972, 26 Media L. Rep. 2228, 98 Cal. Daily Op. Serv. 6719, 98 Cal. Daily Op. Serv. 9301
(Cite as: 154 F.3d 972)

▷

United States Court of Appeals,
Ninth Circuit.
CHILDREN OF THE ROSARY; Katherine A. Sabelko; Arizona Civil Liberties Union, Plaintiffs-Appellants,
v.
CITY OF PHOENIX; Richard C. Thomas, in his official capacity as Public Transit Director for the City of Phoenix; Neal Manske, in his official capacity as Deputy Director, Phoenix Transit Department, City of Phoenix; Transportation Displays, Inc. Defendants-Appellees,
and
ATC/Vancom Management Services, Inc., Defendant.
No. 97-16821.

Argued and Submitted March 12, 1998.
Decided Aug. 28, 1998.

Anti-abortion organization and civil rights organization sued city, alleging that city's standards for accepting advertising on municipal buses violated the First Amendment. The United States District Court for the District of Arizona, Stephen M. McNamee, J., denied organizations' application for a preliminary injunction, and they appealed. The Court of Appeals, Byron R. White, Associate Justice of the United States Supreme Court, Retired, sitting by designation, held that: (1) bus advertising panels were nonpublic fora; (2) city's ban on noncommercial advertising on municipal buses was reasonable in light of city's interests in maintaining neutrality and preventing a reduction in income earned from selling commercial advertising space; (3) city's advertising standard was not impermissible viewpoint discrimination; (4) advertisements submitted by plaintiff organizations were not changed to commercial advertisements by simply adding an offer to purchase a bumpersticker containing political or religious message; and (5) organizations failed to establish invalidity of city's advertising policy based on facial overbreadth, underinclusiveness, or vagueness.

Affirmed.

Noonan, Circuit Judge, filed dissenting opinion.

West Headnotes

[1] Injunction 212 ⚿138.1

212 Injunction
212IV Preliminary and Interlocutory Injunctions
212IV(A) Grounds and Proceedings to Procure
212IV(A)2 Grounds and Objections
212k138.1 k. In General. Most Cited Cases
To obtain preliminary injunction, movant must show likelihood of success on merits and possibility of irreparable injury or existence of serious questions going to the merits and balance of hardships tipping in movant's favor.

[2] Federal Courts 170B ⚿815

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)4 Discretion of Lower Court
170Bk814 Injunction
170Bk815 k. Preliminary Injunction; Temporary Restraining Order. Most Cited Cases
Court of Appeals reviews denial of preliminary injunction for abuse of discretion, and will find abuse of discretion where district court based its ruling on erroneous view of the law or on clearly erroneous assessment of the evidence.

[3] Constitutional Law 92 ⚿1761

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press

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Submitted At Meeting
Date 8/3/10 Item 3
Exh. b. #8

92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1761 k. Parks and Forests. Most Cited Cases
(Formerly 92k90.4(1))
For First Amendment purposes, "traditional public forum" is a place that has traditionally been available for public expression, such as a public park. U.S.C.A. Const.Amend. 1.

|4| Constitutional Law 92 ⚿1745

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1744 Designated Public Forum in General
92k1745 k. In General. Most Cited Cases
(Formerly 92k90.4(1))
For First Amendment purposes, "designated public forum" is a nontraditional forum that government has opened for expressive activity by part or all of the public; creation of designated public forum requires a decision intentionally opening a nontraditional forum for public discourse. U.S.C.A. Const.Amend. 1.

|5| Constitutional Law 92 ⚿1766

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1766 k. Transit Systems and Stations. Most Cited Cases
(Formerly 92k90.1(4))
City did not create "designated public forum" by opening up exterior panels on buses for advertising by the general public, but, rather, bus advertising panels were nonpublic fora for purposes of First Amendment analysis; city had consistently restricted political and religious advertising, and, although city did accept some noncommercial advertising under prior policy, such as public service announcements, only one percent of the advertisements displayed on the exterior of buses were noncommercial. U.S.C.A. Const.Amend. 1.

|6| Constitutional Law 92 ⚿1751

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1748 Non-Public Forum in General
92k1751 k. Justification for Exclusion or Limitation. Most Cited Cases
(Formerly 92k90.1(4))
In nonpublic forum, government has the right to make distinctions in access on basis of subject matter and speaker identity, but must not make distinctions based on speaker's viewpoint; touchstone for evaluating these distinctions is whether they are reasonable in light of the purpose which the forum at issue serves. U.S.C.A. Const.Amend. 1.

|7| Constitutional Law 92 ⚿1754

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1754 k. Advertising in General. Most Cited Cases
(Formerly 92k90.1(4))
Governmental advertising standards applicable to nonpublic forum need only be reasonable for First Amendment purposes; they need not be the most reasonable or the only reasonable limitation. U.S.C.A. Const.Amend. 1.

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[8] Constitutional Law 92 ⚿1766

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1766 k. Transit Systems and Stations. Most Cited Cases
(Formerly 92k90.3)

Municipal Corporations 268 ⚿718

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works
268XI(C) Public Buildings, Parks, and Other Public Places and Property
268k718 k. Means of Public Transportation and Communication. Most Cited Cases
City's ban on noncommercial advertising on municipal buses was reasonable, for First Amendment purposes, in light of city's interest in maintaining position of neutrality on political and religious issues, fear that buses and passengers could be subject to violence if advertising was not restricted, and interest in preventing reduction in income earned from selling advertising space to commercial advertisers. U.S.C.A. Const.Amend. 1.

[9] Constitutional Law 92 ⚿1766

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1766 k. Transit Systems and Stations. Most Cited Cases
(Formerly 92k90.3)

Municipal Corporations 268 ⚿718

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works
268XI(C) Public Buildings, Parks, and Other Public Places and Property
268k718 k. Means of Public Transportation and Communication. Most Cited Cases
City's ban on noncommercial advertising on municipal buses was not impermissible viewpoint discrimination under First Amendment, since city did not use political or religious controversy as test for accepting advertising, but instead implemented neutral standard based on its desire to avoid jeopardizing revenue and the city's neutrality. U.S.C.A. Const.Amend. 1.

[10] Constitutional Law 92 ⚿1507

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1507 k. Viewpoint or Idea Discrimination. Most Cited Cases
(Formerly 92k90(3))
For First Amendment purposes, "viewpoint discrimination" is a form of content discrimination in which government targets not subject matter, but particular views taken by speakers on a subject. U.S.C.A. Const.Amend. 1.

[11] Constitutional Law 92 ⚿1751

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1748 Non-Public Forum in General
92k1751 k. Justification for Exclusion or Limitation. Most Cited Cases
(Formerly 92k90.1(4))
First Amendment does not prohibit the government from imposing content-based exclusions in nonpublic forum, as long as such are reasonable, and motive is not dispositive when there is no indica-

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tion that government is implementing policy in a viewpoint discriminatory manner that reflects an intent to use policy to exclude disfavored perspectives on the issues. U.S.C.A. Const.Amend. 1.

[12] Constitutional Law 92 ⚿1766

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1766 k. Transit Systems and Stations. Most Cited Cases
(Formerly 92k90.3)

Municipal Corporations 268 ⚿718

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works
268XI(C) Public Buildings, Parks, and Other Public Places and Property
268k718 k. Means of Public Transportation and Communication. Most Cited Cases
City's ban on noncommercial advertising on municipal buses was not shown to favor one side of a debate, in violation of First Amendment, based on fact that city's standard might permit an advertisement for a family planning clinic that offered abortion services while barring messages opposing abortion; city was merely requiring that an advertisement convey a commercial message. U.S.C.A. Const.Amend. 1.

[13] Constitutional Law 92 ⚿1766

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1766 k. Transit Systems and Stations. Most Cited Cases
(Formerly 92k90.3)

Municipal Corporations 268 ⚿718

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works
268XI(C) Public Buildings, Parks, and Other Public Places and Property
268k718 k. Means of Public Transportation and Communication. Most Cited Cases
Advertisements submitted by anti-abortion organization and civil rights organization were "ideological communications," and essential issue-oriented nature of the advertisements could not be changed to commercial advertisements by simply adding an offer to purchase a bumpersticker containing political or religious message, and, thus, city's rejection of organization's advertisements, pursuant to city policy banning noncommercial advertising on municipal buses, was not unconstitutional viewpoint-based discrimination. U.S.C.A. Const.Amend. 1.

[14] Constitutional Law 92 ⚿1766

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1766 k. Transit Systems and Stations. Most Cited Cases
(Formerly 92k90.1(4))

Municipal Corporations 268 ⚿718

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works
268XI(C) Public Buildings, Parks, and Other Public Places and Property
268k718 k. Means of Public Transportation and Communication. Most Cited Cases
When government was acting as proprietor in nonpublic forum, specifically, bus advertising panels,

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government could regulate that nonpublic forum by rejecting advertisement combining political and religious advertisements with a commercial offer. U.S.C.A. Const.Amend. 1.

|15| Constitutional Law 92 ⚿857

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(A) Persons Entitled to Raise Constitutional Questions; Standing
92VI(A)9 Freedom of Speech, Expression, and Press
92k857 k. Carriers. Most Cited Cases
(Formerly 92k42.3(1))
Religious and civil rights organizations could not mount valid facial overbreadth challenge to city policy banning noncommercial advertising on municipal buses, absent any claim of "a realistic danger" of compromising First Amendment rights of third parties. U.S.C.A. Const.Amend. 1.

|16| Constitutional Law 92 ⚿1766

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1766 k. Transit Systems and Stations. Most Cited Cases
(Formerly 92k90.3)

Municipal Corporations 268 ⚿718

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works
268XI(C) Public Buildings, Parks, and Other Public Places and Property
268k718 k. Means of Public Transportation and Communication. Most Cited Cases
City policy banning noncommercial advertising on municipal buses was not shown to be unconstitutionally underinclusive, on ground that it did not ban commercial speech containing religious or political elements, where there was no showing that city's policy was giving an advantage to one side in a debate. U.S.C.A. Const.Amend. 1.

|17| Constitutional Law 92 ⚿1766

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1766 k. Transit Systems and Stations. Most Cited Cases
(Formerly 92k90.3)

Municipal Corporations 268 ⚿718

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works
268XI(C) Public Buildings, Parks, and Other Public Places and Property
268k718 k. Means of Public Transportation and Communication. Most Cited Cases
Anti-abortion organization and civil rights organization failed to show that city policy banning noncommercial advertising on municipal buses was unconstitutionally vague, based on organizations' contention that city's standard presented a danger of discrimination against disfavored subjects in the guise of determining what is commercial speech; city could only reject an advertisement if it failed to propose a legitimate commercial transaction, a standard which would leave it with relatively little discretion in accepting or rejecting advertisements for display. U.S.C.A. Const.Amend. 1.

***974** Jay Alan Sekulow,The American Center for Law and Justice, Washington, DC; Benjamin W. Bull, The American Center for Law and Justice, Scottsdale, Arizona; James Weinstein, College of Law, Arizona State University, Tempe, Arizona; Nicholas S. Hentoff, Hentoff Law Offices, Phoenix, Arizona, for the plaintiffs-appellants.

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Donald O. Loeb, Campana, Vieh, Shore, Owens & Loeb, P.C., Scottsdale, Arizona, for the defendants-appellees.

Appeal from the United States District Court for the District of Arizona; Stephen M. McNamee, District Judge, Presiding. D.C. No. CV-97-0138-SMM.

Before: WHITE,[FN*] Associate Justice, (Ret.), NOONAN and THOMAS, Circuit Judges.

FN* The Honorable Byron R. White, Associate Justice of the United States Supreme Court, (Ret.), sitting by designation, pursuant to 28 U.S.C. § 294(a).

Opinion by Justice WHITE; Dissent by Judge NOONAN.

WHITE, Associate Justice (Ret.):

The issue presented in this appeal is whether there is a likelihood that limiting advertising on municipal buses to "speech which proposes a commercial transaction" violates the First Amendment. We hold that there is not a sufficient likelihood of a constitutional violation to justify the grant of a ***975** preliminary injunction and affirm the district court.

I

The city of Phoenix sells advertising space on the exterior panels of its buses for the purpose of raising revenue. Prior to November 1, 1996, the city's advertising standards prohibited advertising "support[ing] or oppos[ing] a candidate, issue or cause, or which advocates or opposes a religion, ... or belief." Pursuant to this standard, the city rejected an advertisement submitted by plaintiff-appellant Children of the Rosary (COR) in September 1995. The proposed advertisement stated:

"Before I formed you in the womb, I knew you"-God

Jeremiah 1:5

CHOOSE LIFE!

[COR Logo] Children of the Rosary

The COR logo is a fetus surrounded by a rosary, which is connected to a cross at the top. On October 10, 1995, COR sued the city and obtained an injunction preventing the city from enforcing the standard against COR and requiring the city to display the COR advertisement.

On November 1, 1996, new advertising standards took effect. The new standards limited the subject matter of bus advertising to "speech which proposes a commercial transaction." On November 15, 1996, the city advised COR that its advertisement would not be displayed because the advertisement did not propose a commercial transaction. In response, COR submitted a revised advertisement for display on the exterior bus panels. The revised advertisement stated:

"Before I formed you in the womb, I knew you"-God

Jeremiah 1:5

Purchase this message as a bumpersticker for your vehicle!

Contact [phone number]

[COR Logo] Children of the Rosary CHOOSE LIFE!

The city rejected COR's revised advertisement because, in the city's view, the primary purpose of the advertisement was not to propose a commercial transaction, but instead promote a non-commercial message.

Subsequently, plaintiff-appellant Arizona Civil Liberties Union (AzCLU) submitted its own advertisement for display on buses. Their advertisement stated:

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The ACLU Supports Free Speech for Everyone

To purchase this bumper sticker please call [phone number]

The city rejected this advertisement because it did not comply with the new advertising standard.

On January 23, 1997, appellants filed suit against the city under 42 U.S.C. § 1983 in the United States District Court for the District of Arizona alleging that the city's advertising standards violated the First Amendment.[FN1] On August 1, 1997, the district court denied appellants' application for a preliminary injunction. This appeal followed.

> FN1. In addition to the city of Phoenix, appellants sued Richard C. Thomas, the city's Public Transit Director, Neal Manske, Deputy Director of the transit department, ATC/Vancom Management Services, Inc., a corporation that manages the transit system under a contract with the city, and Transportation Displays, Inc., a corporation that administers the placement of advertising on city buses in compliance with city standards. For convenience, we refer to the defendants collectively as the "city."

II

[1] We have jurisdiction under 28 U.S.C. § 1292(a)(1). To obtain a preliminary injunction, a movant must show a likelihood of success on the merits and the possibility of irreparable injury or the existence of serious questions going to the merits and the balance of hardships tipping in the movant's favor. *See Foti v. City of Menlo Park*, 146 F.3d 629, 634 (9th Cir.1998).

[2] We review the denial of a preliminary injunction for abuse of discretion, and will find an abuse of discretion "where the district***976** court 'based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence.' " *Roe v. Anderson*, 134 F.3d 1400, 1402 (9th Cir.1998) (quoting *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405, 110 S.Ct. 2447, 110 L.Ed.2d 359 (1990)); *see MAI Systems Corp. v. Peak Computer, Inc.*, 991 F.2d 511, 516 (9th Cir.1993).

To prove a violation of 42 U.S.C. § 1983, appellants must establish that 1) the city acted under color of state law; and 2) the city deprived appellants of a right secured by the Constitution or laws of the United States. *See Fred Meyer, Inc. v. Casey*, 67 F.3d 1412, 1413 (9th Cir.1995).

III

There are three primary issues we must address in determining whether the district court applied the correct First Amendment framework. First, we must properly classify the advertising panels under the Supreme Court's "forum approach" for assessing the validity of restrictions on the use of government property. *See International Society for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 678, 112 S.Ct. 2701, 120 L.Ed.2d 541 (1992) (ISKCON). Second, once we determine the type of forum at issue, we ascertain the relevant level of scrutiny for this forum. Finally, we must determine whether the city improperly applied this standard in rejecting the advertisements submitted by appellants.

A

[3] The Supreme Court "has adopted a forum analysis as a means of determining when the Government's interest in limiting the use of its property to its intended purpose outweighs the interest of those wishing to use the property for other purposes." *Cornelius v. NAACP Legal Defense & Educ. Fund, Inc.*, 473 U.S. 788, 800, 105 S.Ct. 3439, 87 L.Ed.2d 567 (1985). Forum analysis divides government property into three categories: public fora, designated public fora, and nonpublic fora. A traditional public forum is a place "that has traditionally been

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available for public expression," such as a public park. *ISKCON*, 505 U.S. at 678, 112 S.Ct. 2701. Neither party argues that a bus advertising panel is a traditional public forum. Instead, the parties debate whether the bus panel is a designated public forum or a nonpublic forum.

[4] A designated public forum is a nontraditional forum that the government has opened for expressive activity by part or all of the public. *See Perry Educ. Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 46 & n. 7, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983). The creation of a designated public forum requires a decision "intentionally opening a nontraditional forum for public discourse." *Cornelius*, 473 U.S. at 802, 105 S.Ct. 3439; *see Arkansas Educational Television Comm'n v. Forbes*, 523 U.S. 666, ----, 118 S.Ct. 1633, 1641, 140 L.Ed.2d 875 (1998) (*AETC*). Hence, the Court has looked to the policy and practice of the government, the nature of the property and its compatibility with expressive activity, and whether the forum was designed and dedicated to expressive activities in determining if the government created a designated public forum. *See Cornelius*, 473 U.S. at 802-03, 105 S.Ct. 3439; *AETC*, 523 U.S. at ----, 118 S.Ct. at 1641.

In defining the relevant forum, the Court has "focused on the access sought by the speaker." *Cornelius*, 473 U.S. at 801, 105 S.Ct. 3439. In this case, we agree with the district court that the relevant forum at issue is the exterior advertising spaces on the city's buses.

[5] Appellants contend that the city created a designated public forum by opening up the exterior panels on buses for advertising by the general public. However, a review of the city's standards and practices indicates that the city has not opened a public forum. The city has consistently restricted political and religious advertising. *See* Excerpts of Record at 22 (affidavit of Public Transit Director). Although under its prior policy the city did accept some noncommercial advertising, such as public service announcements, only one percent of the advertisements displayed on the exterior of buses were noncommercial. *See* Excerpts of Record at 22 (affidavit of Public Transit Director).***977** The city submits that its current ban on noncommercial advertising supports a finding that the advertising panels are nonpublic fora.

The Supreme Court's decision in *Lehman v. Shaker Heights*, 418 U.S. 298, 94 S.Ct. 2714, 41 L.Ed.2d 770 (1974), strongly supports our conclusion that the advertising panels are nonpublic fora. In *Lehman*, the Court upheld a ban on political advertising on public transit vehicles. The plurality opinion squarely rejected the argument that the advertising space on buses constituted a public forum protected by the First Amendment. *Id.* at 301-02, 94 S.Ct. 2714. The Court noted that the city was engaged in commerce and had "discretion to develop and make reasonable choices concerning the type of advertising" it would display. *Id.* at 303, 94 S.Ct. 2714. In our view, *Lehman* undermines appellants' claim that if a city has opened a property for communication, the property becomes a designated public forum. *See Perry*, 460 U.S. at 49 n. 9, 103 S.Ct. 948 (noting that *United States Postal Service v. Council of Greenburgh Civic Assns.*, 453 U.S. 114, 101 S.Ct. 2676, 69 L.Ed.2d 517 (1981), reaffirmed *Lehman's* rationale for rejecting the argument that because an instrumentality is used for communication of ideas, it becomes a public forum).

However, appellants suggest *Lehman* is not persuasive authority. They assert that *Lehman* only concerns advertising *inside* a bus because Justice Douglas, who supplied the fifth vote for upholding the ban, based his concurrence on the fact that commuters were a "captive audience" who would be forced to view a partisan political message. This interpretation of his concurrence is far from clear. In Justice Douglas's view, the right of commuters to be free from forced intrusions on their privacy "preclude[d]" the city from transforming its buses into "forums for the dissemination of ideas upon this captive audience." 418 U.S. at 307, 94 S.Ct. 2714. The reference to "captive audience" arguably suggests Justice Douglas was referencing com-

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muters inside a bus. However, read in context, his concern about forcing messages on a captive audience applies to observers on the street and commuters inside a bus. Justice Douglas wrote:

> I agree with Mr. Justice Brandeis who ... said that the visual message in streetcars is no different [from other forms of communication imposed on a captive audience], for "[a]dvertisements of this sort are constantly before the eyes of observers on the streets and in street cars to be seen without the exercise of choice or volition on their part. Other forms of advertising are ordinarily seen as a matter of choice on the part of the observer.... The radio can be turned off, but not so the billboard or street car placard."

418 U.S. at 307-08, 94 S.Ct. 2714 (quoting *Packer Corp. v. Utah*, 285 U.S. 105, 110, 52 S.Ct. 273, 76 L.Ed. 643 (1932)). We reject appellants' invitation to narrowly interpret *Lehman*.[FN2]

> FN2. Appellants also claim that the issue presented in *Lehman* was limited to advertising inside transit vehicles. However, their claim is contradicted by Justice Brennan's dissent, which stated that the petitioner was denied access to exterior and interior advertising space pursuant to the city's prohibition on political advertising, 418 U.S. at 320 n.12, 94 S.Ct. 2714.

Appellants also argue that we should not rely on *Lehman* because it was decided prior to the Supreme Court's adoption of its current approach to forum analysis in *Perry*. They claim that *Lehman* is inconsistent with subsequent Supreme Court decisions and provides little support for finding that the panels are nonpublic fora. We reject this argument. The Court relied upon and reaffirmed *Lehman's* rationale in *Perry* and subsequent cases, and there is no suggestion in the Court's jurisprudence that the advertising panels are properly classified as designated fora. *See, e.g., Perry*, 460 U.S. at 47, 103 S.Ct. 948 (relying on restriction upheld in *Lehman* to support the proposition that selective access does not transform government property into a public forum); *ISKCON*, 505 U.S. at 678, 112 S.Ct. 2701 (*Lehman* reflects forum-based analysis and supports proposition that lower level of scrutiny applies when government acts as a proprietor); *Cornelius*, 473 U.S. at 803-04, 806, 808-09, 105 S.Ct. 3439 (relying on *Lehman* to support, *inter alia*, propositions that "[n]ot every instrumentality used for communication ... is a ***978** traditional public forum or a public forum by designation," and that a speaker may be excluded from a nonpublic forum if he wishes to address a topic not within the purpose of the forum); *United States v. Kokinda*, 497 U.S. 720, 725-26, 110 S.Ct. 3115, 111 L.Ed.2d 571 (1990) (plurality opinion) (extensively quoting from *Lehman* and noting the lower level of scrutiny applied to the ban on political advertising); *id.* at 737, 110 S.Ct. 3115 (relying on *Lehman* as stating the Court's "usual test for reasonableness" in a nonpublic forum); *R.A.V. v. St. Paul*, 505 U.S. 377, 390 n. 6, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992) (*Lehman* supports conclusion that there is "room" for "reasonable and viewpoint-neutral content-based discrimination in nonpublic forums"); *see also Lebron v. National R.R. Passenger Corp.*, 69 F.3d 650, 657 n. 3 (2d Cir.1995), *cert. denied*, 517 U.S. 1188, 116 S.Ct. 1675, 134 L.Ed.2d 778 (1996) (rejecting the same argument presented by appellants in this case and noting that "the Supreme Court has repeatedly reaffirmed a broader reading of *Lehman*, often specifically citing to the plurality opinion").

Thus, *Lehman* provides sufficient authority for concluding that the bus advertising panels are nonpublic fora. Our conclusion is also consistent with the reasoning of other circuits. *See Planned Parenthood Ass'n/Chicago Area v. Chicago Transit Auth.*, 767 F.2d 1225 (7th Cir.1985); *New York Magazine v. Metropolitan Transportation Authority*, 136 F.3d 123 (2d Cir.1998); *see also Christ's Bride Ministries, Inc. v. Southeastern Pa. Transp. Auth.*, 148 F.3d 242 (3d Cir.1998). In *Planned Parenthood*, the Seventh Circuit concluded that advertising space on a bus system became a public forum where the

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transit authority permitted advertising on "a wide variety of commercial, public-service, public-issue, and political ads." 767 F.2d at 1232. The court distinguished *Lehman* because *Lehman* "upheld the blanket exclusion of an entire class of potentially controversial speech," while in *Planned Parenthood* the transit authority promulgated "no policy at all" with respect to the acceptance of advertising. 767 F.2d at 1233; *see Christ's Bride Ministries, Inc.*, 148 F.3d at 254-55, 256-57 (distinguishing *Lehman* where transit authority promulgated no policy governing removal of advertisements).

Similarly, in *New York Magazine,* the Second Circuit concluded that advertising space on the outside of buses was a public forum where the transit authority permitted "political and other noncommercial advertising generally." 136 F.3d at 130. The court found that the transit authority could not reject an advertisement based on a regulatory interest in upholding a law prohibiting the use of a person's name without their consent. *Id.* The court distinguished *Lehman* by arguing that

> disallowing political speech, and allowing commercial speech only, indicates that making money is the main goal. Allowing political speech, conversely, evidences a general intent to open a space for discourse, and a deliberate acceptance of the possibility of clashes of opinion and controversy that the Court in *Lehman* recognized as inconsistent with sound commercial practice.

Id.

This case is easily distinguished from the decisions of the Second and Seventh Circuits because the city of Phoenix consistently promulgates and enforces policies restricting advertising on its buses to commercial advertising. The city has not designated the advertising space on the exterior of its buses as a place for general discourse, and we therefore do not back away from our conclusion that the advertising space is a nonpublic forum.

B

[6][7] In a nonpublic forum, the government has the "right to make distinctions in access on the basis of subject matter and speaker identity," *Perry,* 460 U.S. at 49, 103 S.Ct. 948, but "must not [make distinctions] based on the speaker's viewpoint," *AETC,* 523 U.S. at ----, 118 S.Ct. at 1643. "The touchstone for evaluating these distinctions is whether they are reasonable in light of the purpose which the forum at issue serves." *Perry,* 460 U.S. at 49, 103 S.Ct. 948. The advertising standards "need only be reasonable; [they] need not be the most reasonable ***979** or the only reasonable limitation." *ISKCON,* 505 U.S. at 683, 112 S.Ct. 2701 (internal quotations omitted). In addition, "[w]here the government is acting as a proprietor ... its action will not be subjected to the heightened review to which its actions as a lawmaker may be subject." *ISKCON,* 505 U.S. at 678, 112 S.Ct. 2701 (citing *Lehman* and noting that the Court upheld the political advertisement ban "even though the city permitted other types of advertising" on the buses); *see Kokinda,* 497 U.S. at 726, 110 S.Ct. 3115 (action of government acting in proprietary capacity is valid "unless it is unreasonable, or, as was said in *Lehman,* 'arbitrary, capricious, or invidious.' ").

[8] The city sets forth four interests justifying the limitation on noncommercial speech: 1) maintaining a position of neutrality on political and religious issues; 2) a fear that buses and passengers could be subject to violence if advertising is not restricted; 3) preventing a reduction in income earned from selling advertising space because commercial advertisers would be dissuaded "from using the same forum commonly used by those wishing to communicate primarily political or religious messages;" and 4) a concern that allowing COR's advertisement would violate the Establishment Clause. *See* Answer ¶ 6.10. The district court concluded that each of the first three interests sufficiently supported the reasonableness of the revised standard. The court declined to address the Establishment Clause issue.

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We agree with the district court that any one of the three interests supports the reasonableness of the city's standard. The city's interests in protecting revenue and maintaining neutrality on political and religious issues are especially strong. The *Lehman* court recognized that:

> [r]evenue earned from long-term commercial advertising could be jeopardized by a requirement that short-term candidacy or issue-oriented advertisements be displayed on car cards. Users would be subjected to the blare of political propaganda. There could be lurking doubts about favoritism, and sticky administrative problems might arise in parceling out limited space to eager politicians. In these circumstances, the managerial decision to limit car card space to innocuous and less controversial commercial and service oriented advertising does not rise to the dignity of a First Amendment violation. Were we to hold to the contrary, display cases in public hospitals, libraries, office buildings, military compounds, and other public facilities would become Hyde Parks open to every would-be pamphleteer and politician. This the Constitution does not require.
>
> ....
>
> The city consciously has limited access to its transit system advertising space in order to minimize chances of abuse, the appearance of favoritism, and the risk of imposing upon a captive audience. These are reasonable legislative objectives advanced by the city in a proprietary capacity.

Lehman, 418 U.S. at 304, 94 S.Ct. 2714; *see Cornelius*, 473 U.S. at 809, 105 S.Ct. 3439 ("avoiding the appearance of political favoritism is a valid justification for limiting speech in a nonpublic forum"); *Lebron*, 69 F.3d at 658 (upholding reasonableness of policy rejecting displays favoring any political view).

Appellants recognize that the plurality in *Lehman* "stated that the exclusion of noncommercial speech was justified by the city's asserted interest" in protecting its advertising revenue. Appellants' Opening Brief at 33. However, they argue that *Lehman's* low level of scrutiny is no longer valid in light of subsequent Supreme Court decisions. As we discussed in concluding that the panels were nonpublic fora, there is little authority to support this argument. We conclude that the city's ban on noncommercial advertising is reasonable in light of the interests asserted by the city. [FN3]

> FN3. Appellants' argument that *Metromedia, Inc. v. San Diego*, 453 U.S. 490, 101 S.Ct. 2882, 69 L.Ed.2d 800 (1981), prohibits favoring commercial speech over noncommercial speech in bus advertising is rebutted by *Metromedia*'s recognition that *Lehman* presented exactly that situation, and the Court's statement that it upheld the policy in *Lehman* Because it involved a factual situation different from the regulation of billboards. *Metromedia*, 453 U.S. at 514 n.19, 101 S.Ct. 2882 (plurality opinion).

***980** C

[9][10] The standard may still violate the First Amendment if it discriminates on the basis of viewpoint. *Cornelius*, 473 U.S. at 811, 105 S.Ct. 3439. We must determine whether the city's standard is a permissible subject matter restriction or impermissible viewpoint discrimination, a distinction that "is not a precise one." *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 831, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995). Viewpoint discrimination is a form of content discrimination in which "the government targets not subject matter, but particular views taken by speakers on a subject." *Id.* at 829, 115 S.Ct. 2510; *see General Media Communications, Inc. v. Cohen*, 131 F.3d 273, 281 (2d Cir.1997), *cert. denied*, 524 U.S. 951, 118 S.Ct. 2367, 141 L.Ed.2d 736 (1998).

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[11] Appellants first argue that even though the standard may have the facial appearance of neutrality, the standard is unconstitutional because the intent of the policy is to exclude religious and political speech. But we are dealing here with a nonpublic forum. The First Amendment does not prohibit the government from imposing content-based exclusions, as long as such are reasonable, which is the case here. Two of the reasonable exclusions are political and religious speakers in order to maintain neutrality. It is argued, however, that "[a]lthough the new Policy has abandoned the previous policy's language, it has not abandoned its goal." Appellants' Opening Brief at 23. The city certainly intended to reject political and religious speakers. But motive is not dispositive when there is no indication that the city is implementing the standard in a viewpoint discriminatory manner that reflects an intent to use the policy to exclude disfavored perspectives on the issues.

The city's previous attempt at restricting access to the forum was struck down because it prohibited the expression of religious perspectives on issues while possibly permitting others to express their perspective. The city responded by enacting a general standard regulating access to the forum. The city's current standard does not use political or religious controversy as the test for accepting advertising, but instead implements a neutral standard based on its desire to avoid jeopardizing revenue and the city's neutrality. *See Lehman*, 418 U.S. at 304, 94 S.Ct. 2714 (limiting advertising to commercial advertising that is generally "innocuous and less controversial" does not violate the First Amendment); *Lebron*, 69 F.3d at 658-59.

Of course, a regulation that "is in reality a facade for viewpoint-based discrimination" is unconstitutional. *Cornelius*, 473 U.S. at 811, 105 S.Ct. 3439. But "[a] facade for viewpoint discrimination ... requires discrimination behind the facade." *Grossbaum v. Indianapolis Marion County Bldg. Auth.*, 100 F.3d 1287, 1298 (7th Cir.1996). In *Cornelius*, the Court was concerned that a government ban on "advocacy groups" in a charity drive concealed a bias against a viewpoint expressed by an excluded group. The government argued that the advocacy organization was excluded from a government charity campaign based in part on the government's interest in limiting participation to groups providing direct services to indigent persons. However, the Court remanded the case because there was evidence that other organizations who did not provide direct services to the poor participated in the campaign, thus raising the possibility that the organization was excluded because of its viewpoint.

We do not have similar evidence in this case. Although the city has continued to honor pre-existing contracts involving noncommercial advertisements to avoid breach of contract claims, including the display of a COR advertisement, the city has not accepted new noncommercial advertisements. The district court carefully reviewed the details of each contract and advertisement proffered by appellants as evidence of discrimination, and concluded that the standard was not a facade for viewpoint discrimination. We find no error in the district court's findings that the noncommercial contracts were effective prior to the adoption of the new standard and that advertisements accepted after the standard took effect were commercial in nature.

We also reject appellants' argument, based on *R.A.V. v. St. Paul*, 505 U.S. 377, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992), that the standard discriminates in practice against a viewpoint***981** because it favors one side in a debate on public issues. *R.A.V.* struck down a criminal law that, among other things, prohibited displays that used certain words that would arouse anger in others on the basis of race, color, creed, religion, or gender. However, the law permitted displays containing the same words if the display did not invoke race or other classifications. Here, appellants do not explain how the city's standard prohibits one side of a debate from employing certain language or methods to express its view, while permitting the other side to use the same methods. Or, as the Court put it in

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R.A.V., the city is not permitting "one side of a debate to fight freestyle, while requiring the other to follow Marquis of Queensberry rules." 505 U.S. at 392, 112 S.Ct. 2538. Moreover, as compared to the applicable level of scrutiny when the government acts as a proprietor, the level of scrutiny is higher when the government is using its sovereign power to impose criminal penalties to deprive citizens of their liberty for expressing certain views.

[12] Appellants claim that the standard might permit an advertisement for a family planning clinic that offers abortion services while barring messages opposing abortion, thus favoring one side of a debate. However, the city is merely requiring that an advertisement convey a commercial message. As in *Lehman*, the city is acting to prevent its advertising panels from becoming areas for the debate of political and religious issues with a resulting detrimental effect on the city's ability to attract long-term commercial advertising. "In these circumstances, the managerial decision to limit car card space to innocuous and less controversial commercial and service oriented advertising does not rise to the dignity of a First Amendment violation." *Lehman*, 418 U.S. at 304, 94 S.Ct. 2714.

D

[13] Appellants also bring an as applied challenge, claiming that the city's rejections of their revised advertisements were viewpoint-based. The district court rejected the challenge, finding that the advertisements were "ideological communications" and the essential issue-oriented nature of the advertisements could not be changed to commercial advertisements by simply adding an offer to purchase a bumpersticker containing a political or religious message. We agree with the district court.

As an initial matter, we note that if appellants' challenge is successful, the reasoning of *Lehman* is hollow because a political advertising restriction could easily be avoided by tacking on a commercial offer to purchase the political message. For example, any candidate for political office could convert his political advertisement into a commercial advertisement by simply offering the message as a bumpersticker. This would significantly undermine the government's ability to act as a proprietor and control access to a nonpublic forum, thereby forcing the government into "an all-or-nothing choice" where "it might not open the property at all." *AETC*, 523 U.S. at ----, 118 S.Ct. at 1642.

The Court addressed a similar attempt to transform speech in *Valentine v. Chrestensen*, 316 U.S. 52, 62 S.Ct. 920, 86 L.Ed. 1262 (1942). The petitioner in *Valentine* attempted to evade a restriction on commercial advertising by placing a protest against a city law on the back of a handbill containing a commercial advertisement. The Court rejected this attempt to convert a commercial advertisement into a public protest, concluding:

> that the affixing of the protest against official conduct to the advertising circular was with the intent, and for the purpose, of evading the prohibition of the ordinance. If that evasion were successful, every merchant who desires to broadcast advertising leaflets in the streets need only append a civic appeal, or a moral platitude, to achieve immunity from the law's command.

316 U.S. at 55, 62 S.Ct. 920. Although *Valentine's* holding that the First Amendment does not protect commercial advertising has not survived, *see Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 420-21, 113 S.Ct. 1505, 123 L.Ed.2d 99 (1993), the Court has continued to reject attempts to evade a regulation by appending a message aimed at transforming the speech.

***982** In *Board of Trustees of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 109 S.Ct. 3028, 106 L.Ed.2d 388 (1989), the Court rejected another attempt to transform speech by combining commercial and noncommercial elements. The prohibition at issue in *Fox* banned the operation of commercial enterprises on state university campuses. Students challenged the prohibition on First Amendment grounds

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because they were unable to host "Tupperware parties" to sell housewares. According to the students, the parties included presentations on "how to be financially responsible and how to run an efficient home." 492 U.S. at 474, 109 S.Ct. 3028. Thus, the students asserted, the commercial and noncommercial speech were "inextricably intertwined" and must therefore be classified as commercial speech. The Court stated that the "level of First Amendment scrutiny must depend upon the nature of the speech taken as a whole and the effect of [any] compelled statement thereon." 492 U.S. at 474, 109 S.Ct. 3028 (internal quotations omitted). The Court concluded that including the "home economics elements" did not convert the events into educational speech.

[14] The district court did not err in finding that the proposed advertisements were noncommercial and the city did not engage in impermissible viewpoint discrimination. The Court has recognized that "there are commonsense differences between speech that does no more than propose a commercial transaction and other varieties." *Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 771 n. 24, 96 S.Ct. 1817, 48 L.Ed.2d 346 (1976) (internal quotations omitted); *see Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 557, 562, 100 S.Ct. 2343, 65 L.Ed.2d 341 (1980). In this case, the advertisements are not "expression[s] related solely to the economic interests of the speaker and its audience," *Central Hudson*, 447 U.S. at 561, 100 S.Ct. 2343, but instead seek to blur the distinction between types of speech by blending an "ideological communication," *Virginia Bd. of Pharmacy*, 425 U.S. at 779, 96 S.Ct. 1817 (Stewart, J., concurring), with an offer to purchase the message. When the government is acting as a proprietor in this nonpublic forum, the government may regulate this nonpublic forum by rejecting an advertisement combining political and religious advertisements with a commercial offer. The city did not apply the standard in a viewpoint discriminatory manner by rejecting appellants' advertisements promoting their views on public issues.

IV

[15] Appellants also argue with little elaboration that the standard is overbroad, underinclusive, and vague. Appellants claim that the standard is overbroad because its restrictions are greater than necessary to protect the city's interests. Appellants do not explain how the doctrine of overbreadth applies in this case. Indeed, they do not claim that the standard chills the speech of third parties or that others may not undertake to challenge the law. *See Board of Airport Comm'rs of Los Angeles v. Jews for Jesus, Inc.*, 482 U.S. 569, 574, 107 S.Ct. 2568, 96 L.Ed.2d 500 (1987). Appellants fail to argue that there is "a realistic danger" of compromising the First Amendment rights of third parties and we find no merit in their facial overbreadth challenge. *See Jews for Jesus*, 482 U.S. at 574, 107 S.Ct. 2568 (internal quotations omitted).

[16] We also reject appellants' assertion that the standard is underinclusive because it does not ban commercial speech containing religious or political elements. Appellants reliance on *City of Ladue v. Gilleo*, 512 U.S. 43, 114 S.Ct. 2038, 129 L.Ed.2d 36 (1994), to support their argument is misplaced. *City of Ladue* stated that a regulation may be underinclusive where it attempts to give one side of a debate an advantage or where the government seeks to control "the search for political truth." 512 U.S. at 51, 114 S.Ct. 2038 (internal quotations omitted). Appellants do not argue in their underinclusive challenge that the city is giving an advantage to one side in a debate, and we rejected this argument in discussing whether the standard discriminates on the basis of viewpoint.

[17] Finally, appellants argue that the standard is unconstitutionally vague in reliance on a concurring opinion in ***983***Metromedia*, 453 U.S. at 536-37, 101 S.Ct. 2882, and a citation to that statement in *Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 423 n. 19, 113 S.Ct. 1505, 123 L.Ed.2d 99

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(1993). They claim that the standard presents a danger of discrimination against disfavored subjects in the guise of determining what is commercial speech. Their brief vagueness argument makes it difficult to determine if they claim that the standard is vague because it presents a danger of viewpoint discrimination, or is vague because it "contains no standard for guidance as to prohibited and allowable conduct." *Major Media of the Southeast, Inc. v. City of Raleigh*, 792 F.2d 1269, 1272 (4th Cir.1986). To the extent appellants claim the standard is unconstitutional because of the discretion granted to the city, we reject this argument based on our discussion in previous sections.

If appellants are simply asserting that we should hold the standard unconstitutional because it is difficult to determine whether the "speech proposes a commercial transaction," we would reject the argument. First, we note that there is no fine or other penalty in this case if a person incorrectly classifies their advertisement: The city simply rejects the advertisement. This claim is unlike the usual vagueness challenge involving a fine or other sanction that has the potential to chill conduct. *Cf. Jews for Jesus*, 482 U.S. at 576, 107 S.Ct. 2568 (unrestrained power to arrest). Second, we agree with the Fourth Circuit that the Supreme Court has provided sufficient guidance on the meaning of the standard. *See Major Media*, 792 F.2d at 1272. The city's standard goes beyond stating that commercial speech is allowed; the city enacted the Court's standard for identifying commercial speech.[FN4] "[T]he test for identifying commercial speech" is whether the advertisement "propose[s] a commercial transaction." *Fox*, 492 U.S. at 473-74, 109 S.Ct. 3028. The Fourth Circuit was not persuaded that the possible difficulty of applying the Court's guidance in a marginal situation was sufficient to declare a policy unconstitutionally vague:

> FN4. Cf. *Foti v. City of Menlo Park*, 146 F.3d 629, 638-39 (9th Cir. 1998) (striking down on vagueness grounds a portion of an ordinance banning signs displayed on vehicles only when the vehicle has been parked in a manner designed to attract attention). The statute in Foti was facially invalid because it required police officers to determine whether the driver intended to park the car for the purpose of displaying a sign and provided no standard to guide their discretion. *Id.* at 639 (citing *Grayned v. City of Rockford*, 408 U.S. 104, 108-109, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972)). Here, by contrast, the city may only reject an advertisement if it fails to propose a legitimate commercial transaction, a standard which will leave it with relatively little discretion in accepting or rejecting advertisements for display.

> Although an occasional marginal case might arise raising the question of whether on the particular facts the definition of commercial speech would be correct, such an infrequent possibility should not in itself justify a generalized charge that the ordinance itself is vague, given the guidance afforded by court decisions in the area.

Major Media, 792 F.2d at 1272-73. We agree with the Fourth Circuit and reject appellants' vagueness challenge.

CONCLUSION

We AFFIRM the district court's denial of appellants' request for a preliminary injunction.

AFFIRMED.

NOONAN, Circuit Judge, dissenting.

That commercial speech can be distinguished from non-commercial speech, that the government as proprietor can limit a non-public forum to commercial speech so that the government makes money, and that the sides of buses in Phoenix are meant to be such a forum, are propositions I accept. They do not remedy discriminatory application of the ordinance by the City of Phoenix.

The ordinance restricts advertising to "speech

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which proposes a commercial transaction." At first blush, it looks as though the standard must be good because it incorporates a hint from a dictum of the Supreme Court: "[t]here are commonsense differences between speech that does 'no more than propose a commercial transaction,' ... and other varieties." ***984** *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 771 n. 24, 96 S.Ct. 1817, 48 L.Ed.2d 346 (1976) (citation omitted). Advertisements for employment that do not express an opinion on social policy are "classic examples of commercial speech." *Pittsburgh Press Co. v. Pittsburgh Comm'n on Human Relations*, 413 U.S. 376, 385, 93 S.Ct. 2553, 37 L.Ed.2d 669 (1973). An advertisement that expresses opinion and seeks financial support for a political movement is not commercial. *New York Times Co. v. Sullivan*, 376 U.S. 254, 266, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964). The distinction is tangible.

The distinction must be applied in the unique context of the medium of communication involved. Street car signs have been lumped with billboards as forming "a class by themselves." *Packer Corp. v. Utah*, 285 U.S. 105, 110, 52 S.Ct. 273, 76 L.Ed. 643 (1932) (Brandeis, J.); *see also Lehman v. City of Shaker Heights*, 418 U.S. 298, 307-08, 94 S.Ct. 2714, 41 L.Ed.2d 770 (1974) (Douglas, J., concurring, relying on Justice Brandeis's opinion in *Packer*). Experience, however, has shown each medium of communication to be unique. *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 501, 101 S.Ct. 2882, 69 L.Ed.2d 800 (1981). The medium here is the exterior panels of city buses. Such panels are large-not as big as big billboards but large enough so that figures on them are more than lifesize and the print on them shouts its message. Moving and grunting as they move, buses call attention to themselves. Stuck in traffic beside or behind a bus, the driver and passengers of a car cannot avoid taking in what confronts them. It is in their face. Similarly, pedestrians waiting for a light to turn cannot avert their eyes from what a waiting bus offers to view. The exterior panels are better than billboards in their ability to command consideration by those momentarily before them, and, unlike billboards, they move down central streets.

Not only is each medium of expression unique; the cultural context changes with the times. The context of a quarter of a century ago is not today's. We must apply precedents taking into account the context of contemporary culture. In this culture ideological conflicts exist in which the commercial side coincides with one of the two embattled positions. The commercial-non-commercial distinction should not be mechanically applied without attention to this distinct modern phenomenon.

As applied, the Phoenix ordinance bans a message that proposes a commercial transaction and, as an integral part of that proposal, identifies the product to be bought. What Children of the Rosary offers for sale is not something devised to evade the ordinance. As the record demonstrates, the bumpersticker was a good it sold prior to the ordinance's enactment. The American Civil Liberties Union offers a bumpersticker that, containing a message as to the ACLU's goals, effectively advertises the value of the ACLU as a participant in the community. A nonprofit organization may surely sell products incidental to its mission and thereby both promote its goals and help to support itself. It is hard to see why Phoenix rejected the ACLU ad-surely the message was uncontroversial-unless the city was trapped into maintaining a consistent position on bumperstickers. It may be, as the majority suggests, that the ordinance would be porous if the sale of bumperstickers is not barred; but that suggestion only shows the deficiency of the ordinance as applied and the difficulty of governmental restraint of speech.

It is something of an anomaly in First Amendment jurisprudence for more protection to be accorded commercial speech than is accorded noncommercial speech. As Justice White has observed, such a result "inverts" the normal rule. *Metromedia, Inc.*, 453 U.S. at 513, 101 S.Ct. 2882. If the inversion is permitted by precedent, it still must be done in a way

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that does not destroy the level playing field of politics or put the government's seal of approval on one of two sides of a political issue. Moneymaking is not government's primary business. It would be ironic if pursuit of profit permitted a unit of government to discriminate in the messages on government property.

Here, the message of a group acknowledging the sacredness of human life in the womb is rejected; Planned Parenthood could run an ad for an abortion clinic. The views clash; the city of Phoenix would give space to one and not the other. Analogously, if ***985** Arizona should come to permit physician-assisted suicide as does Oregon, Dr. Kevorkian could advertise his services on the sides of the buses of Phoenix, but the counter advice of advocates offering free counselling against this course would be forbidden. The examples from the great life issues in our present culture speak for themselves. The clash over the environment affords other examples. A power company could extol its product. The Sierra Club, objecting to more dams, would be denied the forum. The makers of a pesticide could celebrate their wares; champions of pesticide-free farms would be barred. A developer could tout the quality of his homes; defenders of green space in the suburbs would have to be silent on the buses. The pornographer could advertise his shop; the defenders of neighborhood decency would be denied a reply. In the America of 1998 to give the commercial advertiser space, without reference to the product being pushed, is for a city to take sides more than occasionally on issues of life and health and energy and the ecosystem.

The case is further complicated by the likelihood of commercial media using the buses to advertise their products. The record indicates that the city of Phoenix is ready to accept such advertisements. Commercial media advertising can be full of political or religious content. In this way a radio station in Phoenix, like a station in San Francisco, could advertise on the buses that it broadcasts Rush Limbaugh with a photo of the man accompanying the sales pitch. A Christian radio station could promote its product with a cross and a relevant message. A movie house could announce the return of *The Last Temptation of Christ* with an illustration of the Magdalen.

If the city of Phoenix is to be truly neutral on political and religious issues, it must go beyond the simplicity of "commercial" and be specific as to the content of commercial messages it will not accept. The city may, for instance, specify that the buses will not carry commercial messages on hot topics-e.g., abortion, cigars and cigarettes, environmental disputes, euthanasia, pornography, radio talk shows, and X-rated movies. The city will have to discriminate frankly as to content, as it permissibly may in this commercial context. Such content-based restrictions are permissible in such nonpublic fora. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n,* 460 U.S. 37, 49, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983). What the city may not do is discriminate as to viewpoint, *Arkansas Educ. Television Comm'n v. Forbes,* 523 U.S. 666, ----, 118 S.Ct. 1633, 1643, 140 L.Ed.2d 875 (1998), as it did in this case where in the course of applying its ordinance it effectively rewrote it to permit only "primarily commercial" messages and thereby froze out even commercial advertising by nonprofit groups without significant business transactions to advertise.

Of the three rationales for the city's policy, the avoidance of violence against the buses seems to border on the absurd; nothing in the record substantiates the fear. The other two rationales-neutrality on contentious political and religious matters and the maintenance of standards attractive to business advertisers-would both be served by the kind of precision suggested here as essential to constitutionality. Neither rationale is served by a policy that allows the ideology of one side but not the other to be smuggled in.

The Phoenix ordinance, as applied, discriminates against the appellants' commercial speech and the Phoenix ordinance, as applied, fails to mark off a

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realm of ideology-free speech from a realm where ideologues with businesses to advertise can flourish. The preliminary injunction should have been granted.

C.A.9 (Ariz.),1998.
Children of the Rosary v. City of Phoenix
154 F.3d 972, 26 Media L. Rep. 2228, 98 Cal. Daily Op. Serv. 6719, 98 Cal. Daily Op. Serv. 9301

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69 F.3d 650, 64 USLW 2291
(Cite as: 69 F.3d 650)

▷

United States Court of Appeals,
Second Circuit.
Michael A. LEBRON, Plaintiff-Counter-Defendant-Appellee,
v.
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK), Defendant-Appellant,
and
Transportation Displays, Incorporated, Defendant-Counter-Claimant.
No. 1494, Docket 93-7127.

Argued April 27, 1993.
Decided Dec. 27, 1993.
Reversed and Remanded Feb. 21, 1995.
Reargued May 11, 1995.
Decided Oct. 30, 1995.

Artist sued National Railroad Passenger Corporation (Amtrak), after Amtrak rejected artist's lease of large billboard space because artist's proposed display was "political," for violation of artist's First Amendment rights. The United States District Court for the Southern District of New York, Pierre N. Leval, J., 811 F.Supp. 993, entered judgment for artist, and Amtrak appealed. The Court of Appeals for the Second Circuit, 12 F.3d 388, reversed upon finding that Amtrak was not government actor. The Supreme Court, 513 U.S 374, 115 S.Ct. 961, 130 L.Ed.2d 902, Justice Scalia, granted certiorari, and reversed upon finding that Amtrak was governmental actor. On remand, the Court of Appeals, Mahoney, Circuit Judge, held that: (1) display was not a public forum, or was a limited public forum; (2) policy prohibiting political speech on billboard was reasonable; (3) policy was not void for vagueness; (4) policy was not void for viewpoint bias; and (5) plaintiff lacked standing for facial challenge to Amtrak's policy.

Reversed and remanded with instructions.

Jon O. Newman, Chief Judge, dissented and filed opinion.

Amended on Denial of Rehearing 74 F.3d 371, 1995 WL 767138.

West Headnotes

[1] Constitutional Law 92 ⚿1735

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1732 Public Forum in General
92k1735 k. Justification for Exclusion or Limitation. Most Cited Cases
(Formerly 92k90.1(4))
Regulation of speech on government property that has traditionally been available for public expression or that has been designated as public forum, whether of limited or unlimited character, is subject to highest scrutiny; such regulations survive only if they are narrowly drawn to achieve compelling state interest. U.S.C.A. Const.Amend. 1.

[2] Constitutional Law 92 ⚿1751

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1748 Non-Public Forum in General
92k1751 k. Justification for Exclusion or Limitation. Most Cited Cases
(Formerly 92k90.1(4))
Limitations on expressive activity conducted on government property which has not traditionally been available for public expression or that has not been designated as public forum need only be reasonable, as long as regulation is not effort to sup-

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Submitted At Meeting
Date 8/3/10 Item 3
Exhibit 9

press speaker's activity due to disagreement with speaker's view. U.S.C.A. Const.Amend. 1.

[3] Constitutional Law 92 ⇐1735

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1732 Public Forum in General
92k1735 k. Justification for Exclusion or Limitation. Most Cited Cases
(Formerly 92k90.1(4))
Reasonable, content-neutral time, place, or manner restrictions are permissible in public forum. U.S.C.A. Const.Amend. 1.

[4] Constitutional Law 92 ⇐1754

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1754 k. Advertising in General. Most Cited Cases
(Formerly 92k90.1(4))
For purposes of determining whether public forum was involved with respect to artist's desire to place advertisement on large billboard on New York City's Pennsylvania Station, determination was limited to that unique display rather than all advertising space managed by same firm in New York City. U.S.C.A. Const.Amend. 1.

[5] Constitutional Law 92 ⇐1734

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1732 Public Forum in General
92k1734 k. Nature and Requisites. Most Cited Cases
(Formerly 92k90.1(4))
Government does not create public forum by inaction or by permitting limited discourse, but only by intentionally opening nontraditional forum for public discourse; even when government opens forum for some speech, forum does not become public forum if government did not intend to open forum without limitation. U.S.C.A. Const.Amend. 1.

[6] Constitutional Law 92 ⇐1754

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1754 k. Advertising in General. Most Cited Cases
(Formerly 92k90.1(4))
Large billboard on New York City's Pennsylvania Station was not a "public forum," or was a limited public forum for purely commercial speech, for purposes of determining whether limitations against political speech violated potential First Amendment rights of artist who leased it; display had never been open for anything other than commercial advertising. U.S.C.A. Const.Amend. 1.

[7] Constitutional Law 92 ⇐1752

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1752 k. Proprietary Function of Government. Most Cited Cases
(Formerly 92k90.1(1))
Where government is acting as proprietor, managing its internal operations, rather than acting as lawmaker with power to regulate or license, its ac-

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tion will not be subjected to heightened review to which its actions as lawmaker may be subject.

|8| Constitutional Law 92 ⚿1709

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(F) Politics and Elections
92k1709 k. Advertisements. Most Cited Cases
(Formerly 92k90.3)
Policy of National Railroad Passenger Corporation (Amtrak), as proprietor of large billboard on New York City's Pennsylvania Station, to prohibit display of political speech was reasonable; Amtrak's position, as government controlled and financed public facility, made it highly advisable to avoid criticism and embarrassments of allowing any display seeming to favor any political view. U.S.C.A. Const.Amend. 1.

|9| Constitutional Law 92 ⚿1710

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(F) Politics and Elections
92k1710 k. Signs. Most Cited Cases
(Formerly 92k90.3, 92k90.1(3))
Unwritten policy of National Railroad Passenger Corporation (Amtrak) to prohibit display of political speech on large billboard on New York City's Pennsylvania Station was not void for vagueness; Amtrak did not enjoy unbridled discretion nor could it have perpetrated illegitimate abuse of censorial power in rejecting advertisement because of its political content. U.S.C.A. Const.Amend. 1.

|10| Constitutional Law 92 ⚿1710

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(F) Politics and Elections
92k1710 k. Signs. Most Cited Cases
(Formerly 92k90.3)
Policy of National Railroad Passenger Corporation (Amtrak) which gave Amtrak discretion to refuse advertising for large billboard on New York City's Pennsylvania Station that "involve[s] political or other views which could result in dissension or involve [Amtrak] in dissension, complaints or controversy with its patrons or the public," was not void for viewpoint bias; statement was unartfully phrased justification for policy of prohibiting all political speech on that billboard, rather than test for discriminating against controversial political advertisements. U.S.C.A. Const.Amend. 1.

|11| Constitutional Law 92 ⚿667

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(A) Persons Entitled to Raise Constitutional Questions; Standing
92VI(A)1 In General
92k667 k. Third-Party Standing in General. Most Cited Cases
(Formerly 92k42(2))
Embedded in traditional rules governing constitutional adjudication is general principle that person to whom statute may constitutionally be applied will not be heard to challenge that statute on ground that it may conceivably be applied unconstitutionally to others, in other situations not before court.

|12| Federal Courts 170B ⚿612.1

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(D) Presentation and Reservation in Lower Court of Grounds of Review
170BVIII(D)1 Issues and Questions in Lower Court
170Bk612 Nature or Subject-Matter of Issues or Questions
170Bk612.1 k. In General. Most Cited Cases
Question of standing is not subject to waiver; appellate court is required to address issue even if courts below have not passed on it, and even if

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parties fail to raise issue.

|13| Federal Courts 170B ⚿30

170B Federal Courts
170BI Jurisdiction and Powers in General
170BI(A) In General
170Bk29 Objections to Jurisdiction, Determination and Waiver
170Bk30 k. Power and Duty of Court. Most Cited Cases
Federal courts are under independent obligation to examine their own jurisdiction, and standing is perhaps most important of jurisdictional doctrines.

|14| Constitutional Law 92 ⚿855

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(A) Persons Entitled to Raise Constitutional Questions; Standing
92VI(A)9 Freedom of Speech, Expression, and Press
92k855 k. In General. Most Cited Cases
(Formerly 92k42.2(1))

Constitutional Law 92 ⚿859

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(A) Persons Entitled to Raise Constitutional Questions; Standing
92VI(A)9 Freedom of Speech, Expression, and Press
92k858 Criminal Law
92k859 k. In General. Most Cited Cases
(Formerly 92k42.2(1))
Under overbreadth doctrine, individual may bring First Amendment challenge against statute that threatens others not before court because it also threatens those who desire to engage in legally protected expression but who may refrain from doing so rather than risk prosecution or undertake to have law declared partially invalid. U.S.C.A. Const.Amend. 1.

|15| Constitutional Law 92 ⚿1164

92 Constitutional Law
92X First Amendment in General
92X(A) In General
92k1162 Overbreadth in General
92k1164 k. Substantial Impact, Necessity Of. Most Cited Cases
(Formerly 92k82(4))
Invalidation of statute on its face, under First Amendment overbreadth doctrine, is permitted only if overbreadth is substantial. U.S.C.A. Const.Amend. 1.

|16| Constitutional Law 92 ⚿857

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(A) Persons Entitled to Raise Constitutional Questions; Standing
92VI(A)9 Freedom of Speech, Expression, and Press
92k857 k. Carriers. Most Cited Cases
(Formerly 92k42.2(1))
Artist who was prohibited by policy of National Railroad Passenger Corporation (Amtrak) from displaying political advertisement on large billboard on New York City's Pennsylvania Station lacked standing to present First Amendment facial challenge to Amtrak's general policy under overbreadth doctrine. U.S.C.A. Const.Amend. 1.
***652** Kevin T. Baine, Washington, D.C. (Nicole K. Seligman, Steven M. Farina, Williams & Connolly, Washington, D.C., William G. Ballaine, Mark S. Landman, Siff Rosen P.C., New York City (of counsel), for Defendant-Appellant.

David D. Cole, Washington, D.C. (Center for Constitutional Rights, Washington, D.C., R. Bruce Rich , Gloria C. Phares, Robin E. Silverman, Bernadette M. McCann Ezring, Jonathan Bloom, Weil, Gotshal & Manges, New York City, of counsel), for Plaintiff-Counter-Defendant-Appellee.

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Before: NEWMAN, Chief Judge, and LUMBARD and MAHONEY, Circuit Judges.

MAHONEY, Circuit Judge:

On remand from the United States Supreme Court, *see Lebron v. National R.R. Passenger Corp.*, 513 U.S. 374, 115 S.Ct. 961, 130 L.Ed.2d 902 (1995) ("*Lebron III*"), this appeal of a judgment entered February 11, 1993 in the United States District Court for the Southern District of New York, Pierre N. Leval, then-*District Judge,*[FN*] again comes before us. The district court enjoined defendant-appellee National Railroad Passenger Corporation ("Amtrak") and defendant-counter-claimant Transportation Displays, Incorporated ("TDI") to display a political advertisement prepared by plaintiff-counter-defendant-appellee Michael A. Lebron on a large billboard known as the Spectacular in New York City's Pennsylvania Station ("Penn Station"), having determined that Amtrak's failure to do so violated the First Amendment. *See* ***653***Lebron v. National R.R. Passenger Corp. (AMTRAK)*, 811 F.Supp. 993 (S.D.N.Y.1993) ("*Lebron I*").

> FN* Judge Leval became a member of the Second Circuit Court of Appeals on November 8, 1993.

On appeal, after staying the injunction, we reversed the judgment of the district court, "conclud[ing] that Amtrak is not a governmental actor subject to the strictures of the First Amendment." *Lebron v. National R.R. Passenger Corp. (AMTRAK)*, 12 F.3d 388, 389 (2d Cir.1993) ("*Lebron II*"). The Supreme Court reversed and remanded, holding that Amtrak "is part of the Government for purposes of the First Amendment," *Lebron III*, 513 U.S. at ---- - ----, 115 S.Ct. at 974-75, but "express[ing] no opinion as to whether Amtrak's refusal to display Lebron's advertisement violated that Amendment." *Id.* at ----, 115 S.Ct. at 975.

Because we conclude that Amtrak's historical refusal to accept political advertisements such as Lebron's on the Spectacular is a reasonable use of that forum that is neutral as to viewpoint, and that Lebron lacks standing to assert a facial challenge to Amtrak's general policies concerning the acceptance of advertising for display at Pennsylvania Station, we again reverse the judgment of the district court.

Background

On November 30, 1992, Lebron, an artist who creates political billboard displays (frequently involving commentary on public issues), and TDI, which manages the leasing of advertising space for Amtrak, entered into a leasing agreement (the "Lease") under which Lebron would rent the Spectacular, "a curved back-lit display space approximately 103 feet wide by ten feet high ... [which] dominates the west wall of the rotunda on the upper level of Penn Station where thousands of passengers pass each day," for the months of January and February 1993. *Lebron II*, 12 F.3d at 389. Although Lebron did not specify the precise nature of his display, he did inform TDI that his work was generally political. *Id.* By the terms of the Lease, " '[a]ll advertising copy is subject to approval of TDI and [Amtrak] as to character, text, illustration, design and operation.... [I]f [Amtrak] should deem such advertising objectionable for any reason, TDI shall have the right to terminate the contract and discontinue the service without notice.' " *Id.* (quoting the Lease, alterations partially added).

Lebron then submitted his proposed advertisement (the "Display") to TDI. Lebron characterizes the Display as "an allegory about the destructive influence of a powerful, urban, materialistic and individualistic culture on rural, community based, family-oriented and religious cultures." The district court described the Display as follows:

> The work is a photomontage, accompanied by considerable text. Taking off on a widely circulated Coors beer advertisement which proclaims Coors to be the "Right Beer," Lebron's piece is

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> captioned "Is it the Right's Beer Now?" It includes photographic images of convivial drinkers of Coors beer, juxtaposed with a Nicaraguan village scene in which peasants are menaced by a can of Coors that hurtles towards them, leaving behind a tail of fire, as if it were a missile. The accompanying text, appearing on either end of the montage, criticizes the Coors family for its support of right-wing causes, particularly the contras in Nicaragua. Again taking off on Coors' advertising which uses the slogan of "Silver Bullet" for its beer cans, the text proclaims that Coors is "The Silver Bullet that aims The Far Right's political agenda at the heart of America."

Lebron I, 811 F.Supp. at 995.

When TDI saw the Display, it offered Lebron any of 500 alternative billboard sites that TDI had available in New York City (none of which were in Penn Station), but Lebron rejected this offer. Echoing the allegation in his complaint that the Spectacular is "a unique advertising location in the City of New York," Lebron stated in an affidavit that:

> The very size of the Spectacular allowed me to design and visualize this work with an effectiveness and clarity that would have been otherwise impossible to achieve. Its size and shape make it one of the largest advertising display spaces in New York City, and its prominent location in Pennsylvania Station means that it is visible to a large segment of the traveling public, providing an excellent opportunity ***654** to reach exactly the kind of audience I hope to engage with the subject matter of this piece. For all of these reasons, I consider the space an extraordinarily unique advertising location in New York City, and a unique challenge to my communicative skills as an artist that no gallery and few other public environments could provide.

Shortly thereafter, Amtrak rejected the Display, stating that its " 'policy is that it will not allow political advertising on the [S]pectacular advertising sign.' " *Lebron II*, 12 F.3d at 389 (quoting Amtrak rejection letter, alteration in *Lebron II*).

This policy, however, is not committed to writing, *Lebron I*, 811 F.Supp. at 1001, although the licensing agreement between Amtrak and TDI (which is addressed to all of Amtrak's advertising space) states that: " 'All advertising material, exhibit material, notices and advertisements, and their manner of presentation and design, shall be subject to approval by Amtrak, which may disapprove any such items at its own discretion.' " *Id.* at 1002 (quoting licensing agreement).[FN1] In addition, the licensing agreement provides that public service announcements may be accepted, at a reduced rate and when space is available, although they may be preempted by commercial advertising. *Id.* at 1003. Public service advertisements may be accepted only from " 'recognized, legitimate [tax exempt] not-for-profit organizations, corporations, National, State or Local government agencies and subdivisions, philanthropic or cultural organizations whose activities would be of interest or benefit to a majority of the area population,' " and must "adhere to 'good taste, decency and community standards.' " *Id.* (quoting licensing agreement, alterations in *Lebron I*).

> FN1. The licensing agreements between Amtrak's predecessor, the Pennsylvania Railroad Company ("PRC"), and TDI provided that the PRC could refuse any advertisement that it deemed " 'unlawful, immoral, improper or offensive to good taste ... or [to] involve *political* or other views which could result in dissension or [to] involve [PRC] in dissension, complaints or controversy with its patrons or the public.' " *Lebron I*, 811 F.Supp. at 1001-02 (quoting PRC-TDI licensing agreements) (alterations partially added, emphasis added). However, this language has been superseded by the language quoted in the text of this opinion.

In this regard, Amtrak has leased advertising space to various noncommercial groups, including:

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> the New York Department of the Environment, the New York Department of Commerce, a foundation for muscular dystrophy, and *Plain Truth* Magazine, a free magazine on political and social issues published by The Worldwide Church of God. In addition, testimony of the general counsel of TDI indicates that TDI regularly displays public service advertisements, including subjects such as the homeless, the environment, drunk driving, AIDS awareness, health issues, and race relations.

Id. at 1004. *The Plain Truth* is distributed at a four-sided, seven-foot kiosk that displays an advertisement for the magazine and is located in front of the Spectacular.

In addition, however, it is undisputed that in the twenty-six years of its existence, the Spectacular has never been used for any type of advertising other than commercial promotions. The only advertisements that have appeared on the Spectacular have promoted DuPont Company, Resorts International in Atlantic City, the Broadway play "Sophisticated Ladies," Fujitsu Computers, Nike athletic wear, and A & S Department Stores.[FN2] Moreover, as Lebron has acknowledged, Amtrak previews proposed advertisements for the Spectacular, while it views advertisements to be used at other locations only after they are exhibited.

> FN2. The stated twenty-six years of the Spectacular's existence, and the list of advertisers over that period, is premised upon the record presented on this appeal, which was completed over two years ago.

Lebron commenced this action alleging a violation of his First Amendment rights and breach of contract, and seeking equitable relief or, alternatively, damages. The district court granted a mandatory injunction requiring Amtrak and TDI to exhibit the Display on the Spectacular. *Lebron I*, 811 F.Supp. at 1005. After holding that Amtrak is a government actor subject to the First ***655** Amendment, *id.* at 995-1000, the court concluded that Amtrak's refusal to exhibit the Display violated that amendment. *Id.* at 1000-05. The court provided four bases for this determination: (1) Amtrak's policy of not accepting political advertisements is not clearly set forth, in that it is not reduced to writing, *id.* at 1001-02; (2) the policy is vague, in that it is difficult to draw the line between political, public interest, and commercial advertisements, as demonstrated by conflicting testimony by Amtrak's officials, *id.* at 1002-03; (3) the policy is not consistently applied, in that certain public service advertisements that Amtrak has accepted might be viewed as political, *id.* at 1003-04; and (4) the policy may be void as discriminating on the basis of viewpoint, in that Amtrak may inquire into whether a particular advertisement is offensive, *id.* at 1004-05.

As previously stated, we initially reversed on the ground that Amtrak is not subject to First Amendment constraints, and therefore did not consider the merits of Lebron's First Amendment claim. *Lebron II*, 12 F.3d at 392. We instructed the district court not to exercise supplemental jurisdiction over the remaining state law claim, but noted that Lebron would be free to pursue that claim in state court. *Id.* at 392-93. The Supreme Court reversed and remanded on the "government actor" issue, directing us to consider the merits of Lebron's First Amendment claim. *Lebron III*, 513 U.S. at ---- - ----, 115 S.Ct. at 974-75.

We requested supplemental letter briefs from the parties, and heard reargument on the First Amendment issues.

Discussion

[1][2][3] Because Lebron seeks access to government property, we begin with a review of the public forum doctrine.

> Under this approach, regulation of speech on government property that has traditionally been available for public expression is subject to the highest scrutiny. Such regulations survive only if

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> they are narrowly drawn to achieve a compelling state interest. *Perry [Educ. Ass'n v. Perry Local Educators' Ass'n]*, 460 U.S. [37,] 45, 103 S.Ct. [948,] 955 [74 L.Ed.2d 794] [(1983)]. The second category of public property is the designated public forum, whether of a limited or unlimited character-property that the state has opened for expressive activity by part or all of the public. *Ibid.* Regulation of such property is subject to the same limitations as that governing a traditional public forum. *Id.*, at 46, 103 S.Ct., at 955. Finally, there is all remaining public property. Limitations on expressive activity conducted on this last category of property must survive only a much more limited review. The challenged regulation need only be reasonable, as long as the regulation is not an effort to suppress the speaker's activity due to disagreement with the speaker's view. *Ibid.*

International Soc'y for Krishna Consciousness, Inc. v. Lee, 505 U.S. 672, ----, 112 S.Ct. 2701, 2705-06, 120 L.Ed.2d 541 (1992). Reasonable, content-neutral time, place, or manner restrictions are permissible in a public forum. *See Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S.Ct. 2746, 2753-54, 105 L.Ed.2d 661 (1989).

"[I]n defining the forum [the Supreme Court has] focused on the *access sought by the speaker*.... In cases in which limited access is sought, [the Court's] cases have taken a more tailored approach to ascertaining the perimeters of a forum within the confines of the government property." *Cornelius v. NAACP Legal Defense and Educ. Fund, Inc.*, 473 U.S. 788, 801, 105 S.Ct. 3439, 3448, 87 L.Ed.2d 567 (1985) (emphasis added) (holding that federal fund-raising drive, not federal workplace generally, was relevant forum for analysis).

[4] Amtrak contends that our public forum inquiry must focus on the Spectacular alone, rather than all Penn Station advertising space. We agree. Because of its unique size, location, and visibility, Lebron sought access only to the Spectacular, and refused to accept any other advertising space in New York City managed by TDI. Although Lebron now contends that we should broaden our public forum inquiry to all Penn Station advertising space, it was he who determined that only the Spectacular would be acceptable for his display. *Cf.* ***656***Air Line Pilots Ass'n, Int'l v. Department of Aviation*, 45 F.3d 1144, 1151-52 (7th Cir.1995) (where speaker seeks access to diorama display cases in airport, public forum inquiry focuses on display cases rather than airport as a whole); *Hubbard Broadcasting, Inc. v. Metropolitan Sports Facilities Comm'n*, 797 F.2d 552, 555-56 (8th Cir.) (where speaker seeks access to advertising space in sports arena, public forum inquiry focuses on advertising space rather than entire arena), *cert. denied*, 479 U.S. 986, 107 S.Ct. 576, 93 L.Ed.2d 579 (1986).

[5] To determine the Spectacular's forum category, we must examine "the policy and practice of the government to ascertain whether it intended to designate a place not traditionally open to assembly and debate as a public forum." *Cornelius*, 473 U.S. at 802, 105 S.Ct. at 3449. We must bear in mind that "[t]he government does not create a public forum by inaction or by permitting limited discourse, but only by intentionally opening a nontraditional forum for public discourse." *Id.; see also Krishna*, 505 U.S. at ----, 112 S.Ct. at 2706 (quoting *Cornelius*, 473 U.S. at 802, 105 S.Ct. at 3449). Thus, even when the government opens a forum for some speech, the forum does not become a public forum if the government did not intend to open the forum without limitation. *See United States v. Kokinda*, 497 U.S. 720, 730, 110 S.Ct. 3115, 3121-22, 111 L.Ed.2d 571 (1990) (plurality opinion); *Perry Educ. Ass'n v. Perry Local Educators Ass'n*, 460 U.S. 37, 48, 103 S.Ct. 948, 956-57, 74 L.Ed.2d 794 (1983). When only some First Amendment access has been granted, the reasonableness test applies. *Kokinda*, 497 U.S. at 730, 110 S.Ct. at 3121-22 (plurality opinion); *Perry*, 460 U.S. at 49, 103 S.Ct. at 957.

Although Amtrak does not maintain a written policy with respect to the Spectacular, its practice is clear; it has never opened the Spectacular for any-

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thing except purely commercial advertising. *See Air Line Pilots Ass'n,* 45 F.3d at 1154 ("[A] court must examine the *actual* policy-as gleaned from the *consistent* practice with regard to various speakers-to determine whether a state intended to create a designated public forum".); *cf. AIDS Action Comm. v. Massachusetts Bay Transp. Auth.,* 42 F.3d 1, 10-12 (1st Cir.1994) (prohibiting advertisements concerning use of condoms pursuant to written policy prohibiting sexually explicit advertisements constituted "discrimination in the application of supposedly neutral standards" when other sexually explicit advertisements had been allowed).

[6] In light of Amtrak's undisputed practice with respect to the Spectacular, therefore, we conclude that the Spectacular is not a public forum; most likely, it is a non-public forum, or perhaps it is a limited public forum opened for purely commercial speech. *See Calash v. City of Bridgeport,* 788 F.2d 80, 83-84 (2d Cir.1986) (sports arena opened only to civic, charitable, and nonprofit groups either a nonpublic forum or a limited public forum not required to accommodate other members of general public).

Accordingly, Amtrak's policy of excluding noncommercial advertisements from the Spectacular will be upheld so long as the policy is "viewpoint-neutral and reasonable in relation to the forum's purpose." *Calash,* 788 F.2d at 84; *see also Cornelius,* 473 U.S. at 806, 105 S.Ct. at 3451 ("Control over access to a nonpublic forum can be based on subject matter and speaker identity so long as the distinctions drawn are reasonable in light of the purpose served by the forum and are viewpoint neutral.").

Lehman v. City of Shaker Heights, 418 U.S. 298, 94 S.Ct. 2714, 41 L.Ed.2d 770 (1974), is particularly well addressed to this issue as presented in the instant case. In *Lehman,* the city imposed a ban on political advertisements in buses, but allowed other types of advertisements, including commercial and public service ads. A candidate for public office challenged this policy as a First Amendment violation, and the Court responded as follows:

> Here, we have no open spaces, no meeting hall, park, street corner, or other public thoroughfare. Instead, the city is engaged in commerce. It must provide rapid, convenient, pleasant, and inexpensive service to the commuters of Shaker Heights. The car card space, although incidental to the provision of public transportation,***657** is part of the commercial venture. In much the same way that a newspaper or periodical, or even a radio or television station, need not accept every proffer of advertising from the general public, a city transit system has discretion to develop and make reasonable choices concerning the type of advertising that may be displayed in its vehicles. In making these choices, this Court has held that a public utility "will be sustained in its protection of activities in public places when those activities do not interfere with the general public convenience, comfort and safety." *Public Utilities Comm'n v. Pollak,* 343 U.S. [451,] 464-65, [72 S.Ct. 813, 821-22, 96 L.Ed. 1068 [(1952)].
>
> Because state action exists, however, the policies and practices governing access to the transit system's advertising space must not be arbitrary, capricious, or invidious.... Revenue earned from long-term commercial advertising could be jeopardized by a requirement that short-term candidacy or issue-oriented advertisements be displayed on car cards. Users would be subjected to the blare of political propaganda. There could be lurking doubts about favoritism, and sticky administrative problems might arise in parceling out limited space to eager politicians. In these circumstances, the managerial decision to limit car card space to innocuous and less controversial commercial and service oriented advertising does not rise to the dignity of a First Amendment violation....
>
> No First Amendment forum is here to be found. The city consciously has limited access to its transit system advertising space in order to minimize chances of abuse, the appearance of favor-

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> itism, and the risk of imposing upon a captive audience. These are reasonable legislative objectives advanced by the city *in a proprietary capacity.* In these circumstances, there is no First or Fourteenth Amendment violation.

Lehman, 418 U.S. at 303-04, 94 S.Ct. at 2717-18 (plurality opinion) (emphasis added).[FN3]

> FN3. Lebron contends that because the only government interest in *Lehman* that garnered the support of a majority of the Court is protecting captive audiences, the case must be read as so limited. However, the Supreme Court has repeatedly reaffirmed a broader reading of *Lehman,* often specifically citing to the plurality opinion. *See, e.g., Krishna,* 505 U.S. at ----, 112 S.Ct. at 2705 ("[W]e have upheld a ban on political advertisements in city-operated transit vehicles") (citing *Lehman*); *Kokinda,* 497 U.S. at 726, 110 S.Ct. at 3119 (plurality opinion) ("In *Lehman,* the plurality concluded that the ban on political advertisements (combined with the allowance of other advertisements) was permissible under [the arbitrary and capricious] standard....") (followed by quotation from *Lehman,* 418 U.S. at 304, 94 S.Ct. at 2717-18) (plurality opinion); *Cornelius,* 473 U.S. at 806, 105 S.Ct. at 3451 ("[A] speaker may be excluded from a nonpublic forum if he wishes to address a topic not encompassed within the purpose of the forum....") (citing *Lehman*); *Perry,* 460 U.S. at 47, 103 S.Ct. at 956 ("[I]n [*Lehman*] (opinion of BLACKMUN, J.), a plurality of the Court concluded that a city transit system's rental of space in its vehicles for commercial advertising did not require it to accept partisan political advertising."); *see also Air Line Pilots Ass'n,* 45 F.3d at 1153 n. 3 (declining "to limit *Lehman*'s holding to situations involving captive audiences"); *Calash,* 788 F.2d at 84 (citing *Lehman* plurality opinion for proposition that "rental of space to commercial advertisers does not require City to accept political advertising on buses"). We therefore see no need to address Amtrak's argument that its policy could be justified on the basis of the captive audience doctrine.

[7] It is especially significant that, as in *Lehman,* Amtrak acts in this case in a proprietary capacity, rather than as a governmental regulator. As the Court stated in *Krishna:*

> Where the government is acting as a proprietor, managing its internal operations, rather than acting as lawmaker with the power to regulate or license, its action will not be subjected to the heightened review to which its actions as a lawmaker may be subject. *Kokinda, supra,* 497 U.S., at [725], 110 S.Ct., at [3119] (plurality opinion) (citing *Cafeteria & Restaurant Workers v. McElroy,* 367 U.S. 886, 896, 81 S.Ct. 1743, 1749, 6 L.Ed.2d 1230 (1961)). Thus, we have upheld a ban on political advertisements in city-operated transit vehicles, *Lehman v. City of Shaker Heights,* 418 U.S. 298, 94 S.Ct. 2714, 41 L.Ed.2d 770 (1974), even though the city permitted other types of advertising on those vehicles. Similarly, we have permitted a school district***658** to limit access to an internal mail system used to communicate with teachers employed by the district. *Perry Education Assn. v. Perry Local Educators' Ass'n,* 460 U.S. 37, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983).

505 U.S. at ----, 112 S.Ct. at 2705.

[8][9] Amtrak's decision, as a proprietor, to decline to enter the political arena, even indirectly, by displaying political advertisements is certainly reasonable. Amtrak's position as a government controlled and financed public facility, used daily by thousands of people, made it highly advisable to avoid the criticism and the embarrassments of allowing any display seeming to favor any political view. This was particularly so with respect to the Spec-

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tacular in view of its uniqueness and size. *Cf. Calash,* 788 F.2d at 84 (finding the city's decision to limit access to sports arena to civic, charitable, and non-profit groups, but not rock musicians, reasonable) (citing *Cornelius,* 473 U.S. at 809-11, 105 S.Ct. at 3452-54; *Perry,* 460 U.S. at 50-53, 103 S.Ct. at 958-59; and *Lehman,* 418 U.S. at 304, 94 S.Ct. at 2718 (plurality opinion)). Nor would a policy against "political" advertising on the Spectacular be void for vagueness in light of the Supreme Court's decision in *Lehman,* 418 U.S. at 303-04, 94 S.Ct. at 2717-18 (plurality opinion).

Lebron urges us to reach the same conclusion as the district court, arguing that Amtrak's policy is unwritten, inconsistently applied, and possibly viewpoint biased. We disagree.

The fact that a policy is not committed to writing does not of itself constitute a First Amendment violation. *Cf. City of Lakewood v. Plain Dealer Publishing Co.,* 486 U.S. 750, 770, 108 S.Ct. 2138, 2151, 100 L.Ed.2d 771 (1988) ("[T]he limits the city claims are implicit in its law must be made explicit by textual incorporation, binding judicial or administrative construction, or well-established practice."). *City of Lakewood* and the other cases cited by the district court stand for the propositions that "in the area of free expression a licensing statute placing unbridled discretion in the hands of a government official or agency constitutes a prior restraint and may result in censorship," *id.* at 757, 108 S.Ct. at 2144, and that "the absence of express standards makes it difficult to distinguish, 'as applied,' between a licensor's legitimate denial of a permit and its illegitimate abuse of censorial power." *Id.* at 758, 108 S.Ct. at 2144.

Neither of these concerns is implicated here. Amtrak's prior written agreements, together with the testimony of the Amtrak official responsible for approving advertisements on the Spectacular and Amtrak's historic practice of reserving the Spectacular for commercial advertisements, dispel the notion that Amtrak enjoyed "unbridled discretion" or could have perpetrated an "illegitimate abuse of censorial power" in rejecting an advertisement because of its political content. Furthermore, because the policy against political advertisements was limited in scope to the Spectacular, there is no evidence that Amtrak's policy has ever been applied inconsistently.

[10] The district court also intimated that Amtrak's policy might be void for viewpoint bias, depending upon which of the conflicting versions offered at trial represented Amtrak's true policy. Although the district court entered no findings of fact, its concern was primarily based upon statements appearing in Amtrak's 1967 and 1980 agreements with TDI, which gave Amtrak the discretion to refuse any advertising that "involve[s] political or other views which could result in dissension or involve [Amtrak] in dissension, complaints or controversy with its patrons or the public." 811 F.Supp. at 1001-02 (quoting TDI licensing agreements) (alterations partly added). Of course, if such a policy were used to screen out only controversial political advertisements-that is, political advertisements distasteful to the majority-it would be void for viewpoint bias. On the other hand, it seems more sensible to read the language as a justification, however inartfully phrased, for a categorical ban against political advertising, *see, e.g., Lehman,* 418 U.S. at 304, 94 S.Ct. at 2718 (characterizing commercial advertising as "innocuous and less controversial" than political advertising), rather ***659** than as a test for discriminating against certain types of political advertisements.[FN4]

> FN4. Lebron invokes *Lamb's Chapel v. Center Moriches Union Free School District,* 508 U.S. 384, 113 S.Ct. 2141, 124 L.Ed.2d 352 (1993), which invalidated a ban on the showing of religiously oriented films in public schools when secularly oriented films on the identical subjects were permitted, to argue that Amtrak's policy violates viewpoint neutrality. Lebron perceives viewpoint discrimination because "[u]nder Amtrak's policy, the Coors Brew-

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> ing Company could advertise and *encourage* purchase of its beer, but Lebron's critical treatment of the same subject matter, *discouraging* purchase of Coor's beer, was rejected because it expressed a 'political' point of view." The argument is plainly specious. The "subject matter" of the Display can hardly be described, with any remote sense of accuracy, as the merits or demerits of Coors Beer. As Lebron himself stated in an affidavit, "I do not seek to sell anything other than ideas with this advertisement."

[11] Because we have found that Amtrak's policy against political advertisements was limited in scope to the Spectacular, Lebron's attempt to attack Amtrak's policies regarding the acceptance of advertisements in Penn Station generally, rather than on the Spectacular, amounts, in substance, to a facial challenge to those policies as they might be applied to advertisements other than Lebron's and to locations not at issue. Ordinary rules of standing, of course, would bar Lebron from mounting such a challenge. As the Supreme Court has made clear: "Embedded in the traditional rules governing constitutional adjudication is the principle that a person to whom a statute may constitutionally be applied will not be heard to challenge that statute on the ground that it may conceivably be applied unconstitutionally to others, in other situations not before the Court." *Broadrick v. Oklahoma,* 413 U.S. 601, 610, 93 S.Ct. 2908, 2915, 37 L.Ed.2d 830 (1973) (collecting cases).

[12][13] Further, "[t]he question of standing is not subject to waiver ...: 'we are required to address the issue even if the courts below have not passed on it, and even if the parties fail to raise the issue before us. The federal courts are under an independent obligation to examine their own jurisdiction, and standing "is perhaps the most important of [the jurisdictional] doctrines." ' " *United States v. Hays,* 515 U.S. 737, ----, 115 S.Ct. 2431, 2435, 132 L.Ed.2d 635 (1995) (quoting *FW/PBS, Inc. v. City of Dallas,* 493 U.S. 215, 230-31, 110 S.Ct. 596, 607, 107 L.Ed.2d 603 (1990) (quoting *Allen v. Wright,* 468 U.S. 737, 750, 104 S.Ct. 3315, 3324, 82 L.Ed.2d 556 (1984))) (alteration in *FW/PBS*).

Broadrick also recognized, however, that "the Court has altered its traditional rules of standing to permit-in the First Amendment area-'attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with the requisite narrow specificity.' " 413 U.S. at 612, 93 S.Ct. at 2916 (quoting *Dombrowski v. Pfister,* 380 U.S. 479, 486, 85 S.Ct. 1116, 1121, 14 L.Ed.2d 22 (1965)). *Broadrick* went on to emphasize that this overbreadth doctrine "has been employed by the Court sparingly and only as a last resort." 413 U.S. at 613, 93 S.Ct. at 2916; *see also Younger v. Harris,* 401 U.S. 37, 52, 91 S.Ct. 746, 754, 27 L.Ed.2d 669 (1971) ("Procedures for testing the constitutionality of a statute 'on its face' ... are fundamentally at odds with the function of the federal courts in our constitutional plan.").

[14][15] In our view, this case affords no occasion for application of the overbreadth doctrine, and Lebron accordingly lacks standing to assert a general challenge to Amtrak's advertising policies. The doctrine has only been applied to the conduct of the government in its role as a regulator, not as a proprietor. *See, e.g., City of Lakewood,* 486 U.S. at 759-62, 108 S.Ct. at 2145 (newspaper permitted to mount facial challenge to ordinance that granted municipal mayor uncircumscribed authority to allow or disallow distribution of newspapers via newsracks on public streets); *Board of Airport Comm'rs v. Jews for Jesus, Inc.,* 482 U.S. 569, 571, 574-77, 107 S.Ct. 2568, 2570, 2572-73, 96 L.Ed.2d 500 (1987) (allowing overbreadth challenge to ordinance that barred "First Amendment activities within the Central Terminal Area at Los Angeles International Airport"). It is invoked against a statute that " 'threatens others not before the court-those who desire*660 to engage in legally protected expression but who may refrain from doing so

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rather than risk prosecution or undertake to have the law declared partially invalid,' " *id.* at 574, 107 S.Ct. at 2572 (quoting *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 503, 105 S.Ct. 2794, 2802, 86 L.Ed.2d 394 (1985)), and invalidation of a statute on its face is permitted "only if the overbreadth is 'substantial.' " *Id.* (collecting cases).

[16] Such concerns simply are not implicated by Amtrak's role as the proprietor of Penn Station, essentially seeking to derive revenues from the sale of advertising while minimizing interference with or disruption of the station's commercial function. *See Lehman*, 418 U.S. at 303, 94 S.Ct. at 2717 (plurality opinion). Thus, Lebron lacks standing to present a facial challenge to Amtrak's general advertising policies in this litigation. This would be so even if Lebron had adduced a stronger showing of erosion of Amtrak's policy against political advertisements than the handful of assertedly borderline cases that was presented in this litigation. As Chief Judge Newman pointed out in *Lebron II*, "Amtrak's billboard space in Pennsylvania Station, even if used in the past for ads of a public service nature, has not become a forum for ads of such pointed political content as Lebron's attack on the makers of Coors Beer for promoting 'The Far Right's political agenda.' " 12 F.3d at 394 (Newman, C.J., dissenting).

Conclusion

We reverse the judgment of the district court and remand with the instruction that the district court dismiss Lebron's complaint. As previously noted, *see Lebron II*, 12 F.3d at 392-93, Lebron is free to pursue his state law claim in state court.

JON O. NEWMAN, Chief Judge, dissenting:
Because I believe that Amtrak, a governmental entity now authoritatively determined to be subject to First Amendment limitations, *see Lebron v. National R.R. Passenger Corp.*, 513 U.S. 374, 115 S.Ct. 961, 130 L.Ed.2d 902 (1995), has violated the First Amendment by its rejection of the political advertisement that Michael Lebron contracted to display on a billboard in Penn Station, I respectfully dissent.

The Court's dismissal of Lebron's lawsuit rests on two premises, both of which, in my view, are flawed. The first concerns the identification of the forum for purposes of applying public forum analysis. The second concerns the standard for determining whether a governmental actor's policy for rejecting advertisements violates First Amendment requirements.

1. *The relevant forum.* The premise of the Court's identification of the relevant forum is that, in advertising cases, a court should consider the particular billboard on which an applicant wishes to display a message. Proceeding from this premise, the Court narrows its inquiry to "the Spectacular," the large billboard high on the west wall of the rotunda of the upper level of Penn Station. No prior case has taken such a restricted view of the relevant forum, and I think it can be readily demonstrated that the Court's premise is incorrect.

The Supreme Court has instructed that the relevant forum is to be determined by "the access sought by the speaker." *Cornelius v. NAACP Legal Defense and Educational Fund, Inc.*, 473 U.S. 788, 801, 105 S.Ct. 3439, 3448, 87 L.Ed.2d 567 (1985). The meaning of that instruction is made clear by the facts of *Cornelius*. The plaintiff sought access to what the Court called "a particular means of communication," *id.*-the Combined Federal Campaign, a charity drive aimed at federal employees. The Court ruled that the charity campaign itself was the relevant forum, rather than the entirety of the federal workplace. The cases relied on by *Cornelius* further illuminate the Court's meaning. In *Perry Education Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983), the Court confined its inquiry to a school district's interschool mail system, rather than all parts of school property. *Cornelius* referred to the mail system as "a particular *means* of communication." 473 U.S. at 801, 105 S.Ct. at 3448 (emphasis added). In

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661Lehman v. City of Shaker Heights,* 418 U.S. 298, 94 S.Ct. 2714, 41 L.Ed.2d 770 (1974), the Court confined its inquiry to advertising space on city-owned buses.

All of these cases focus on a means of communication, not the particular location where an advertiser prefers to display its ad. It is unimaginable that in *Cornelius* the Court would have permitted one political party to solicit funds through the Combined Federal Campaign at one side of the lobby of a federal building while denying another party the opportunity to solicit funds through the Campaign at the other side, or that in *Perry* the Court would have permitted one group to place a political message in the mail boxes of one school while denying another group a similar right at other schools, or that in *Lehman* the Court would have permitted political ads on one bus while prohibiting political ads on other buses.

The two cases relied on by the majority in the pending appeal, both interestingly and accurately cited with a signal meaning "compare," are also instructive. In *Air Line Pilots Assn. v. Dept. of Aviation,* 45 F.3d 1144 (7th Cir.1995), the Court focused on diorama display cases throughout an airport, rather than the entirety of the airport. The Court did not limit its analysis to one display case. In *Hubbard Broadcasting, Inc. v. Metropolitan Sports Facilities Commission,* 797 F.2d 552 (9th Cir.), *cert. denied,* 479 U.S. 986, 107 S.Ct. 576, 93 L.Ed.2d 579 (1986), the Court focused on all advertising space in a sports arena, rather than the entirety of the arena. The Court did not limit its analysis to one portion of the advertising space.

Nevertheless, the Court in the pending case limits its public forum analysis to the one billboard in Penn Station on which Lebron wishes to display his ad-the so-called "Spectacular." There is no question that this billboard is bigger than any other in Penn Station, more visible, and, if one can afford it, more desirable. But public forum analysis cannot be so particularized as to focus on one of several billboards on government property, no matter how preferable that one billboard's size and location may be to an advertiser. The reason can be readily demonstrated. As everyone who has ever walked through Penn Station knows, the Spectacular is high atop the west wall of the station's rotunda, and two small billboards are high atop the north and south walls of the same rotunda. If Amtrak had permitted the Democratic Party to place political ads on either of the two smaller billboards in the rotunda, can it be seriously argued that any court would limit its forum analysis to the one large billboard and permit Amtrak to deny the Republican Party the opportunity to place its political ad on the Spectacular, just because no political ad had previously been on that precise space?

The relevant forum must be at least advertising space in the rotunda of Penn Station-the means of communication to which Lebron sought access. Once the forum is defined to have at least this scope, Amtrak's violation of the First Amendment is evident because it has leased advertising space on a kiosk in the rotunda for *The Plain Truth,* a magazine the Court acknowledges is devoted to "political and social issues." It is clearly unconstitutional for Amtrak to permit its advertising space in the rotunda to be used to convey the message of *The Plain Truth* and deny space in the same rotunda to the message that Lebron believes conveys the plain truth about the brewers of Coors Beer.

2. *Amtrak's policy.* Even if the relevant forum is the one billboard space known as the Spectacular, the Court's second premise-that the scope and lawfulness of Amtrak's exercise of discretion regarding political ads may be ascertained solely from its past practice-is also unsound. The proper inquiry, the Supreme Court has instructed, focuses not solely on past practice but on "policy and practice," *Cornelius,* 473 U.S. at 802, 105 S.Ct. at 3449; *see Lehman,* 418 U.S. at 303, 94 S.Ct. at 2717 ("policies and practices"). If it were the case that the only evidence of Amtrak's approach to political ads was its past practice, an inquiry confined to that practice would be defensible. But the record in this case

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contains more evidence, and the District Court made findings based on that evidence that are not even arguably clearly erroneous.

First, the agreement between Amtrak and Transportation Displays Incorporated (TDI), the leasing agent for billboards in Penn Station,***662** states, "All advertising material, exhibit material, notices and advertisements, and their manner of presentation and design, shall be subject to approval by Amtrak, which may disapprove any such items at its own discretion." *Lebron v. National R.R. Passenger Corp.*, 811 F.Supp. 993, 1002 (S.D.N.Y.1993). It is difficult to imagine a more standardless statement of policy. Second, as the District Court found, neither the key Amtrak official responsible for supervising Amtrak's arrangements with TDI nor any of the executives of TDI knew of any prohibition on political advertising at any of Amtrak's facilities. *Id.* Third, other key Amtrak officials could not agree on what Amtrak's policy was. One testified that the policy prohibited only those advertisements that were both "political and divisive or objectionable," while another could not say what the policy meant. *Id.* Fourth, the guidelines of Amtrak's leasing agent, TDI, do not prohibit political advertisements but merely consider them commercial and therefore subject to full rate charge. *Id.* at 1003.

In view of this evidence, the District Court's findings that Amtrak's alleged policy against political ads was unwritten, unclear, and undisseminated provide ample basis for the Court's ultimate conclusion that the policy permitted the unfettered exercise of discretion and created the risk of abuse that the First Amendment prohibits. *See Lebron v. Washington Metropolitan Area Transit Authority*, 749 F.2d 893, 899 (D.C.Cir.1984).

Disregarding the evidence and the District Judge's findings, this Court ascertains Amtrak's policy solely by looking to the past practice of not yet contracting for a political ad on the Spectacular. But where a policy is unwritten, unclear, and undisseminated, the fact that it has not yet been used discriminatorily does not save it from invalidation under the First Amendment. The vice of conferring unfettered discretion on government officials to determine which messages may be conveyed is not avoided by their past pattern of not making a discriminatory decision. The vice inheres in the opportunity for discrimination, and the First Amendment requires that opportunity to be held to an acceptable minimum by a clear and well understood policy that appropriately limits the discretion of the officials who must administer it. *See Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1051, 111 S.Ct. 2720, 2732, 115 L.Ed.2d 888 (1991) (imprecise standards concerning permissible statements by lawyers); *Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 755-59, 108 S.Ct. 2138, 2143-45, 100 L.Ed.2d 771 (1988) (unfettered discretion to permit newspaper dispensing devices on governmental property). As the Supreme Court has observed,

> The prohibition against vague regulations of speech is based in part on the need to eliminate the impermissible risk of discriminatory enforcement.... The question is not whether discriminatory enforcement occurred here, and we assume it did not, but whether the Rule is so imprecise that discriminatory enforcement is a real possibility."

Gentile, 501 U.S. at 1051, 111 S.Ct. at 2732 (citations omitted). In some cases, it might be possible to infer the existence of a policy that passes constitutional muster from a record consisting solely of a pattern of past practice. But in the pending case such a policy cannot be inferred from past practice in the face of substantial evidence that has persuaded a District Judge to make findings that the alleged policy was not understood by the officials responsible for administering it.

Wholly apart from the absence of a clear, understandable, and understood policy, Lebron might be correct that, to the extent that the defendant's policy purports to bar political ads, it is a viewpoint-based discrimination that violates the First Amendment. *See Air Line Pilots Assn. v. Department of Aviation*, 45 F.3d 1144 (7th Cir.1995). As Lebron contends,

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the defendants are willing to display an ad urging the public to buy Coor's beer but are unwilling to display his ad urging the public not to do so. He makes a substantial argument that viewpoint-based discrimination is occurring when government allows an ad promoting the sale of a product, but purports to prohibit an ad opposing a product because of the views of its manufacturer. Presumably, Amtrak would allow an ad opposing the sale of Coor's beer because of its alcoholic content or for any reason unrelated ***663** to the views of its manufacturer. I need not decide whether to accept Lebron's argument since his other positions are well supported on this record.

In my view, the District Court's findings, fully supported by the evidence, entitled Lebron to prevail on his claim that Amtrak's refusal to permit display of his ad violated the First Amendment. At a minimum, he is entitled to a declaration that Amtrak has violated the First Amendment, damages (to the extent, if any, not precluded by *F.D.I.C. v. Meyer*, 510 U.S. 471, ---- - ----, 114 S.Ct. 996, 1004-06, 127 L.Ed.2d 308 (1994)), and equitable relief requiring promulgation and dissemination of a clear policy concerning political ads. Since the Court concludes that Amtrak has no liability at all, I need not consider the further issue of whether the equitable relief ought to include a requirement that Lebron's ad be displayed. My statement from the prior appeal, 12 F.3d at 394 (Newman, C.J., dissenting), quoted by the Court out of its context, was directed solely at the issue of the possible scope of relief, not the issue of liability on which the Court today rules.

I respectfully dissent.

C.A.2 (N.Y.),1995.
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569 F.3d 1029, 2009 Daily Journal D.A.R. 9302
(Cite as: 569 F.3d 1029)

United States Court of Appeals,
Ninth Circuit.
Michael James BERGER, a single man also known as Magic Mike, Plaintiff-Appellee,
v.
CITY OF SEATTLE; Virginia Anderson, Director of Seattle Center; Michael Anderson, Emergency Service Manager for Seattle Center; Ten Unknown Employees/Officers, of the Seattle Center and the City of Seattle, all in both their individual and official capacities, Defendants-Appellants.
No. 05-35752.

Argued and Submitted Sept. 23, 2008.
Filed June 24, 2009.

Background: Street performer brought action against city, alleging that rules concerning use of public park violated the First Amendment by restricting speech activity. The United States District Court for the Western District of Washington, James L. Robart, J., granted summary judgment in favor of performer. City appealed. The Court of Appeals, 512 F.3d 582, reversed and remanded.

Holdings: On rehearing en banc, the Court of Appeals, Marsha S. Berzon, Circuit Judge, held that:
(1) rule requiring performers to obtain permits before performing was not sufficiently narrowly tailored to meet standard for a valid time, place, and manner regulation of speech;
(2) genuine issue of material fact as to whether rule limiting performers to designated locations left open ample alternative channels for communication precluded summary judgment on claim that this rule violated First Amendment;
(3) rule allowing performers to passively, but not actively, solicit donations was content-based;
(4) rule governing solicitation was not the least restrictive means by which city could have discouraged aggressive solicitation;
(5) public park-goers were not a protectable captive audience; and
(6) even if city had a substantial interest in protecting certain park-goers from communications by others, rule prohibiting all speech activities within 30 feet of any captive audience was not narrowly tailored to meet that interest.

Affirmed in part and remanded in part.

Kozinski, Chief Judge, dissented and filed opinion in which Gould And Tallman, Circuit Judges, joined.

Gould, Circuit Judge, dissented and filed opinion in which Kozinski, Chief Judge, and Tallman, Circuit Judge, joined.

N.R. Smith, Circuit Judge, filed opinion concurring in part and dissenting in part in which Kozinski, Chief Judge, joined in part.

West Headnotes

[1] Constitutional Law 92 ⇐1038

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)4 Burden of Proof
92k1032 Particular Issues and Applications
92k1038 k. Freedom of Speech, Expression, and Press. Most Cited Cases
The government bears the burden of justifying the regulation of expressive activity in a public forum. U.S.C.A. Const.Amend. 1.

[2] Federal Courts 170B ⇐776

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent

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170BVIII(K)1 In General
170Bk776 k. Trial De Novo. Most Cited Cases
The Court of Appeals reviews a district court's legal determinations, including constitutional rulings, de novo.

[3] Federal Courts 170B ⇐776

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)1 In General
170Bk776 k. Trial De Novo. Most Cited Cases
A district court's determinations on mixed questions of law and fact that implicate constitutional rights are reviewed de novo.

[4] Federal Courts 170B ⇐776

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)1 In General
170Bk776 k. Trial De Novo. Most Cited Cases
Where key issues arise under the First Amendment, the Court of Appeals conducts an independent review of the facts. U.S.C.A. Const.Amend. 1.

[5] Constitutional Law 92 ⇐1759

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1759 k. Streets and Highways. Most Cited Cases

Constitutional Law 92 ⇐1761

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1761 k. Parks and Forests. Most Cited Cases
The protections afforded by the First Amendment are nowhere stronger than in streets and parks, both categorized for First Amendment purposes as traditional public fora. U.S.C.A. Const.Amend. 1.

[6] Constitutional Law 92 ⇐1737

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1736 Traditional Public Forum in General
92k1737 k. In General. Most Cited Cases
In traditional public fora, the government's right to limit expressive activity is sharply circumscribed. U.S.C.A. Const.Amend. 1.

[7] Constitutional Law 92 ⇐1761

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1761 k. Parks and Forests. Most Cited Cases
Despite the broad First Amendment protection accorded expressive activity in public parks, certain restrictions on speech in the public parks are valid; specifically, a municipality may issue reasonable regulations governing the time, place, or manner of speech. U.S.C.A. Const.Amend. 1.

[8] Constitutional Law 92 ⇐1509

92 Constitutional Law

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92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1508 Time, Place, or Manner Restrictions
92k1509 k. In General. Most Cited Cases

To pass muster under the First Amendment, a time, place, or manner restriction on speech must meet three criteria: (1) it must be content-neutral; (2) it must be narrowly tailored to serve a significant governmental interest; and (3) it must leave open ample alternative channels for communication of the information. U.S.C.A. Const.Amend. 1.

[9] Constitutional Law 92 ⚿1885

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(N) Entertainment
92k1885 k. In General. Most Cited Cases

Constitutional Law 92 ⚿1894

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(N) Entertainment
92k1893 Music
92k1894 k. In General. Most Cited Cases

Music and performance art are forms of expressive activity protected by the First Amendment. U.S.C.A. Const.Amend. 1.

[10] Constitutional Law 92 ⚿1592

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(B) Licenses and Permits in General
92k1592 k. Prior Restraints. Most Cited Cases

A permitting requirement is a prior restraint on speech and therefore bears a heavy presumption against its constitutionality. U.S.C.A. Const.Amend. 1.

[11] Constitutional Law 92 ⚿1887

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(N) Entertainment
92k1887 k. Use of Government Property or Facilities in General. Most Cited Cases

Municipal Corporations 268 ⚿721(3)

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works
268XI(C) Public Buildings, Parks, and Other Public Places and Property
268k721 Parks and Public Squares and Places
268k721(3) k. Grants of Rights to Use Public Property. Most Cited Cases

Rule requiring street performers to obtain permits before performing in city's public park was not sufficiently narrowly tailored to meet standard for a valid time, place, and manner regulation of speech and, thus, violated First Amendment; rule did not promote city's asserted interests in protecting safety of park-goers by reducing territorial disputes because permitting requirements did not assign particular performers to specific times or locations, city's interests could have been achieved by less intrusive measures than requiring individual speakers to preregister with government, and rule was overly broad as it applied to large number of individuals who had no connection with asserted reasons for rule. U.S.C.A. Const.Amend. 1.

[12] Constitutional Law 92 ⚿1509

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General

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92XVIII(A)1 In General
92k1508 Time, Place, or Manner Restrictions
92k1509 k. In General. Most Cited Cases
A "narrowly tailored" time, place, or manner restriction on speech is one that does not burden substantially more speech than is necessary to achieve a substantial government interest; it must target and eliminate no more than the exact source of the evil it seeks to remedy. U.S.C.A. Const.Amend. 1.

[13] Constitutional Law 92 ⚿1510

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1508 Time, Place, or Manner Restrictions
92k1510 k. Reasonableness. Most Cited Cases
Although a restriction on the time, place, or manner of speech need not be the least restrictive or least intrusive means available to achieve the government's legitimate interests, the existence of obvious, less burdensome alternatives is a relevant consideration in determining whether the fit between ends and means is reasonable. U.S.C.A. Const.Amend. 1.

[14] Constitutional Law 92 ⚿1591

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(B) Licenses and Permits in General
92k1591 k. Discretion in General. Most Cited Cases
Rules that grant licensing officials undue discretion are invalid under the First Amendment. U.S.C.A. Const.Amend. 1.

[15] Constitutional Law 92 ⚿1504

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1504 k. Exercise of Police Power; Relationship to Governmental Interest or Public Welfare. Most Cited Cases
The government may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals. U.S.C.A. Const.Amend. 1.

[16] Constitutional Law 92 ⚿1887

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(N) Entertainment
92k1887 k. Use of Government Property or Facilities in General. Most Cited Cases

Municipal Corporations 268 ⚿721(3)

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works
268XI(C) Public Buildings, Parks, and Other Public Places and Property
268k721 Parks and Public Squares and Places
268k721(3) k. Grants of Rights to Use Public Property. Most Cited Cases
Even if definition of street performer in rule requiring street performers to obtain permits before performing in city's public park was limited to those performers who aimed to attract an audience, rule would be overly broad and vague and, thus, violate First Amendment's protection of freedom of speech; most performers would seek to attract a crowd, even if only composed of two or three people, and an officer attempting to enforce permitting requirement would have to decide whether the performer intended to attract a crowd, which could lead to discriminatory enforcement. U.S.C.A. Const.Amend. 1.

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[17] Constitutional Law 92 ⚿994

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k994 k. Avoidance of Constitutional Questions. Most Cited Cases

Constitutional Law 92 ⚿1014

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k1006 Particular Issues and Applications
92k1014 k. Overbreadth in General. Most Cited Cases
Statutes will be interpreted to avoid constitutional difficulties; thus, where an unconstitutionally broad statute is readily subject to a narrowing construction that would eliminate its constitutional deficiencies, the court accepts that construction.

[18] Federal Civil Procedure 170A ⚿2491.5

170A Federal Civil Procedure
170AXVII Judgment
170AXVII(C) Summary Judgment
170AXVII(C)2 Particular Cases
170Ak2491.5 k. Civil Rights Cases in General. Most Cited Cases
Genuine issue of material fact as to whether rule limiting street performers to designated locations on public park grounds left open ample alternative channels for communication precluded summary judgment on performer's claim that rule violated right to freedom of speech under the First Amendment. U.S.C.A. Const.Amend. 1.

[19] Constitutional Law 92 ⚿1038

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)4 Burden of Proof
92k1032 Particular Issues and Applications
92k1038 k. Freedom of Speech, Expression, and Press. Most Cited Cases
As with other time, place, or manner restrictions on speech in a public forum, the government bears the burden of justifying a location restriction. U.S.C.A. Const.Amend. 1.

[20] Constitutional Law 92 ⚿1509

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1508 Time, Place, or Manner Restrictions
92k1509 k. In General. Most Cited Cases
An alternative channel for communication is not "ample," as required for a valid time, place, or manner restriction on speech, if the speaker is not permitted to reach the intended audience. U.S.C.A. Const.Amend. 1.

[21] Constitutional Law 92 ⚿1870

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(M) Soliciting, Canvassing, Pamphletting, Leafletting, and Fundraising
92k1870 k. In General. Most Cited Cases
Speech that solicits funds is protected by the First Amendment. U.S.C.A. Const.Amend. 1.

[22] Constitutional Law 92 ⚿1871

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and

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Press
92XVIII(M) Soliciting, Canvassing, Pamphletting, Leafletting, and Fundraising
92k1871 k. Government Property, Use Of. Most Cited Cases
Rules that regulate solicitation in public fora are subject to the same standards as those that limit other forms of speech; in other words, solicitation regulations must be content-neutral, narrowly tailored, and leave open reasonable alternative channels for expression. U.S.C.A. Const.Amend. 1.

[23] Constitutional Law 92 ⚿1735

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1732 Public Forum in General
92k1735 k. Justification for Exclusion or Limitation. Most Cited Cases
If a regulation on speech in public fora is not content-neutral, the court applies strict scrutiny; under that standard, the regulation is valid only if it is the least restrictive means available to further a compelling government interest. U.S.C.A. Const.Amend. 1.

[24] Constitutional Law 92 ⚿1517

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1516 Content-Based Regulations or Restrictions
92k1517 k. In General. Most Cited Cases
A regulation on speech is "content-based" if either the underlying purpose of the regulation is to suppress particular ideas, or if the regulation, by its very terms, singles out particular content for differential treatment. U.S.C.A. Const.Amend. 1.

[25] Constitutional Law 92 ⚿1887

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(N) Entertainment
92k1887 k. Use of Government Property or Facilities in General. Most Cited Cases
Rule allowing street performers to passively, but not actively, solicit donations in city public park was "content-based" and, thus, subject to strict scrutiny for purposes of determining whether rule violated First Amendment's protection of freedom of speech; rule regulated speech rather than conduct because it allowed the conduct of exchanging money and regulated only the speech by specifying the permissible medium and manner of requesting money, and rule restricted performers from communicating a particular set of messages, such as that they would like people to give them money. U.S.C.A. Const.Amend. 1.

[26] Constitutional Law 92 ⚿1870

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(M) Soliciting, Canvassing, Pamphletting, Leafletting, and Fundraising
92k1870 k. In General. Most Cited Cases
Regulations that ban certain conduct associated with solicitation do not violate the prohibition on content-based regulation of speech. U.S.C.A. Const.Amend. 1.

[27] Constitutional Law 92 ⚿1517

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1516 Content-Based Regulations or Restrictions
92k1517 k. In General. Most Cited Cases

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That an officer must evaluate the content of a message to determine whether a regulation applies is evidence that the regulation on speech is content-based, although it is not dispositive. U.S.C.A. Const.Amend. 1.

[28] Constitutional Law 92 ⚿1887

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(N) Entertainment
92k1887 k. Use of Government Property or Facilities in General. Most Cited Cases

Municipal Corporations 268 ⚿721(2)

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works
268XI(C) Public Buildings, Parks, and Other Public Places and Property
268k721 Parks and Public Squares and Places
268k721(2) k. Prevention of Improper Use or Obstruction. Most Cited Cases
Even if city had a compelling interest in reducing aggressive solicitation, content-based rule allowing street performers to passively, but not actively, solicit donations in city public park was not the least restrictive means by which city could have discouraged aggressive solicitation, and thus rule violated First Amendment's protection of freedom of speech; punishing offensive conduct after it occurred was a less restrictive way to protect audiences, and city could have enforced an appropriately worded prohibition on aggressive behavior or relied on nuisance and aggressive panhandling laws to control performers. U.S.C.A. Const.Amend. 1.

[29] Constitutional Law 92 ⚿1505

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1505 k. Narrow Tailoring. Most Cited Cases
A complete ban on speech can be narrowly tailored only if each activity within the proscription's scope is an appropriately targeted evil. U.S.C.A. Const.Amend. 1.

[30] Constitutional Law 92 ⚿1761

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1761 k. Parks and Forests. Most Cited Cases
Under fundamental principle of traditional public forum jurisprudence, use of parks for public discussion and gathering has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens and must not, in the guise of regulation, be abridged or denied. U.S.C.A. Const.Amend. 1.

[31] Constitutional Law 92 ⚿1562

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)3 Particular Issues and Applications in General
92k1562 k. "Fighting Words". Most Cited Cases
Fighting words are proscribable under the First Amendment. U.S.C.A. Const.Amend. 1.

[32] Constitutional Law 92 ⚿1761

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and

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Events
92k1761 k. Parks and Forests. Most Cited Cases
Public park-goers, in general, are not a protectable captive audience for First Amendment purposes. U.S.C.A. Const.Amend. 1.

[33] Constitutional Law 92 ⚿1502

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1502 k. Receipt of Information or Ideas; Listeners' Rights. Most Cited Cases
Only in narrow circumstances may the government restrain speech to protect captive audiences. U.S.C.A. Const.Amend. 1.

[34] Constitutional Law 92 ⚿1502

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1502 k. Receipt of Information or Ideas; Listeners' Rights. Most Cited Cases
The ability of government, consonant with the Constitution, to shut off discourse solely to protect others from hearing it is dependent upon a showing that substantial privacy interests are being invaded in an essentially intolerable manner. U.S.C.A. Const.Amend. 1.

[35] Constitutional Law 92 ⚿1761

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1761 k. Parks and Forests. Most Cited Cases

Municipal Corporations 268 ⚿721(2)

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works
268XI(C) Public Buildings, Parks, and Other Public Places and Property
268k721 Parks and Public Squares and Places
268k721(2) k. Prevention of Improper Use or Obstruction. Most Cited Cases
Even if city had a substantial interest in protecting certain park-goers from communications by others, rule prohibiting all speech activities within 30 feet of any captive audience in city's public park, but which did not apply to city employees or licensed concessionaires, was not narrowly tailored to meet that interest, and thus violated First Amendment's protection of freedom of speech; rule's preference for concessionaires and licensees created bias in favor of commercial speech over artistic and political speech, rule prohibited both welcome and unwelcome communications, and rule created system of unpredictable floating buffers and shifting free speech zones. U.S.C.A. Const.Amend. 1.

[36] Constitutional Law 92 ⚿1526

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1525 Prior Restraints
92k1526 k. In General. Most Cited Cases
Prior restraints on speech are the most serious and least tolerable infringement on First Amendment rights. U.S.C.A. Const.Amend. 1.

[37] Constitutional Law 92 ⚿1739

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events

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The Seattle Center is a central venue for Seattle's civic, cultural, and social life. The Center's roughly 80-acre expanse of public space attracts over ten million visitors annually. It is home to Seattle's iconic Space Needle, and to museums, sports arenas, theaters, and a performance hall. The Center's grounds also include twenty-three acres of outdoor public park space.

In 2002, the Seattle Center's Director issued a revised set of regulations concerning the use of the Center, known as the Seattle Center Campus Rules ("Rules").[FN1] Among other matters, the Rules govern the use of the Center's outdoor spaces. Five of the Rules are relevant here: Rule F.1, which requires "street performers" to obtain a permit before performing at the Center and to wear a badge displaying that permit while performing; Rule F.2, which sets forth the terms and conditions for acquiring a "Street Performer Permit"; Rule F.3.a, which bars street performers from "actively solicit[ing] donations"; Rule F.5, which limits street performances to sixteen designated locations; and Rule G.4, which prohibits all Seattle Center visitors, other than Center employees and licensed concessionaires, from engaging in "speech activities" within thirty feet of a "captive audience." Rule C.5 defines a "captive audience" as "any person or group of persons: 1) waiting in line to obtain tickets or food or other goods or services, or to attend any Seattle Center event; 2) attending or being in an audience at any Seattle Center event; or 3) seated in any seating location where foods or beverages are consumed."

> FN1. The City has delegated its rulemaking authority over the Center to the Center's Director. *See* Wash. Mun.Code § 17.04.040.

About a year after the Rules were promulgated, Michael Berger, a balloon artist and Seattle street performer, filed the complaint that gives rise to this appeal. In his complaint, Berger alleged that the five rules just summarized violate the First Amendment both on their face and as applied to him. In 2005, the district court granted Berger summary judgment as to his facial challenges. Shortly thereafter, Berger and the City settled his as-applied challenges. The City now timely appeals the summary judgment.

II. General Principles

[2][3][4] We review a district court's legal determinations, including constitutional rulings, *de novo. See Berry v. Dep't of Soc. Servs,* 447 F.3d 642, 648 (9th Cir.2006). A district court's determinations on mixed questions of law and fact that implicate constitutional rights are also reviewed *de novo. See Cogswell v. City of Seattle,* 347 F.3d 809, 813 (9th Cir.2003). Where, as here, the key "issues aris[e] under the First Amendment," we also conduct an independent review of the facts. *See Rosenbaum v. City & County of S.F.,* 484 F.3d 1142, 1152 (9th Cir.2007).

[5][6] We begin our analysis with one bedrock principle: The protections afforded***1036** by the First Amendment [FN2] are nowhere stronger than in streets and parks, both categorized for First Amendment purposes as traditional public fora. *See Perry Educ. Ass'n,* 460 U.S. at 45, 103 S.Ct. 948; *Long Beach Area Peace Network v. City of Long Beach,* 522 F.3d 1010, 1021 (9th Cir.2008). In such fora, the government's right "to limit expressive activity [is] sharply circumscribed." *Perry Educ. Ass'n,* 460 U.S. at 45, 103 S.Ct. 948. Among traditional public fora, public parks such as the Seattle Center are especially important locales for communication among the citizenry, as they " 'have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.' " *Grossman v. City of Portland,* 33 F.3d 1200, 1204-05 (9th Cir.1994) (quoting *Hague v. CIO,* 307 U.S. 496, 515, 59 S.Ct. 954, 83 L.Ed. 1423 (1939)). [FN3]

> FN2. The First Amendment states that "Congress shall make no law ... abridging

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the freedom of speech, ... or the right of people peaceably to assemble...." U.S. Const. amend. I; *see also Lovell v. City of Griffin,* 303 U.S. 444, 450, 58 S.Ct. 666, 82 L.Ed. 949 (1938) (holding that the First Amendment's prohibitions also apply to state and local government rule-makers).

FN3. Although the City argued at the district court that the Seattle Center was only a limited public forum and so subject to more stringent government regulation than a traditional public forum, *see Perry,* 460 U.S. at 45-46, 103 S.Ct. 948, it does not on appeal challenge the district court's determination that the "Seattle Center is a traditional public forum." The record supports this characterization, as Judge Smith ably demonstrates in his separate opinion.

[7][8] Despite the broad First Amendment protection accorded expressive activity in public parks, "certain restrictions on speech in the public parks are valid. Specifically, a municipality may issue reasonable regulations governing the time, place or manner of speech." *Grossman,* 33 F.3d at 1205; *see also Clark v. Cmty. for Creative Non-Violence,* 468 U.S. 288, 293, 104 S.Ct. 3065, 82 L.Ed.2d 221 (1984). To pass constitutional muster, a time, place, or manner restriction must meet three criteria: (1) it must be content-neutral; (2) it must be "narrowly tailored to serve a significant governmental interest"; and (3) it must "leave open ample alternative channels for communication of the information." *Ward v. Rock Against Racism,* 491 U.S. 781, 791, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989) (quoting *Clark,* 468 U.S. at 293, 104 S.Ct. 3065).

With these overarching principles in mind, we turn to an evaluation of each of the challenged rules.

III. Rules F.1 & F.2: The Permit & Badge Requirements

A. Overview

[9] Rule F.1 requires all "street performers" to obtain a permit from the Director prior to performing on the Center's grounds. A "street performer" is "a member of the general public who engages in any performing art or the playing of any musical instrument, singing or vocalizing, with or without musical accompaniment, and whose performance is not an official part of an event sponsored by the Seattle Center or by a Seattle Center licensee." [FN4] ***1037** Rule C.15. Notably, a "street performer" need not be seeking payment from his audience to be covered by the permit and other requirements, nor need he be a repeat performer at the Seattle Center. Permits are issued "upon [the] Director's satisfaction that the information set forth in the [performer's] application is true, the applicant has executed a statement stating that he or she will comply with applicable law and all provisions of the Seattle Center rules, and has paid the applicable application fee." Rule F.1. The permits are presumptively valid for one year, Rule F.2, and allow permit-holders to perform "at designated locations on the Seattle Center campus." Rule C.16. Rule F.1 also mandates that "[p]ermits, when issued, shall be evidenced by a badge that shall be worn or displayed by the performer in plain view at all times during a performance."

FN4. Music and performance art are forms of expressive activity protected by the First Amendment. *See Ward,* 491 U.S. at 790, 109 S.Ct. 2746; *Schad v. Borough of Mount Ephraim,* 452 U.S. 61, 65-66, 101 S.Ct. 2176, 68 L.Ed.2d 671 (1981) ("Entertainment, as well as political and ideological speech, is protected; motion pictures, programs broadcast by radio and television, and live entertainment, such as musical and dramatic works fall within the First Amendment guarantee.") (collecting cases).

The permitting requirement outlined in Rule F.1 is noteworthy for what it does not cover. It places no limitation, for example, on the number of street per-

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former permits that the Director may issue in a given year. Nor does the required permit assign particular performers to specific venues or performance times. Instead, "[p]erformance locations are available on a first come first served basis" and "may not be 'saved' or 'reserved.' " Rule F.4.

Rule F.2 sets forth the "terms and conditions" governing the permits, including the grounds for their revocation. Although the City represents that the Rules provide the Director with no discretion to deny a permit application, the language of Rule F.2 suggests otherwise. According to the Rule, the Director may deny or condition a permit "as appropriate to protect the health, safety and welfare of the public and/or the campus; to protect property; to avoid or limit interference with other uses or users of the campus; [and] to minimize disturbance of the surrounding neighborhood." The Director may also require the performer to obtain insurance, supply a security deposit, and/or post a bond. A permit may be revoked by the Director "for convenience," so long as the Director provides the performer with notice.

B. Constitutionality of Rules F.1 and F.2

1. Single-Speaker Registration Requirements

[10] A permitting requirement is a prior restraint on speech and therefore bears a " 'heavy presumption' " against its constitutionality. *See Forsyth County v. Nationalist Movement,* 505 U.S. 123, 130, 112 S.Ct. 2395, 120 L.Ed.2d 101 (1992) (quoting *Bantam Books, Inc. v. Sullivan,* 372 U.S. 58, 70, 83 S.Ct. 631, 9 L.Ed.2d 584 (1963)). As the Court explained in *Watchtower Bible & Tract Society of New York, Inc. v. Village of Stratton,* 536 U.S. 150, 122 S.Ct. 2080, 153 L.Ed.2d 205 (2002),

> [i]t is offensive-not only to the values protected by the First Amendment, but to the very notion of a free society-that in the context of everyday public discourse a citizen must first inform the government of her desire to speak to her neighbors and then obtain a permit to do so.

Id. at 165-66, 122 S.Ct. 2080; *see also id.* at 166, 122 S.Ct. 2080 ("Even if the issuance of permits by the mayor's office is a ministerial task that is performed promptly and at no cost to the applicant, a law requiring a permit to engage in such speech constitutes a dramatic departure from our national heritage and constitutional tradition.").

The presumptive invalidity and offensiveness of advance notice and permitting requirements stem from the significant burden that they place on free speech. "Both the procedural hurdle of filling out and submitting a written application, and the temporal hurdle of waiting for the ***1038** permit to be granted may discourage potential speakers." *Grossman,* 33 F.3d at 1206. Registration requirements also dissuade potential speakers by eliminating the possibility of anonymous speech. *See Watchtower Bible,* 536 U.S. at 166, 122 S.Ct. 2080; *see also McIntyre v. Ohio Elections Comm'n,* 514 U.S. 334, 341-42, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995) ("[A speaker's] decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible."). And, critically, advance notification requirements eliminate "spontaneous speech." *See Watchtower Bible,* 536 U.S. at 167, 122 S.Ct. 2080; *see also Grossman,* 33 F.3d at 1206 (noting that "because of the delay caused by complying with the permitting procedures, '[i]mmediate speech can no longer respond to immediate issues.' ") (alteration in original) (quoting *NAACP. v. City of Richmond,* 743 F.2d 1346, 1355 (9th Cir.1984)); *see also Rosen v. Port of Portland,* 641 F.2d 1243, 1249 (9th Cir.1981).

As a result of the significant burden that registration requirements place on speakers, the Supreme Court has consistently struck down permitting systems that apply to individual speakers-as opposed to large groups-in the one context in which they have been put in place with some regularity: solicitation of private homes. *See Watchtower Bible,* 536

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U.S. at 166-67, 122 S.Ct. 2080; *Vill. of Schaumburg v. Citizens for a Better Env't,* 444 U.S. 620, 638-39, 100 S.Ct. 826, 63 L.Ed.2d 73 (1980) (striking down a solicitation permit requirement); *Cantwell v. State of Conn.,* 310 U.S. 296, 301, 306-07, 60 S.Ct. 900, 84 L.Ed. 1213 (1940) (striking down a license requirement as applied to Jehovah's Witnesses "going singly from house to house" for the purpose of religious solicitation); *Schneider v. State of N.J.,* 308 U.S. 147, 163-64, 60 S.Ct. 146, 84 L.Ed. 155 (1939) (striking down a permitting scheme covering all forms of solicitation). The Court has recognized that the government interests asserted in these door-to-door solicitation cases-the prevention of crime and fraud, and the protection of residential privacy-are weighty. *See, e.g., Watchtower Bible,* 536 U.S. at 164-65, 122 S.Ct. 2080. Nonetheless, it has repeatedly concluded that single-speaker permitting requirements are not a constitutionally valid means of advancing those interests because, typically, (1) they sweep too broadly, *see, e.g., Vill. of Schaumburg,* 444 U.S. at 636-37, 100 S.Ct. 826 (invalidating registration requirement because, among other things, it applied to groups engaged in legitimate activities as well as those who were not); *Watchtower Bible,* 536 U.S. at 165-66, 122 S.Ct. 2080 (same), (2) they only marginally advance the government's asserted interests, *see, e.g., Watchtower Bible,* 536 U.S. at 168-69, 122 S.Ct. 2080 (noting that a permitting requirement is "unlikely ... [to] preclude criminals from knocking on doors and engaging in conversations [with homeowners]," and that "[t]he annoyance caused by an uninvited knock on the front door is the same whether or not the visitor is armed with a permit"), and (3) the government's interests can be achieved by less intrusive means, *see id.* at 168-69, 122 S.Ct. 2080 (noting that a homeowner's privacy interests can be adequately protected by "No Solicitation" signs); *see also Vill. of Schaumburg,* 444 U.S. at 637, 100 S.Ct. 826 (asserting that "[f]raudulent misrepresentations can be prohibited and the penal laws used to punish such conduct directly." (citing *Schneider,* 308 U.S. at 164, 60 S.Ct. 146)).[FN5]

FN5. Chief Judge Kozinski argues that this case and *Watchtower Bible* "have about as much in common as bananas and boomerangs." Kozinski Dissent at 1072. The comparison is colorful, but the Chief Judge's attempt to brush aside *Watchtower Bible* does not work, for a myriad of reasons. First, and contrary to the Chief Judge's contention, performance art, like door-to-door canvassing, has historically served an important role in the dissemination of ideas. *See* Gould Dissent at 1074 ("Speech in the form of music, drama, or performance has played a vital role in our society and deserves First Amendment protection. Some of our culture's most valued written works originated as spoken performances."). Second, the Seattle Center's permitting requirement, like the permitting requirement in Watchtower Bible, significantly inhibits spontaneous speech. This critical point, which the Chief Judge ignores, was an important aspect of the Supreme Court's holding in *Watchtower Bible.* Third, there is no reason to believe that street performers are less interested in maintaining their anonymity from the government than door-to-door canvassers or other purveyors of potentially unpopular ideas. *See Watchtower Bible,* 536 U.S. at 166, 122 S.Ct. 2080 ("The fact that circulators revealed their physical identities did not foreclose our consideration of the circulators' interest in maintaining their anonymity [in *Buckley v. American Constitutional Law Foundation, Inc.,* 525 U.S. 182, 119 S.Ct. 636, 142 L.Ed.2d 599 (1999)]. In the Village, strangers to the resident certainly maintain their anonymity, and the ordinance may preclude such persons from canvassing for unpopular causes."). Fourth, as noted, the ordinance applies whether or not the street performer solicits funds, and the definition of "street performer" includes individuals who do not

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> solicit funds. Finally, like the permit regulation in *Watchtower Bible,* the permitting requirement in this case applies to individuals who communicate their message to groups as small as two or three others. In short, the principles set forth by the Supreme Court in *Watchtower Bible* apply with as much force in this context as they did in the context of door-to-door canvassers.

***1039** Although the Supreme Court has not addressed the validity of single-speaker permitting requirements for speech in a public forum, it stands to reason that such requirements would be at least as constitutionally suspect when applied to speech in a public park, where a speaker's First Amendment protections reach their zenith, than when applied to speech on a citizen's doorstep, where substantial privacy interests exist. *See Frisby v. Schultz,* 487 U.S. 474, 483-84, 108 S.Ct. 2495, 101 L.Ed.2d 420 (1988). It is therefore not surprising that we and almost every other circuit to have considered the issue have refused to uphold registration requirements that apply to individual speakers or small groups in a public forum. *See Santa Monica Food Not Bombs v. City of Santa Monica,* 450 F.3d 1022, 1039 (9th Cir.2006) ("As the cautionary language in our earlier opinions indicates, the significant governmental interest justifying the unusual step of requiring citizens to inform the government in advance of expressive activity has always been understood to arise only when large groups of people travel together on streets and sidewalks."); *see also Grossman,* 33 F.3d at 1206 (holding that the possibility that the ordinance at issue could reach "the actions of single protestors" rendered it unconstitutional); *Rosen,* 641 F.2d at 1247-48 (invalidating a one-day advance registration requirement because it applied to individuals and therefore "regulate[d] far more than mass conduct that necessarily interferes with the use of public facilities"); *Cox v. City of Charleston,* 416 F.3d 281, 285 (4th Cir.2005) ("[U]nflinching application" of a permitting requirement "to groups as small as two or three renders it constitutionally infirm."); *Douglas v. Brownell,* 88 F.3d 1511, 1524 (8th Cir.1996) ("[A]pplying the permit requirement to groups as small as ten persons compounds our conclusion that the parade permit ordinance is not narrowly tailored [to advance the government's interest in protecting the safety and convenience of users of public sidewalks and streets."); *American-Arab Anti-Discrimination Committee v. City of Dearborn,* 418 F.3d 600, 608 (6th Cir.2005) (striking down a permit requirement as "hopelessly overbroad" on the ground that ***1040** the requirement could conceivably apply to groups as small as "two or more persons").[FN6]

> FN6. The Second Circuit recently upheld a single-speaker permitting requirement in *Hobbs v. County of Westchester,* 397 F.3d 133, 150 (2d Cir.2005). But the regulation in *Hobbs,* as interpreted by the Second Circuit, required individuals who planned to perform on public property to obtain a permit only if they planned to use "props and/or equipment," so the permit requirement was triggered by conduct, not speech. *Id.* at 151. Also, the court did not directly consider the constitutionality of the permitting requirement. Rather, it evaluated the constitutionality of an Executive Order which prohibited the issuance of permits to individuals who had been previously convicted of a sex offense against a minor, and whose planned performance was designed to attract children. *Id.* at 152. In that narrow context, the court upheld the prohibition as a valid time, place, and manner restriction.

In this case, the Center's permitting requirement applies to individual speakers who wish to express themselves in a public forum.[FN7] The requirement is not limited to only those performers who seek to attract (or who do, in fact, attract) a crowd of a sufficiently large size.[FN8] As noted, neither we, the Supreme Court, nor most other circuit courts have

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ever upheld such a requirement. In addition, the interests the City asserts here-reducing territorial and other disputes involving street performers, and coordinating uses at a public park-are no more, and perhaps less, substantial than those cited by the local governments in the door-to-door solicitation cases. *See, e.g., Watchtower Bible,* 536 U.S. at 164-65, 122 S.Ct. 2080 (the government's asserted interests included the prevention of crime and fraud and the protection of residential privacy).

> FN7. Although street performers do, of course, hope to draw crowds, this goal is of little moment to our analysis. The individual protestors in *Rosen* and *Grossman* also undoubtedly hoped to attract crowds of people eager to learn their views. But we have emphasized that advance registration permits are only appropriate for larger crowds than any street performer at the Seattle Center is likely to draw at one time. *See Long Beach Area Peace Network v. City of Long Beach,* 522 F.3d 1010, 1033 (9th Cir.2008) ("Although it is a close question, we hold that a group of seventy-five people using a public open space in Long Beach is large enough to warrant an advance notice and permitting requirement."). As we note later, *see infra* pp. 1044-45, an otherwise valid, general permit requirement applicable to large groups could be applied to street performers, but only if the crowd attracted is in fact large enough to reach the minimum crowd size covered by that valid requirement.
>
> FN8. In his dissent, Chief Judge Kozinski concedes that "individual-to-individual and small group-to-small group interactions generally do not pose the sort of problems that time, place and manner rules are designed to deal with." Kozinski Dissent at 1072. The Seattle Center's permitting requirement implicates just such interactions. Under the current rules, Michael Berger must obtain a permit whether he wishes to perform his magic act for groups of two or three others or for groups of one hundred or more. And nothing in the record indicates that crowds-even crowds of fifty or seventy-five people-gather around street performers at the Seattle Center. In other words, the Seattle Center's permitting requirement impinges on the very individual-to-small group interactions that even the Chief Judge acknowledges are not problematic.

[11] In addition, as discussed in more detail below, the Center's permitting requirements have an impermissibly broad scope; do not meaningfully promote the City's asserted interests; and address interests that could be achieved through means far less intrusive than an individual speaker registration requirement. These considerations indicate that the regulation is not sufficiently narrowly tailored to meet the standard for a valid time, place, and manner regulation.

***1041 2. Narrow Tailoring**

[12][13] A narrowly tailored time, place, or manner restriction on speech is one that does not "burden substantially more speech than is necessary" to achieve a substantial government interest. *Ward,* 491 U.S. at 799, 109 S.Ct. 2746. It must "target[ ] and eliminate[ ] no more than the exact source of the 'evil' it seeks to remedy." *See Frisby,* 487 U.S. at 485, 108 S.Ct. 2495 (citation omitted). Moreover, although the chosen restriction "need not be the least restrictive or least intrusive means" available to achieve the government's legitimate interests, *Ward,* 491 U.S. at 798, 109 S.Ct. 2746, the existence of obvious, less burdensome alternatives is "a relevant consideration in determining whether the 'fit' between ends and means is reasonable," *City of Cincinnati v. Discovery Network, Inc.,* 507 U.S. 410, 417 n. 13, 113 S.Ct. 1505, 123 L.Ed.2d 99 (1993); *see also Santa Monica Food Not Bombs,* 450 F.3d at 1041.

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The Center's permitting requirement fails the narrow tailoring test for three reasons. First, the requirement only marginally, if at all, promotes the City's asserted interests, suggesting that the government's interests would not "be achieved less effectively absent the regulation." *See Ward,* 491 U.S. at 799, 109 S.Ct. 2746 (internal quotation marks and citations omitted). Second, less intrusive measures exist by which the City could achieve its alleged goals. Finally, the Center's permitting rule applies, on its face, to an extraordinarily broad group of individuals, the vast majority of whom are not responsible for the "evil" the City seeks to remedy. *See Frisby,* 487 U.S. at 485, 108 S.Ct. 2495.

1. The City asserts that the permitting requirement promotes its interest in protecting the safety and convenience of park-goers by reducing territorial disputes among performers, deterring harassment of audience members, and "clarifying and coordinating potentially competing uses." A "State's interest in protecting the 'safety and convenience' of persons using a public forum" is assuredly "a valid government objective." *Heffron v. Int'l Soc'y of Krishna Consciousness, Inc.,* 452 U.S. 640, 650, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981); *see also Thomas v. Chic.Park Dist.,* 534 U.S. 316, 323, 122 S.Ct. 775, 151 L.Ed.2d 783 (2002) ("Regulations of the use of a public forum that ensure the safety and convenience of the people are not inconsistent with civil liberties ...." (internal quotation marks and citation omitted)); *Cox v. State of New Hampshire,* 312 U.S. 569, 574, 61 S.Ct. 762, 85 L.Ed. 1049 (1941). We have also held that, under appropriate circumstances, a permitting requirement governing the use of a public open space can further a legitimate interest in the regulation of competing uses of that space. *See Santa Monica Food Not Bombs,* 450 F.3d at 1042-43; *Long Beach Area Peace Network,* 522 F.3d at 1032-33.

The City's asserted reasons for enacting the permitting regulations are thus substantial governmental interests. Unlike the restrictions in the cases just cited, however, the Center's permitting requirements do not promote those interests in any significant way.

There is, for example, no reason two street performers with permits would be less likely to engage in a territorial dispute than two street performers without permits. After all, under the Rules, a permit does not entitle a performer either to a particular territory or to a particular time period within a given territory. While the delineation of performance areas may help reduce such disputes, a permitting requirement is not inherent in such a space allocation system.

[14] The Center's permitting requirement also bears no apparent connection to the City's stated interest in reducing hostile***1042** performer behavior. The City represents that the permits are freely issued, and that there is little, if any, screening process. [FN9] If so, then there is no reason why a performer with a permit is likely to be less hostile than one without a permit. In fact, several of the incident reports that the City introduced as evidence of obstreperous performer conduct describe events that occurred after the introduction of the permitting requirement.

> FN9. Although the City stated at oral argument that issuance of the permits is nondiscretionary, we note that Rule F.2, which lists the "terms and conditions" for obtaining and retaining a permit, indicates otherwise. For example, Rule F.2 vests the Director with the power to revoke a permit "for convenience," thereby seeming to provide the Director with some measure of discretion over which performers are entitled to perform at the Center.
>
> Rules that grant licensing officials undue discretion are not constitutional. *See Forsyth County,* 505 U.S. at 131, 112 S.Ct. 2395 ("[A] law subjecting the exercise of First Amendment freedoms to the prior restraint of a license must contain narrow, objective, and definite standards

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> to guide the licensing authority." (internal quotation marks and citations omitted)); *Thomas,* 534 U.S. at 323, 122 S.Ct. 775. Berger does not challenge the permitting requirement on undue discretion grounds, however. We therefore assume, without deciding, that Rule F.2 does not provide the Director with undue discretion over the permitting system.

Moreover, the permitting requirement, as currently designed, does not aid in coordinating multiple uses of the Center's grounds. As already noted, the Rules place no limit on the number of permits that may be issued and do not assign particular performers to specific times or locations. As a result, the Center has no idea when or where a street performer intends to perform over the course of a permit year or how long any given performance will last. Because the permitting requirement does not resolve such uncertainties, it cannot help the Center "clarify[ ] and coordinat[e] potentially competing uses" of the park.

We recognize that limiting street performers to designated locations does, by definition, improve the coordination of multiple uses of the Center. But again, the permitting requirement does not assign particular performers to one or more of these designated locations, and therefore adds nothing to the Center's coordination scheme.

The Chief Judge implies that our opinion is in conflict with cases such as *Cox v. New Hampshire,* 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049 (1941) and *Poulos v. New Hampshire,* 345 U.S. 395, 73 S.Ct. 760, 97 L.Ed. 1105 (1953) with regard to narrow tailoring to advance a significant governmental interest. Kozinski Dissent at 1068-69. That is simply not the case. In contrast to the Seattle Center's permitting requirement, the permitting schemes at issue in *Cox* and *Poulos* both required applicants to "specify the day and hour" that they planned to hold their parade or public meeting. *See Cox,* 312 U.S. at 571 & n. 1, 61 S.Ct. 762; *Poulos,* 345 U.S. at 398 n. 2, 73 S.Ct. 760. So the permits in *Cox* and *Poulos* did serve to further the government's interest in coordinating multiple uses of limited public space. The same cannot be said of the Seattle Center's permitting requirement, which is untethered to the time, place, length, or size of a planned performance. [FN10] In addition, ***1043** both cases preceded the development by the Supreme Court of specific time, place and manner standards, and so, although still good law, are not examples of the application of modern doctrine to discrete circumstances.

> FN10. Chief Judge Kozinski describes our effort to distinguish *Cox* and *Poulos* on this ground as "clumsy." Kozinski Dissent at 7805. In the Chief Judge's opinion, the fact that the City's permitting requirement allows the performer to "perform any time he wishes ... for as long as he wishes" indicates that it is a less restrictive restraint on speech than those in *Cox* and *Poulos.*
>
> The Chief Judge's argument misses our crucial point: it is the very fact that the permitting schemes in *Cox* and *Poulos* required applicants to specify the day and hour of their gathering that ensured that the restraints at issue did, in fact, promote the government's legitimate interest in coordinating multiple uses of a public space. In other words, the permitting requirement in *Cox* and *Poulos* accomplished more than the mere identification of potential speakers.
>
> In this case, the City simply cannot argue that its permitting requirement promotes any possible coordination of use purpose. The *only* purpose that the City's permitting requirement serves is to force potential speakers to identify themselves to the government. Standing alone, such an interest is decidedly not constitutional, *see Watchtower Bible,* 536 U.S. at 166, 122 S.Ct. 2080, and the Supreme Court has never held otherwise.

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Finally, the imperfect fit between the City's stated goals and the permit and badge requirements is evidenced by the Rules' significant underinclusiveness. Under the Rules, a group of as many as 99 people can gather without a permit to express their views, so long as they are not engaged in an artistic performance.[FN11] At the same time, an individual singing or dancing for a few friends would be required to register with the Director. This discrepancy makes little sense if, in fact, the City's primary motivation in passing the permit and badge requirements is to protect the safety and convenience of parkgoers.

> FN11. The Rules also require individuals or groups to obtain a license if they use electrical power outlets, tables, temporary stages, flammable liquids, or sound amplification equipment. Rule E. This aspect of the Rules has not been challenged.

2. The City, the Chief Judge, and Judge Smith all maintain that the permitting requirement nonetheless promotes the City's asserted interests simply because a performer's fear of losing his or her permit will deter that performer from engaging in aggressive conduct and other non-rule abiding behavior. *See* Kozinski Dissent at 1069; Smith Op. at 1086. Along these same lines, the City contends that, without the ability to revoke a performer's permit, it would have no means of punishing violations of the Rules. These criticisms disregard the bedrock First Amendment presumption against prior speech restraints, and therefore against substituting an advance permitting process for after-the-fact enforcement. And, even if the permitting requirement does deter and help to punish unwanted behavior, "there are easily available alternative modes of regulation," *Santa Monica Food Not Bombs,* 450 F.3d at 1041, that would have considerably less impact on speech than the single-speaker prospective registration system.

Rather than requiring all speakers to pre-register with the government as a prerequisite to engaging in communicative activity, the City could simply enforce its existing rules against those who actually exhibit unwanted behavior.[FN12] For example, after appropriate hearings, the City might be able to suspend a rulebreaker's right to perform on the Center's grounds, or issue a fine.[FN13] *Cf.* ***1044***Madsen v. Women's Health Ctr., Inc.,* 512 U.S. 753, 776, 114 S.Ct. 2516, 129 L.Ed.2d 593 (1994).[FN14] There is little reason to suspect that a performer would fear a suspension of her right to perform on the grounds or a significant fine any less than she would fear a suspension of her permit. The Supreme Court has consistently struck down prior restraints on speech where a state could achieve its purported goal of protecting its citizens from wrongful conduct by punishing only actual wrongdoers, rather than screening potential speakers. *See Riley v. Nat'l Fed'n of the Blind of N.C., Inc.,* 487 U.S. 781, 795, 108 S.Ct. 2667, 101 L.Ed.2d 669 (1988) (invalidating a restraint on charitable solicitation that purported to protect citizens from fraud and noting, "In striking down this portion of the Act, we do not suggest that States must sit idly by and allow their citizens to be defrauded. North Carolina has an antifraud law, and we presume that law enforcement officers are ready and able to enforce it."); *Vill. of Schaumburg,* 444 U.S. at 637, 100 S.Ct. 826 ("Fraudulent misrepresentations can be prohibited and the penal laws used to punish such conduct directly."); *Schneider,* 308 U.S. at 162, 60 S.Ct. 146 (striking down ban on pamphleteering that was aimed at the prevention of littering in part because "[t]here are obvious methods of preventing littering. Amongst these is the punishment of those who actually throw papers on the streets.").

> FN12. *See* Rule F.7.a (prohibiting performers from "treat[ing] any person or animal in a manner that is aggressive, menacing, vulgar, profane or abusive").

> FN13. According to one city official, "Before a street performer's permit is suspended, Seattle Center: 1) gathers information about the alleged rule violation(s); 2) sends the street performer notice of the al-

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> leged violation(s) and gives the performer the opportunity to respond; and 3) makes a decision based upon the alleged incident and the performer's response, if any." The City does not explain why this system would not function just as well if the penalty was the suspension of the performer's future right to perform at the Center, rather than the suspension of his permit.
>
> FN14. The City states that, absent the ability to suspend a performer's license, it would have no other option but to completely ban a non-rule-abiding performer from the Center's grounds. This argument is unpersuasive, for two reasons. First, there is no reason why identifying a performer who has had his privilege to perform on the Center's grounds suspended would be more difficult than identifying a performer who has had his permit suspended. Both would require an enforcement officer to consult a database which contained identifying information. The essence of the inquiry is no different.
>
> Second, as a practical matter, the City does not appear to have had trouble identifying the limited number of street performers who regularly appear at the Center. The Appellee, "Magic Mike," is apparently quite well-known to the Center's security staff. In addition, its incident reports contain references to such distinctive characters as the hula-hooping magician and "the puppet guy."

In a related argument, Chief Judge Kozinski avers that the City's registration requirement promotes the City's interest in identifying rulebreakers and notifying them of alleged violations. *See* Kozinski Dissent at 1069-70 (stating that the permitting requirement serves the valid purpose of deterring unruly street performer behavior "by denying them the cover of anonymity, and [giving] the Seattle Center authorities a means of holding them accountable when they do misbehave"). This argument is unavailing, for three reasons. First, the requirement that potential speakers identify themselves to the government, and the concomitant loss of anonymity, is one of the primary *evils* the Supreme Court cited when it struck down the permitting requirement in *Watchtower Bible. See* 536 U.S. at 166-67, 122 S.Ct. 2080. The Center's permitting requirement does not require only non-rule abiding street performers to identify themselves to the government. It requires *all* performers to "first inform the government of [their] desire to speak" in a public forum, *see Watchtower,* 536 U.S. at 165-66, 122 S.Ct. 2080, and thereby forego their anonymity. The permitting rule's denial of anonymity to potential street performers, and the deterrent effect that such a denial has on some individuals' exercise of speech rights, weighs against the rule's constitutionality, not in its favor. *See Watchtower,* 536 U.S. at 166-67 & n. 14, 122 S.Ct. 2080.

Second, the City need not rely on a pre-registration scheme to determine the identity***1045** and addresses of problematic street performers. Seattle Center employees can, instead, ask the offending street performer to identify himself and provide an address, if necessary. This method is presumably the one employed by Seattle police officers when they enforce criminal statutes that prohibit such acts as disorderly conduct, *see* Seattle Mun.Code § 12A.12.010, and aggressive begging. *See* Seattle Mun.Code § 12A.12.015. Moreover, the Supreme Court has recently upheld so-called "stop and identify" statutes that require suspects to identify themselves to police officers. *See Hiibel v. Sixth Judicial Dist. Court of Nev.,* 542 U.S. 177, 124 S.Ct. 2451, 159 L.Ed.2d 292 (2004). In other words, the City has the authority to ask alleged rule violators to provide their identities. The registration system is therefore of only minimal additional usefulness, if any.

Third, as noted *supra* n. 14, the City does not appear to have had any practical difficulties uncovering the identities of the limited number of street

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performers who appear regularly at the Seattle Center.

The City's asserted interest in coordinating multiple uses of the Center could also be achieved as effectively without the permitting requirement. Although we do not uphold the Center's designation of sixteen performance locations on the present record, *see infra* Part IV, we also hold that the delineation of performance areas, particularly in the most sought-after locales, might pass constitutional muster on a more developed record. If so, a valid designated-location plan, in combination with the City's existing first-come-first-served rule, would achieve the same improvements in the coordination of multiple uses without a permitting system as it would with one. Conversely, if the designation of performance locations is not constitutionally valid, then the permitting scheme cannot be justified as enhancing the enforcement of an invalid designation.

In short, by relying on an expansive, prophylactic prior restraint, the City has "burden[ed] substantially more speech than is necessary to further [its] interests." *Ward,* 491 U.S. at 799, 109 S.Ct. 2746. The permitting system is entirely peripheral to the Center's need to enforce its Rules. Because the City's interests in punishing wrongful conduct could "be achieved [just as] ... effectively absent the [permitting] regulation," *id.,* that regulation is not narrowly tailored to promote those interests. *See also Discovery Network,* 507 U.S. at 417 n. 13, 113 S.Ct. 1505 (holding that the availability of less restrictive alternatives is a relevant consideration in a narrow tailoring analysis).

[15] 3. There is a third, particularly compelling reason why the Center's permitting requirement fails the narrow tailoring requirement: It applies to a large number of individuals who have no connection to the City's asserted reasons for the permitting requirement, thereby running afoul of the principle that the "[g]overnment may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals." *Ward,* 491 U.S. at 799, 109 S.Ct. 2746.

The permitting requirement is, according to the City, designed in part to reduce obstreperous conduct by street performers. Yet, by the City's own account, most street performers are not problematic.[FN15] So the permitting requirement burdens all performers to root out the occasional bad apple. By doing so, it fails to "target[ ] ***1046** and eliminate[ ] no more than the exact source of the 'evil' it seeks to remedy." *Frisby,* 487 U.S. at 485, 108 S.Ct. 2495 .

> FN15. The City reports that, in the year prior to the introduction of the revised Rules, 70% of the performer-related complaints it received were either generated by or were in reference to "Magic Mike" Berger.

Similarly, the permitting requirement applies to street performers who pose no realistic coordination or traffic flow concerns, as well as to those who might. It is hard to fathom how an individual performing for two or three others in a park as large as the Center would pose coordination or traffic flow problems for the City. *See Santa Monica Food Not Bombs,* 450 F.3d at 1038-39 (noting that the type of coordination problems that justify the imposition of advance notification and permitting requirements arise in a public forum only when large groups are involved); *Grossman,* 33 F.3d at 1206 (same); *Long Beach Area Peace Network,* 522 F.3d at 1032-33 (same); *City of Dearborn,* 418 F.3d at 608 ("The city of Dearborn's significant interest in crowd and traffic control, property maintenance, and protection of the public welfare is not advanced by the application of the Ordinance to small groups."). The City has not provided any evidence that street performers usually, or even sometimes, gather crowds of the size that might justify coordination-of-use permits-according to *Long Beach Area Peace Network,* 522 F.3d at 1033, seventy-five or more people. Once again, the permitting requirement here burdens substantially more speech than necessary to promote a legitimate government objective.

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The unconstitutional breadth of the permitting requirement is perhaps most apparent in the City's definition of "street performer," the group to whom the permitting rules apply. According to Rule C.15, a "Street Performer" is "a member of the general public who engages in any performing art or the playing of any musical instrument, singing or vocalizing, with or without musical accompaniment...." This definition is extraordinary in its sweep.[FN16] It includes not only the few problematic street performers who perform repeatedly and for pay, but also any individual who wishes to sing, dance, or play an instrument while on the Center's grounds. Protest songs, playing the guitar at a picnic, even whistling are swept up into this broad definition. An individual strumming on a guitar at a family picnic surely poses no problem to the safety and convenience of fellow park-goers. Yet, that person, like many others, would need to obtain a permit.

> FN16. Although inclusion of the term "vocalizing" could be read to apply the permitting requirement to any individual who wished to speak out loud while traversing the Seattle Center's grounds, we assume that the permitting rules apply only to those engaged in artistic expression.

[16] The City urges us to read the definition more narrowly than its text would suggest. It contends that the Rules apply only to those performances that are "aimed at attracting an audience," and so are not unconstitutionally broad.

[17] It is a "well-established principle that statutes will be interpreted to avoid constitutional difficulties." *Frisby,* 487 U.S. at 483, 108 S.Ct. 2495. Thus, where an unconstitutionally broad statute is "readily subject to a narrowing construction" that would eliminate its constitutional deficiencies, we accept that construction. *See id.* at 482, 108 S.Ct. 2495; *see also Ctr. for Bio-Ethical Reform, Inc., v. L.A. County Sheriff's Dep't,* 533 F.3d 780, 791-93 (9th Cir.2008) (construing an ambiguous statute narrowly to avoid First Amendment problems).

In this case, though, even if we were to hold that the published "street performer" definition is "readily subject" to the proposed narrowing construction, the revised ***1047** definition would be no less constitutionally infirm, for two reasons. First, most performers seek to "attract a crowd," even if that crowd turns out to be composed of only two or three people. The City's "narrower" rule is therefore only marginally less broad, if less broad at all, than the original.

In *Santa Monica Food Not Bombs,* we invalidated a rule that required any individual who advertised an event on the radio or television to obtain a permit, regardless of the number of people who attended the event. *See* 450 F.3d at 1043. We noted that the permit would have been narrowly tailored if it had applied to events that *actually* attracted a crowd of more than 150 people, even if the number of attendees was unknown before the event. *Id.* In other words, the City of Santa Monica was allowed to hold an organizer responsible for obtaining a permit if the event actually attracted a significant crowd, but not because the event *might conceivably* attract such a crowd. Similarly, here, the City could draft a rule for the Seattle Center that requires performances that attract an audience of a given size to obtain a permit, and enforce that rule for performances that actually attract that size audience. What it cannot do is require permits for all performances at the Center, regardless of the size of the crowd. [FN17]

> FN17. In support of their argument that the Center's permitting requirement is constitutional, Chief Judge Kozinski and Judge Gould cite *Thomas v. Chicago Park Dist.,* 534 U.S. 316, 122 S.Ct. 775, 151 L.Ed.2d 783 (2002) for the proposition that the Supreme Court has previously "[upheld a] permitting requirement for large events in public parks." Gould Dissent at 1075-76; Kozinski Dissent at 1066-67, 1069. As noted, regulating "street performers" is not tantamount to regulating "large events."

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> More importantly, as we have twice noted, " *Thomas* considered only a challenge to the breadth of official discretion, not the other requirements of the time, place, and manner jurisprudence." *Santa Monica Food Not Bombs,* 450 F.3d at 1037 n. 15 (citing *Galvin v. Hay,* 374 F.3d 739, 747 n. 5 (9th Cir.2004) (internal alterations and quotations omitted)). Notably, the *Thomas* Court did not consider, because the issue was not raised, whether the Chicago Park District's fifty-person threshold was high enough to meet constitutional standards. Our caselaw indicates that it may be too low. *See Long Beach Area Peace Network,* 522 F.3d at 1033; *Santa Monica Food Not Bombs,* 450 F.3d at 1043. In any event, because *Thomas* addressed a specific type challenge that is not raised here, it is not useful in evaluating the constitutionality of the Center's permitting requirement.

Second, the City's proposed limitation would make an otherwise clear, though overbroad, regulation unconstitutionally vague. *See Foti v. City of Menlo Park,* 146 F.3d 629, 638-40 (9th Cir.1998). *Foti* invalidated a city ordinance that prohibited drivers from displaying signs on their parked vehicles if, and only if, those signs were designed to "attract the attention of the public." *Id.* at 638. We found this standard unconstitutionally vague, because it required those enforcing the ban to "decipher the driver's subjective intent" based on such factors as the driver's chosen parking space, the amount of traffic passing by the chosen parking spot, and the physical characteristics of the sign. *Id.* at 638-39. Our concern was that, "[w]ith this range of factors to consider, ... a police officer might resort to enforcing the ordinance only against ... [those] messages the officer or the public dislikes." *Id.* at 639.

The City's limiting construction mimics the language of the ordinance declared unconstitutionally vague in *Foti* and so fares no better than that ordinance. A Seattle police officer attempting to enforce the Center's permitting requirement would have to decide whether a performer intended "to attract a crowd." The officer ***1048** would presumably make such a determination based on factors such as the performer's chosen location, volume, flamboyance, and, worst of all, subject matter. As in *Foti,* this myriad of factors lends itself to discriminatory enforcement.

Moreover, a prospective performer would need to anticipate how an officer might interpret the performance. Even if the performer had no intent to "attract an audience," he or she would have to evaluate whether an officer might think so. This uncertainty is likely to have a chilling effect on speech. *See id.* at 638 ("A statute must be sufficiently clear so as to allow persons of 'ordinary intelligence a reasonable opportunity to know what is prohibited.' ") (quoting *Grayned v. City of Rockford,* 408 U.S. 104, 108, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972)).

In short, far from saving Rule C.15 and its associated Rules from constitutional ignominy, the City's proffered limiting construction makes matters worse.

3. Conclusion

Overall, like the invalid permitting scheme in *Grossman,* the City's regulations, "[r]ather than being narrowly tailored to protect speech, ... [are] tailored so as to preclude speech." *Grossman,* 33 F.3d at 1207. We therefore hold that Rules F.1 and F.2 are unconstitutional.[FN18] As currently drafted, the Center's permitting requirement does not meaningfully advance the City's asserted interests. Instead, it requires single individuals to inform the government of their intent to engage in expressive activity in a public forum, a requirement that neither we nor the Supreme Court has *ever* countenanced. In addition, its broad sweep prohibits much more speech than the "evil[s]" it seeks to remedy require, and the main objectives of the City's advance registration scheme could be achieved by far less intrusive means. For all these reasons, the Cen-

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ter's permitting requirement is not a reasonable time, place, or manner restriction.

> FN18. The Seattle Center's badge requirement is intimately connected to the permitting requirement. *See* Rule F.1 ("Permits, when issued, shall be evidenced by a badge that shall be worn or displayed by the performer in plain view at all times during a performance."). Because we hold the Center's permitting requirement unconstitutional and because no badges of the kind required can be issued without permits, we need not separately evaluate the constitutionality of the badge requirement.

IV. Rule F.5: The Performance Location Rule

A. Overview of the Rule

Rule F.5 limits street performers to sixteen "designated locations on the Seattle Center grounds," identified on a map that accompanies each Street Performer Permit. The map also indicates the "maximum number" of performers, typically no more than two, who may perform at each location simultaneously. If the Director determines that a given performance interferes with other users of the Center's grounds or "aggravates foot traffic congestion," the Rule permits the Director to "relocate performers" to other designated areas.

B. Constitutionality of Rule F.5

[18][19] The summary judgment record is insufficient to establish that the performance location rule is unconstitutional. As with other time, place, or manner restrictions on speech in a public forum, the government bears the burden of justifying a location restriction. *See Kuba v. 1-A Agric. Ass'n,* 387 F.3d 850, 858-63 (9th Cir.2004); *see also United States v. Playboy Entm't Group,* 529 U.S. 803, 816-17, 120 S.Ct. 1878, 146 L.Ed.2d 865 (2000); ***1049** *City of Renton v. Playtime Theatres, Inc.,* 475 U.S. 41, 50-52, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986). Viewing the available evidence in a light most favorable to the City, *see Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.,* 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986), we conclude that a genuine issue of material fact exists as to whether the City met this burden, and that summary judgment for Berger was therefore not merited. *See Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 250, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

The City submitted evidence, which Berger does not dispute, that, before the introduction of the location restriction, it received weekly complaints from park tenants about street performers blocking entranceways and egresses. The City's evidence also indicates that street performers regularly engaged in disruptive and volatile territorial disputes. Viewing this uncontested evidence in a light most favorable to the City, we conclude that the City met its burden of establishing that a significant problem exists. *See Edenfield v. Fane,* 507 U.S. 761, 770-71, 113 S.Ct. 1792, 123 L.Ed.2d 543 (1993) ("[A] governmental body seeking to sustain a restriction ... must demonstrate that the harms it recites are real....").

Moreover, unlike the Center's permitting requirement, the location rule does promote the City's interest in reducing these problems. By delineating precise performance locations, the City can assure itself and park tenants that street performers are not blocking entrances, exits, and pathways. Similarly, well-defined performance areas, combined with the Center's first-come, first-served rule, reduce territorial disputes by eliminating uncertainty over the permissible boundaries of a given performance.

In addition, the performance location rule, unlike the permitting requirement, passive solicitation, and captive audience rules, is not overbroad on its face. *See Bd. of Airport Comm'rs of the City of L.A. v. Jews for Jesus, Inc.,* 482 U.S. 569, 574-75, 107 S.Ct. 2568, 96 L.Ed.2d 500 (1987) (striking down, on overbreadth grounds, a regulation that prohibited

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individuals from engaging in "any First Amendment activities" within an airport terminal). [FN19]

> FN19. The performance location rule is overbroad in the sense that it relies on a constitutionally infirm definition of "street performer." *See supra* Part III.B.2. If the City plans to defend the constitutionality of the performance location rule on remand, it must also provide a narrowing construction that comports with the principles discussed in Part III.B.2.

[20] The only issue, then, is whether the location restriction leaves open "ample alternative channels for communication." *Ward,* 491 U.S. at 791, 109 S.Ct. 2746. As we explained in *Long Beach Area Peace Network,* "an alternative is not ample if the speaker is not permitted to reach the intended audience." 522 F.3d at 1024.

On summary judgment, we are, of course, required to draw all reasonable inferences in favor of the non-moving party. *See Anderson,* 477 U.S. at 255, 106 S.Ct. 2505. In support of its argument that the sixteen designated locations provide adequate access to audiences, the City provides a single piece of evidence: a map of the Seattle Center that includes the chosen locations.[FN20] As the dissenters point out, the map shows that the designated ***1050** performance areas are near to several key Seattle Center attractions, including the Space Needle, the Key Arena, and the Experience Music Project. Many of the locations also appear to be directly adjacent to the Center's major pedestrian thoroughfares. The map therefore permits us to draw the reasonable inference that the chosen locations provide street performers with access to most parkgoers and therefore to their intended audience.

> FN20. The City asserts that the number and location of the performance areas were determined through a public process in which street performers participated. The City has yet, however, to introduce any of the details or specific results of this public process. Inquiry into such details would go a long way towards determining the adequacy of the chosen locales.

Berger challenges this inference, and in support of that challenge, introduces his own declaration. In that declaration, he asserts that "many [of the locations] are far off the walkways where it is very difficult to notice the performer." He also avers that "Other times the Center has trucks or equipment or construction blocking locations for weeks on end." Although these statements raise an inference that the chosen locations do not provide adequate access to a street performer's audience, they do not compel that conclusion as a matter of law. Nor does Berger supply additional evidence that would preclude us from drawing an inference in favor of the City.

Because we must draw all reasonable inferences in favor of the City, and because there is conflicting evidence concerning whether the sixteen dedicated locations provide adequate access to the intended audience, summary judgment for Berger on the issue of Rule F.5's constitutionality is not appropriate on the current record.

To be clear, we do not hold that Rule F.5 is constitutional. Berger's evidence, though sparing, is sufficient to support a reasonable inference that the designated locations do not provide access to his intended audience. Rather, we are simply ruling that, on the current summary judgment record, there are conflicting inferences to be drawn regarding material facts pertinent to the dispositive consideration, adequacy of access to the intended audience.

V. Rule F.3.a: The Passive Solicitation Rule

A. Overview of Rule

Rule F.3.a states: "No performer shall actively solicit donations, for example by live or recorded word of mouth, gesture, mechanical devices, or second parties." The Rule does allow performers "passively" to solicit donations by setting out a re-

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ceptacle that "may include a written sign that informs the public that such donations are sought."

B. Constitutionality of Rule F.3.a

[21][22][23] Speech that solicits funds is protected by the First Amendment. *See Vill. of Schaumburg,* 444 U.S. at 628-32, 100 S.Ct. 826; *Int'l Soc'y for Krishna Consciousness, Inc. v. Lee,* 505 U.S. 672, 677, 112 S.Ct. 2701, 120 L.Ed.2d 541 (1992). Rules that regulate solicitation in public fora are therefore subject to the same standards as those that limit other forms of speech. *See Lee,* 505 U.S. at 703-04, 112 S.Ct. 2711 (Kennedy, J., concurring); *see also ACLU of Nev. v. City of Las Vegas (ACLU II),* 466 F.3d 784, 792 (9th Cir.2006); *ACORN v. City of Phoenix,* 798 F.2d 1260, 1267 (9th Cir.1986). In other words, solicitation regulations must be content-neutral, narrowly tailored, and leave open reasonable alternative channels for expression. *Id.* If a regulation is not content-neutral, we apply strict scrutiny. *See Playboy Entertainment Group,* 529 U.S. at 813, 120 S.Ct. 1878; *Perry Educ. Ass'n,* 460 U.S. at 45, 103 S.Ct. 948. Under that standard, the regulation is valid only if it is the least restrictive means available to further a compelling government interest. *Id.* We hold that the Center's active solicitation ban is a content-based regulation, and that it does not satisfy the exacting standard for a valid content-based regulation.

***1051 1. Content-based**

[24] A regulation is content-based if either the underlying purpose of the regulation is to suppress particular ideas, *see Ward,* 491 U.S. at 791, 109 S.Ct. 2746, or if the regulation, by its very terms, singles out particular content for differential treatment. *See Turner Broad. Sys., Inc. v. FCC,* 512 U.S. 622, 642-43, 114 S.Ct. 2445, 129 L.Ed.2d 497 (1994); *see also Discovery Network,* 507 U.S. at 429, 113 S.Ct. 1505.

[25] The City asserts, and we have no reason to doubt, that it passed its active solicitation ban in an effort to protect Center patrons from harassment. That is a legitimate, non-content-based purpose, and Rule F.3.a is therefore content-based only if it discriminates against speech on its face on the basis of content. It does.

[26] First, the City's suggestion to the contrary notwithstanding, Rule F.3.a *does* regulate speech, not conduct. As we explained at length in *ACLU II,* regulations that ban certain *conduct* associated with solicitation do not violate the prohibition on content-based regulation of speech. *See* 466 F.3d at 794-96. A ban on the actual hand-to-hand exchange of money, for example, is not content-based speech regulation. *See Lee,* 505 U.S. at 705, 112 S.Ct. 2701 (Kennedy, J., concurring) (stating that a ban on in-hand donations was not a content-based regulation of speech because it was "directed only at the physical exchange of money"); *see also ACLU II,* 466 F.3d at 795 (relying on Justice Kennedy's concurrence in *Lee*). But Rule F.3.a *allows* the conduct-exchange of money. It regulates only the speech, by specifying the medium and manner of requesting money-only in writing, and only passively.

Second, Rule F.3.a *is* content-based by its very terms. It specifically restricts street performers from communicating a particular set of messages-requests for donations, such as "I'd like you to give me some money if you enjoyed my performance." Performers are otherwise free to communicate whatever ideas they like, however they wish. As we stated with respect to a similar solicitation ban in *ACLU II,* while "this distinction [may be] innocuous or eminently reasonable, it is still a content-based distinction because it 'singles out certain speech for differential treatment based on the idea expressed.' " *See ACLU II,* 466 F.3d at 794 (quoting *Foti,* 146 F.3d at 636 n. 7).

In other words, although the Center's active solicitation rule regulates the "manner" in which street performers may express themselves, it does so based on the content of the performer's message. A performer at the Seattle Center need not rely on a

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sign, for example, to express his or her views on a political candidate; she can use her voice. To use another example, Rule F.3.a is no better than a regulation that forbids those addressing abortion issues, but not those protesting war, from giving speeches in a park, but allows abortion protestors and supporters to pass out leaflets about abortion. As these examples show, one can regulate the manner of speech on the basis of content, taking the regulation outside the time, place, and manner rubric, even though *some* manner of communication on the subject is allowed.[FN21]

> FN21. In dissent, Judge Gould confuses viewpoint-neutrality with content-neutrality. Gould Dissent at 1078 (noting that "there are no favored organizations or persons-no street performer advancing any cause can solicit funds from Seattle Center patrons in an active way"). The Center's passive solicitation rule is certainly viewpoint-neutral in that it affects all street performers regardless of their message. But, for the reasons discussed above, it is nonetheless content-based, as it singles out certain content for special treatment.

***1052** [27] Our conclusion that the active solicitation ban is content-based is supported-but not determined-by the fact that an officer seeking to enforce the active solicitation ban "must necessarily examine the content of the message that is conveyed." *Forsyth County,* 505 U.S. at 134, 112 S.Ct. 2395 (internal quotation marks and citations omitted); *see also ACLU II,* 466 F.3d at 796 n. 12. How else would an officer determine whether a performer's tip-of-the-cap was accompanied by a permissible "Thank you" or a prohibited "Please give?" [FN22]

> FN22. That an officer must evaluate the content of a message to determine whether a regulation applies is *evidence* that the regulation is content-based, although it is not dispositive. *See Forsyth County,* 505 U.S. at 134, 112 S.Ct. 2395. The "officer must read it" test is not always determinative of the issue of whether a regulation is facially content-based. *See Ctr. for Bio-Ethical Reform,* 533 F.3d at 789 n. 5 ("Whether an officer must read a message is persuasive evidence of an impermissible content-based purpose, but is not dispositive.").

In short, Rule F.3.a is a content-based limitation on speech. That it only restricts, rather than completely bans, particular content makes it no more content-neutral.[FN23]

> FN23. In *ACORN,* we held that a City of Phoenix ordinance prohibiting the solicitation of donations from people in vehicles stopped at red lights was content-neutral. 798 F.2d at 1267-68. We also noted approvingly that the ordinance did not enjoin individuals from otherwise distributing literature to or orally communicating with vehicle occupants. *Id.* at 1271. Read broadly, this holding would conflict with our current conclusion, as well as with our holding in *ACLU II. See ACLU II,* 466 F.3d at 794 (holding that a ban on solicitation, but not on other messages, was content-based).
>
> We do not interpret ACORN so broadly, however. We see no indication that the ordinance at issue forbade passing out handbills asking car drivers or passengers to contribute by mail to a charity or cause, as opposed to soliciting on-the-spot donations. That is, the ordinance at issue in *ACORN,* like that in *Lee,* prohibited only the immediate physical exchange of money. *See Lee,* 505 U.S. at 704-05, 112 S.Ct. 2701 (Kennedy, J., concurring). Such a regulation is not a content-based regulation of speech, and so does not run afoul of the content neutrality requirement.

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2. Strict scrutiny

As a content-based regulation, the ban on active solicitation is valid only if it serves a compelling government interest in the least restrictive manner possible. Rule F.3.a does neither, and so is not one of the "rare ... regulation[s] restricting speech because of its content" that is "permissible." *See Playboy Entertainment Group,* 529 U.S. at 818, 120 S.Ct. 1878.

As a general matter, it is unlikely the City's asserted interest in reducing obnoxious behavior by street performers could ever be considered compelling. *See S.O.C., Inc. v. County of Clark,* 152 F.3d 1136, 1146 (9th Cir.1998) (noting that, although the government "may have a substantial interest in preventing solicitors from harassing pedestrians on public streets and sidewalks[,] ... these substantial interests ... may not be compelling"). This stated interest pales in comparison to those interests the Supreme Court has found compelling in a First Amendment context. *See Burson v. Freeman,* 504 U.S. 191, 198-200, 112 S.Ct. 1846, 119 L.Ed.2d 5 (1992) (plurality opinion) (reducing voter intimidation and election fraud); *Eu v. S.F. County Democratic Cent. Comm.,* 489 U.S. 214, 232, 109 S.Ct. 1013, 103 L.Ed.2d 271 (1989) (protecting "the integrity of the electoral process"); *R.A.V. v. City of St. Paul,* 505 U.S. 377, 395, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992) (safeguarding "the basic human rights of members of groups that have historically been subjected to ***1053** discrimination"); *see also Alaskan Independence Party v. Alaska,* 545 F.3d 1173, 1180 (9th Cir.2008) (elimination of fraud and corruption in the state election process); *Cal. Pro-Life Council, Inc. v. Randolph,* 507 F.3d 1172, 1179 & n. 8 (9th Cir.2007) (disclosure of political information to the electorate).

[28][29] But even if reducing aggressive solicitation qualifies as a compelling interest, the Center's passive solicitation rule is far from the least restrictive means by which the City could discourage "pushy" or "overbearing" solicitation. Rule F.3.a bars *all* active solicitation. It reaches innocuous verbal requests for donations; it prohibits a performer from "gestur[ing]" towards the passive receptacle that the Rules permit the performer to display. Yet, "[a] complete ban can be narrowly tailored ... only if each activity within the proscription's scope is an appropriately targeted evil." *Frisby,* 487 U.S. at 485, 108 S.Ct. 2495. Rule F.3.a cannot possibly meet that standard.

If the City desires to curb aggressive solicitation, it could enforce an appropriately worded prohibition on aggressive behavior. If necessary, the City can also rely on constitutionally valid nuisance and aggressive panhandling laws to control street performers who will not take no for an answer when asking for money.

The Supreme Court in *Village of Schaumburg* observed that "[t]he [local government's] legitimate interest in preventing fraud can be better served by measures less intrusive than a direct prohibition on solicitation. Fraudulent misrepresentations can be prohibited and the penal laws used to punish such conduct directly." 444 U.S. at 637, 100 S.Ct. 826; *see also Riley,* 487 U.S. at 795, 108 S.Ct. 2667; *Schneider,* 308 U.S. at 164, 60 S.Ct. 146. Similarly, punishing offensive conduct *after* it has occurred is indubitably a less restrictive way to protect audiences from serious annoyances than banning all forms of active solicitation, whether problematic or not. The City's sweeping ban is simply not the least restrictive means of reducing overbearing street performer behavior. It therefore cannot stand.

VI. Rule G.4: The Captive Audience Rule

A. *Overview of the Rule*

Unlike the rules we have already discussed, Rule G.4 applies to all speakers, not just to street performers. It prohibits all "speech activities ... within thirty (30) feet of any captive audience." "Speech activities" include "both political speech and commercial speech[,]" but do not include "activi[ties] conducted by City employees or licensed conces-

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sionaires." Rule C.14. A "captive audience" is

> any person or group of persons: 1) waiting in line to obtain tickets or food or other goods or services, or to attend any Seattle Center event; 2) attending or being in an audience at any Seattle Center event; or 3) seated in any seating location where foods or beverages are consumed.

Rule C.5.

B. *Constitutionality of Captive Audience Rule*

[30] The Center's "captive audience" Rule is the most troublesome of the challenged regulations, striking at the very core of the precepts underlying the protection of speech in traditional public fora. The Rule's very purpose-according to the City-is to "protect" many of the individuals who have gathered at the Center, a public forum, from efforts by fellow citizens to communicate with them. That purpose is squarely at odds with the fundamental principle of our traditional public forum jurisprudence-namely, that use of parks for public discussion and gathering ***1054** "has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens" and "must not, in the guise of regulation, be abridged or denied." *See Hague,* 307 U.S. at 515-16, 59 S.Ct. 954. The seminal captive audience case, *Lehman v. City of Shaker Heights,* 418 U.S. 298, 94 S.Ct. 2714, 41 L.Ed.2d 770 (1974), specifically abjured any such application of the captive audience concept, recognizing that a public street car is not a "First Amendment forum" like a "park," "where First Amendment values inalterably prevail." *Id.* at 302-04, 94 S.Ct. 2714.

[31] And, indeed, from "time out of mind," public parks have been central to our constitutional heritage of open discourse. *See Hague,* 307 U.S. at 515, 59 S.Ct. 954. They provide an essential outlet to those who, for economic or other reasons, would not otherwise be able to participate in that discourse. *See Grossman,* 33 F.3d at 1205 n. 8. Given the importance of these locales, we cannot countenance the view that individuals who choose to enter them, for whatever reason, are to be protected from speech and ideas those individuals find disagreeable, uncomfortable, or annoying. *See NAACP v. Claiborne Hardware Co.,* 458 U.S. 886, 910-11, 102 S.Ct. 3409, 73 L.Ed.2d 1215 (1982).[FN24]

> FN24. "Fighting words" are, of course, proscribable under the First Amendment. *See Virginia v. Black,* 538 U.S. 343, 359, 123 S.Ct. 1536, 155 L.Ed.2d 535 (2003) (citing *Chaplinsky v. New Hampshire,* 315 U.S. 568, 572, 62 S.Ct. 766, 86 L.Ed. 1031 (1942)).

[32][33][34] The Supreme Court's "captive audience" jurisprudence fully supports our conclusion that public park-goers, in general, are not a protectable captive audience for constitutional purposes. "The plain, if at times disquieting, truth is that in our pluralistic society, constantly proliferating new and ingenious forms of expression, we are inescapably captive audiences for many purposes." *Erznoznik v. City of Jacksonville,* 422 U.S. 205, 210, 95 S.Ct. 2268, 45 L.Ed.2d 125 (1975) (internal quotation marks and citation omitted). Only in "narrow circumstances" may government restrain speech to protect such audiences. *Id.* at 210-11, 95 S.Ct. 2268. "The ability of government, consonant with the Constitution, to shut off discourse solely to protect others from hearing it is, in other words, dependent upon a showing that substantial privacy interests are being invaded in an essentially intolerable manner." *Cohen v. California,* 403 U.S. 15, 21, 91 S.Ct. 1780, 29 L.Ed.2d 284 (1971).

Such substantial privacy interests include "the psychological [and] physical well-being of the [hospital] patient held 'captive' by medical circumstance." *Madsen v. Women's Health Ctr.,* 512 U.S. 753, 768-71, 114 S.Ct. 2516, 129 L.Ed.2d 593 (1994) (validating an injunction creating a 36-foot buffer zone around entrances of an abortion clinic in which picketing and demonstrating, among other activities, were barred); *see also Hill v. Colorado,*

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530 U.S. 703, 728-30, 120 S.Ct. 2480, 147 L.Ed.2d 597 (2000) (upholding an eight-foot regulatory buffer around clinic entrances due to the "unique concerns that surround health care facilities," where those using the facilities "are often in particularly vulnerable physical and emotional conditions"). They also encompass "the quiet enjoyment" of one's home. *Frisby,* 487 U.S. at 483, 108 S.Ct. 2495 (upholding a ban on "focused picketing taking place solely in front of a particular residence").

The unique privacy and self-determination interests involved in protecting medical facilities and residences simply do not exist for those waiting in line or having lunch outdoors in a public park. Indeed, we have already rejected such a comparison in *Kuba,* 387 F.3d at 861 n. 10, explaining that patrons of a "place of public ***1055** entertainment" were not a captive audience similar to the intended audiences in *Madsen* and its progeny, because they were obviously not "particularly vulnerable," as are the patients and doctors in such cases.

Moreover, even if Seattle Center officials could justify a prohibition on unwelcome speech, the current "captive audience" regulation would still be too broad because it prohibits *all* "speech activities," not just those that continue after the recipient of the speech has signaled a preference to be left alone. *See Jews for Jesus,* 482 U.S. at 574-75, 107 S.Ct. 2568 (holding that a regulation was constitutionally overbroad where it prohibited all "First Amendment activities" and noting that "no conceivable governmental interest would justify such an absolute prohibition of speech"); *see also Schenck v. Pro-Choice Network of Western New York,* 519 U.S. 357, 383-84, 117 S.Ct. 855, 137 L.Ed.2d 1 (1997) (holding that an injunction provision that required abortion protestors to move away from abortion clinic patients who asked to be left alone did not violate the First Amendment).

The implications of upholding the Seattle Center's "captive audience" regulation are startling. Doing so would permit the almost unlimited regulation of speech in a public park. After all, any visitor to a park, even one strolling through the park, is "captive" in a particular spot, in that the visitor might have reason to stay where she is rather than move to another location in the park or to a different park. There is no reason to suspect that a group of runners on a park track, parents watching their children in a playground, or an individual sitting in her favorite spot are any less "captive"-i.e., less interested in staying where they are rather than moving to a different location-than those who are waiting in line or eating while seated in a designated area.

In sum, we hold that public park-goers are not a "captive audience." [FN25] Any interest they may have in pursuing such activities as waiting in line, attending an event, or eating without communication by others is not a "substantial privacy interest."

> FN25. Although we hold that Center patrons are not a "captive audience" for First Amendment purposes when frequenting the Center's public open areas, we certainly do not mean to suggest that the City could not promulgate rules that prohibit and punish disruptive conduct during planned Center events or at indoor Center venues. As discussed below, such a rule would, of course, have to be much more narrowly tailored than the sweeping ban on speech that the City has adopted here.

[35] Moreover, even if the City's purported interest in protecting certain park-goers from communications by others were substantial-which it is not-Rule G.4 is not narrowly tailored to meet that interest. This is so for two reasons.

First, the rule's preference for concessionaires and licensees leads to the odd result that purely commercial speech, which receives more limited First Amendment protection than noncommercial speech, is allowed and encouraged, while artistic and political speech is not. This bias in favor of commercial speech is, on its own, cause for the rule's invalidation. *See Metromedia, Inc. v. City of San Diego,*

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453 U.S. 490, 513, 101 S.Ct. 2882, 69 L.Ed.2d 800 (1981) (plurality opinion); *see also G.K. Ltd. Travel v. City of Lake Oswego,* 436 F.3d 1064, 1081 (9th Cir.2006) (ordinance is invalid if it favors commercial speech over noncommercial speech); *Desert Outdoor Adver., Inc. v. City of Moreno Valley,* 103 F.3d 814, 819-20 (9th Cir.1996) (same).

Second, Rule G.4 is unconstitutionally broad. *See* ***1056***Bd. of Airport Comm'rs of City of L.A. v. Jews for Jesus, Inc.,* 482 U.S. 569, 574-75, 107 S.Ct. 2568, 96 L.Ed.2d 500 (1987). In *Jews for Jesus,* the Court invalidated, on overbreadth grounds, a regulation that prohibited individuals from engaging in any "First Amendment activities" within the Central Terminal of Los Angeles International Airport. *Id.* at 574, 107 S.Ct. 2568. In striking down the rule, the Court noted that "[t]he resolution does not merely regulate expressive activity in the Central Terminal Area that might create problems such as congestion or the disruption of the activities of those who use LAX[;] ... it prohibits even talking and reading, or the wearing of campaign buttons or symbolic clothing." *Id.* at 574-75, 107 S.Ct. 2568. "We think it obvious that such a [sweeping] ban cannot be justified ... because no conceivable governmental interest would justify such an absolute prohibition of speech." *Id.* at 575, 107 S.Ct. 2568.

The Center's "captive audience" rule-which prohibits all "speech activities ... within thirty (30) feet of a captive audience"-is similarly overbroad in its sweep. By its very terms, Rule G.4 prohibits both welcome and unwelcome communications, both verbal tirades and silent protests, both offensive language and the mildest remark. It would, for instance, forbid a political campaign representative from offering a handbill to a consenting park-goer in an entirely benign-even silent-manner. It would likewise prevent a concerned citizen from displaying a sign critical of the city government. Such passive and unthreatening acts certainly do not intrude on the privacy of park-goers in "an essentially intolerable manner," if they intrude at all. *See Cohen,* 403 U.S. at 21, 91 S.Ct. 1780. Thus, by flatly prohibiting all "speech activities," the Center's "captive audience" rule, like the regulation in *Jews for Jesus,* "does not merely regulate expressive activity in the [Center] that might create [the alleged] problems." 482 U.S. at 574, 107 S.Ct. 2568. No governmental interest-and certainly not an interest in protecting public park-goers from unwanted communications-could justify such a sweeping ban. *See id.*

Rule G.4 also creates precisely the type of "floating buffer zone [ ]" that the Court found unconstitutional in *Schenck v. Pro-Choice Network of Western New York,* 519 U.S. 357, 377-80, 117 S.Ct. 855, 137 L.Ed.2d 1 (1997). In *Schenck,* the Court considered an injunction which barred demonstrations within fifteen feet of any person or vehicle using an abortion clinic. *Id.* at 367, 117 S.Ct. 855. According to the court, the "floating" fifteen foot zones created by the injunction created an uncertain and over-broad system of restraints on speech. *Id.* at 377-80, 117 S.Ct. 855. As clinic patients moved, speech-restricted areas shifted across the landscape in an unpredictable and, in the Court's view, unacceptable manner. *Id.*

Rule G.4's thirty-foot buffer zone generates the same unpredictability problems here. As the end of a line shifts, or a picnic table is occupied, the Center's captive audience rule snaps on to bar speech within thirty feet of the line or the picnickers. This system of shifting "speech-free" zones is the sort of capricious restraint, likely to chill far more speech than the Seattle Center would be justified in regulating, that *Schenck* struck down. 519 U.S. at 377-80, 117 S.Ct. 855.

In sum, the City's "captive audience" rule not only fails to address a substantial government interest, it also burdens considerably more speech than necessary to achieve its purported goals. Rule G.4's flat ban on all speech activities encompasses a broad compendium of expressive activity, much of which is not disruptive or unduly invasive of the privacy interests of allegedly "captive" park-goers. In addition, the rule promulgates unconstitutionally vague

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"buffer" zones that are likely to ***1057** chill otherwise permissible speech. For all these reasons, the "captive audience" rule cannot stand.

VII. Response to the Dissenters

Although we have responded to specific points raised by the dissent throughout this opinion, we wish to address two broader concerns that we have with the various dissents.

First, in order to bolster their arguments, both Chief Judge Kozinski and Judge Gould mischaracterize both the nature of the Center's rules and our analysis of those rules. Chief Judge Kozinski, for example, repeatedly suggests that the rules apply only to those performers who solicit money. *See, e.g.,* Kozinski Dissent at 1063-64 (noting that the rules are intended to protect park-goers from "overly aggressive street performers bent on increasing their own visibility and income"); *id.* at 1067 ("[S]treet performers like Berger are not merely citizens who wish to use the park as a forum for public expression or religious worship on an occasional basis; they are operating a business and earning a living from these activities."); *id.* at 1068 ("The commercial aspects of the street performer trade, which my colleagues overlook, set up the dynamics that have given Seattle Center cause for concern."). That understanding of the rules is simply wrong. No such limitation appears in the Center's rules, nor has it been propounded by the City. Instead, the permitting requirement applies, on its face, to all "member[s] of the general public who engage[ ] in any performing art or the playing of any musical instrument, singing or vocalizing," Rule C.15. It does not distinguish between performers who seek funds and those who merely wish to entertain or to express an opinion through performance art. The City's "captive audience" rule goes even further. It applies to *all* park-goers, not just to street performers, and certainly *not* just to street performers who solicit funds. The City has not argued otherwise.

The dissenters also imply that the rules are limited to repeat performers, *see* Kozinski Dissent at 1067, 1068, and to preventing "unwelcome or harassing performances." *See* Gould Dissent at 1080. Once again, the scope of the rules at issue is not limited to these categories, nor has the City so interpreted them. The permitting requirement and passive solicitation rules apply to one-time performers and to Seattle Center regulars in equal measure. The sweeping "captive audience" rule applies to everyone (other than City employees and licensed concessionaires) at all times. In addition, none of the rules differentiate between benign, inoffensive conduct and aggressive, unwelcome acts. They simply deter or ban all relevant speech.

We do not discount the City's interest in protecting patrons of the Seattle Center from "browbeating" and other hostile conduct. The problem is that the City, rather than tailoring its rules to curtail problematic behavior, imposed sweeping bans on expressive activity and implemented a broad registration requirement. It is, in large part, the overbreadth of the rules, an overbreadth the dissenters do not appear to recognize, that renders them constitutionally infirm. *See Jews for Jesus,* 482 U.S. at 574-76, 107 S.Ct. 2568.

Chief Judge Kozinski also mischaracterizes, or perhaps misunderstands, key aspects of our opinion. For instance, he asserts that "it is a wholly different matter to derive some sort of rule that prohibits-or strongly discourages-regulation of speech by a single individual, regardless of the size of his expected audience or the disruption he may cause." Kozinski Dissent at 1072. The "rule" that we propose is precisely the opposite of what the Chief Judge suggests. One of the central deficiencies ***1058** of the Center's permitting requirement is that it does *not* consider the size of a street performer's expected audience or "the disruption he may cause." It applies to every member of the "general public" who wishes to perform, sing, or vocalize on the Center's grounds, irrespective of the size of their planned or actual audience. If, by contrast, the

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permitting requirement applied only to performers who intend to attract a crowd of a sufficiently large size (say 100 persons or more), the requirement might very well be constitutional. For this reason, Judge Kozinski's suggestion that our opinion would preclude a permit requirement for the famous civil rights leader who plans to hold a rally for half a million people at the Lincoln Memorial is absurd. Instead, the point is that the Center's permitting requirement is not limited to huge rallies-or even small, hundred person ones.

Moreover, our conclusion that the Constitution prohibits the government from implementing a registration system that governs speech in a public forum and applies to groups as small as a single individual performing without an audience is neither new nor idiosyncratic. This circuit has repeatedly affirmed the principle that an advance notification requirement applicable to speech in a public forum must be limited to larger groups. *See Long Beach Area Peace Network,* 522 F.3d at 1032-33; *Santa Monica Food Not Bombs,* 450 F.3d at 1039; *Grossman,* 33 F.3d at 1206; *City of Richmond,* 743 F.2d at 1355; *Rosen,* 641 F.2d at 1247-48. Several other circuits have reached this same conclusion. *See Cox v. City of Charleston,* 416 F.3d 281, 285 (4th Cir.2005); *American-Arab Anti-Discrimination Committee v. City of Dearborn,* 418 F.3d 600, 608 (6th Cir.2005); *Douglas v. Brownell,* 88 F.3d 1511, 1524 (8th Cir.1996). The dissenters ignore this long line of authority, concluding simply that a "rigid numerical rule will fail because it makes no account for the performance's effect on others." Kozinski Dissent at 1073. But, as we and several other appellate courts have noted, a numerical floor is necessary precisely *because* such a floor indicates that the government has properly tailored its permitting requirement to address the effect that a speaker will have on other users of a public space.

We also reiterate that the City is free to enforce its existing rules, including its criminal statutes and traffic ordinances, against individual offenders. We do not hold, as Chief Judge Kozinski's other, equally silly, examples appear to suggest, *see* Kozinski Dissent at 1072-73, that the First Amendment exempts all individual speakers from regulation. If Yo-Yo Ma or Mr. Nez decided unilaterally to obstruct vehicle traffic, the government can, of course, prevent him from doing so by enforcing its vehicular codes. Similarly, Seattle Center officials can, pursuant to its existing rules, remove a street performer who is blocking pedestrian traffic or harassing parkgoers. But a permitting requirement that applies to a group as small as a *single* person and which governs speech activity in a public park (*not* on a city street) is not necessary to promote the interests the City asserts in this case and is highly offensive to our constitutional values.

Which leads to our second-and overriding-general concern with the approach of the dissenters: the dissents ignore, or at least discount, bedrock principles of First Amendment jurisprudence. Among these is the proposition that public parks are an especially important and protected forum for speech, even as compared to public streets. *See Hague,* 307 U.S. at 515, 59 S.Ct. 954; *Grossman,* 33 F.3d at 1204-05. Chief Judge Kozinski describes the Seattle Center as a "cultural achievement," "an enterprise," a "multi-use facility," and the "crown jewel of [Seattle's] ***1059** civic enterprise." While accurate, these descriptions mask the Seattle Center's true identity: it is an 80-acre expanse of public land that includes twenty-three acres of outdoor, public park space. However unique the Seattle Center may be, it is, fundamentally, a public park. As such, regulations on speech within its boundaries warrant particularly close attention.

[36] The dissenters also disregard the fundamental premise that "a law requiring a permit to engage in [individual] speech constitutes a dramatic departure from our national heritage and constitutional tradition," *Watchtower Bible,* 536 U.S. at 166, 122 S.Ct. 2080, because "prior restraints on speech [like the City's permitting requirement] ... are the most serious and least tolerable infringement on First Amendment rights." *Nebraska Press Ass'n v. Stu-*

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art, 427 U.S. 539, 559, 96 S.Ct. 2791, 49 L.Ed.2d 683 (1976). Such restraints bear a "heavy presumption" against their constitutionality. *Forsyth County,* 505 U.S. at 130, 112 S.Ct. 2395. Without acknowledging the constitutionally suspect nature of prior restraints, the dissenters would uphold the permitting requirement on the weakest of rationales-i.e., that the requirement helps the City identify and punish rule breakers. As already discussed at length, the City need not implement a broadly applicable prior restraint to achieve these objectives. Allowing such an "intolerable infringement on First Amendment rights" therefore simply cannot be countenanced.

VIII. Conclusion

First Amendment protections are robust, yet at the same time fragile and precious. Often, government restrictions on speech seem perfectly reasonable at first glance, and the encroachment on expression forgivable in pursuit of convenience or good manners. But seventy years of law beginning with *Hague v. CIO,* has laid down the basic principle that there are a few government-owned areas-of which public parks are the preeminent example-in which the values underlying the First Amendment favor communication among citizens over merely reasonable speech restrictions, and require instead that any regulation of speech be targeted at real problems, and carefully calibrated to solve those problems. In other words, while some-among them, the dissenters in this case-might prefer a "Truman Show" version of pristine placidity in our public parks, our First Amendment jurisprudence rests on a very different vision.

[37] The standards for valid regulation in traditional public fora are just moderately stringent, an intermediate level of scrutiny in the contemporary constitutional lingo. But the First Amendment interests advanced by the developed time, place, and manner jurisprudence does require that we apply that mid-level scrutiny with care, paying attention to the details of the regulation at issue, the state of the record, and the fit between the regulation and the governmental interest asserted. Having done so, we conclude that none of the challenged Rules qualify as reasonable time, place, or manner restrictions on the current record and that the district court's grant of summary judgment to Berger should be affirmed as to all but the location regulation, Rule F.5, and that the validity of Rule F.5 must be determined on remand, as the grant of summary judgment was improper.

AFFIRMED IN PART and REMANDED IN PART.

Chief Judge KOZINSKI, with whom Judges GOULD and TALLMAN join, dissenting:
Seattle Center is an astonishing cultural achievement. Just minutes from downtown on foot or by monorail, it is home to a ***1060** dizzying array of entertainment venues, sporting events, festivals, educational and community programs, restaurants, museums and, of course, the world-famous Space Needle. The Center's website documents the close co-operation between the city government and the scores of private, professional and community organizations that provide over 10,000 attractions and events there every year. Having had its start as the 1962 World's Fair, the Center campus has maintained and enhanced its vibrancy over the intervening decades. In a square a little smaller than 6 blocks on a side, the Center is home to a professional sports team, PBS broadcast station, opera, ballet, Shakespeare Company, science center, IMAX theater, Experience Music Project (look it up), Science Fiction Hall of Fame, amusement park and countless other attractions. The Center is open from 7 a.m. to midnight every day, and this past year hosted 12 million visitors-roughly the population of Pennsylvania.

Operating an enterprise of this magnitude and complexity requires a good deal of effort and commitment. It also calls for some basic rules, to ensure the safety and convenience of the tens of thousands of people who visit the Center on an average day, and to preserve the atmosphere of hospitality and

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neighborliness that is the Center's guiding spirit.

The rules pertaining to street performers, which my colleagues discard like so much wilted lettuce, were adopted in response to specific problems: repeated disputes among performers about location, performances in places that could not accommodate the crowds gathered to watch them, and rude and overbearing demeanor of some performers towards the public. The following is from a declaration submitted by the city, which we must accept as true for purposes of summary judgment:

> Before the performer permit rules went into effect, ... there were approximately 3 or 4 complaints by performers against other performers per week. If [plaintiff] Magic Mike was here, we could expect one or more from him and then one or more from whomever he was complaining about.... [T]here would be 1 complaint per week by a tenant of a facility in the Seattle Center ... [and] 1 complaint per month by a member of the public against a performer.... The general complaints by performers against other performers would be "that is my spot and he can't be there" and/or "that performer is doing what I am doing and they won't move." ... The general complaints by tenants against performers ... concerned too much noise or blocking access .... [C]omplaints by members of the public generally concerned pushy or overbearing performers .... Emergency Service would normally receive 1 or 2 complaints per week regarding a performer trapping a captive audience.

The Center also experienced other problems: "Unregulated street performing had led to situations in which street performers had set up in areas that could not accommodate the crowds the performances sometimes gather. Street performers also sometimes set up too close to one another, creating conflicts between performers."

Seattle Center authorities found that they had no effective way to deal with these persistent problems:

> Before the permit system, the only recourse that Emergency Services had was to speak to the parties involved and ask performers to get along. We would ask anyone with loud or blocking performances to move or quiet down. Overbearing performers were spoken to and asked to leave if they did not change how they were doing their act. These requests did not reduce the number of complaints involving performers.

***1061** The new rules had the desired effect, bringing peace and order to what had been a chaotic and disruptive process:

> After the performer permit rules went into effect, Emergency Service rarely received any complaints regarding performers. In general, the permit system is welcomed by everyone. They know there are designated spaces for all different types of performances and that there are rules that everyone must follow. It has eliminated confrontation between performers. There are plenty of spots and they are not in the way of one another.

The majority here manages to strike down almost all of these rules without bothering to give Seattle an opportunity to present evidence justifying them. To that end, my colleagues deploy a number of techniques well designed for this purpose:

1. The majority finds the solution adopted by Seattle Center to be both too broad, maj. at 1045-46, and too narrow, *id.* at 1037, 1043, and so concludes that there's an "imperfect fit" between the rules and the goals the city seeks to achieve. *Id.* at 1043. But the Supreme Court has made it quite clear that time, place and manner regulations need not be perfectly tailored, and that a government body has considerable discretion to fashion regulations as it thinks best: "The validity of such regulations does not turn on a judge's agreement with the responsible decisionmaker concerning the most appropriate method for promoting significant government interests." *United States v. Albertini,* 472 U.S. 675, 689, 105 S.Ct. 2897, 86 L.Ed.2d 536 (1985). Rather, a regulation is valid "so long as [it] promotes a substantial government interest that would

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be achieved less effectively absent the regulation." *Id.; Ward v. Rock Against Racism,* 491 U.S. 781, 799, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989).

Instead of settling for effective regulations, the majority demands perfection. But perfection is hard to find in rules written and applied by mortals. Once judges start looking for imperfections, that is pretty much the end of the story-and of the regulations. No rules written by man can withstand such persnickety scrutiny.

2. The majority also trots out the time-honored technique of declaring that the rules in question don't really solve the problems they're supposed to solve. Maj. at 1041-42. Which reminds me of the quip about economists greeting some item of news with the observation, "That may be so in practice, but is it true in theory?" My colleagues overlook evidence in the record that the rules have *actually* worked-the problems they were designed to solve went away as long as the rules were in effect. *See* p. 1060-61 *supra.*

We are reviewing a grant of summary judgment against the Center; we must view the evidence in the light most favorable to it, and affirm only if there are no disputed issues of material fact. *Lopez v. Smith,* 203 F.3d 1122, 1131 (9th Cir.2000) (en banc). Instead, the majority makes its own findings, such as: the rules "do not promote [Seattle Center's] interests in any significant way," maj. at 1041; "do[ ] not aid in coordinating multiple uses" of Seattle Center, maj. at 1042; and that most street performances pose "no realistic coordination or traffic flow concerns," maj. at 1046. Who needs trials when we can find facts on appeal?

3. My colleagues also come up with solutions of their own, which they claim would better solve the problems. *See, e.g.,* maj. at 1044-45, 1047. But the majority's proffered solutions suffer from the same defects it finds in those adopted by Seattle Center, containing such fudge-words as "unwanted behavior" and "most sought-***1062** after locales." Maj. at 1043, 1045. The majority also suggests that the rules are unnecessary because the Center could solve the problems by "enforc[ing] an appropriately worded prohibition on aggressive behavior." Maj. at 1053; *see also id.* at 1043. Does the majority really mean to say that the Center can't have clear rules about obtaining permits and not trapping captive audiences, but it *can* kick out any street performer it deems "aggressive"?

Fortunately for my colleagues, *their* proposed solutions don't need to pass constitutional muster; they can just toss them out as supposedly superior alternatives. But if the city were gullible enough to follow these suggestions, my colleagues would find reasons to strike down the new rules in the next round of litigation. This artifice can be repeated many times, to the delight of plaintiff and the general enrichment of the legal profession.

The majority plays a shell game when it confidently declares that "[t]he City's asserted interest in coordinating multiple uses of the Center could also be achieved as effectively without the permitting requirement." Maj. at 1045. How is the city to achieve these objectives, in the majority's view? Why, it's by use of the designated locations rule that the majority fails to uphold elsewhere in its opinion. And if I had ham, I could have some very nice ham and eggs, if I had eggs. Sophistries such as these are cold comfort to those who have the actual responsibility for operating an enterprise the size and complexity of Seattle Center.

4. The majority overstates the problems that the rules supposedly cause for the street performers, and minimizes the problems that the street performers caused for the Center and its patrons before the rules were instituted. For instance, the majority repeatedly describes the rules as "sweeping bans" on expressive activity. Maj. at 1053, 1056, 1057. In fact, no one is prevented from speaking; the rules merely regulate the time, place and manner of speech, and very lightly at that. Permits are issued on a non-discretionary, non-discriminatory basis, and the performers may conduct any performance they please, however often they want, at any time

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ite point: that the permit is unnecessary because the Center authorities know exactly who the street performers are. Maj. at 1044 n. 14. The majority can't have it both ways.

"[E]very reasonable construction must be resorted to, in order to save a [rule] from unconstitutionality." *United States v. Buckland,* 289 F.3d 558, 564 (9th Cir.2002) (quoting *Hooper v. California,* 155 U.S. 648, 657, 15 S.Ct. 207, 39 L.Ed. 297 (1895)); *see also Broadrick v. Oklahoma,* 413 U.S. 601, 613, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973) ("Facial overbreadth has not been invoked when a limiting construction has been or could be placed on the challenged[rule]."). My colleagues instead reject every reasonable construction that might get in the way of finding the rules unconstitutional.

* * *

"Public parks are often closely identified in the public mind with the government unit that owns the land. City parks-ranging from those in small towns, like ***1064** Pioneer Park in Pleasant Grove City, to those in major metropolises, like Central Park in New York City-commonly play an important role in defining the identity that a city projects to its own residents and to the outside world." *Summum,* 129 S.Ct. at 1133-34. Seattle has a legitimate-indeed a vital-interest in maintaining the character of the multi-use facility that is the crown jewel of its civic enterprise. If the majority here is right, then Seattle and other municipalities hoping to use their parks to promote civic virtue, neighborliness, hospitality and the peaceful enjoyment of the arts cannot possibly draft a set of rules that will protect visitors, concessionaires and other artists from overly aggressive street performers bent on increasing their own visibility and income by bullying those around them.

But the majority is not right. The rules adopted by Seattle Center are a measured and reasonable response to a real problem; none of them stifles speech in any meaningful way, and none is unconstitutional. There is little I can add to the excellent analysis in Judge Gould's opinion as to the specific rules struck down by the majority. Each of those rules is carefully tailored and narrowly drawn to deal with specific, identified problems that, in the judgment of those charged with operating Seattle Center, impaired the safety, convenience and enjoyment of visitors to the park. And, as Judge N.R. Smith explains, the performance-location rule is particularly wellsuited to the city's legitimate objectives, while the objections to the rule-as to which a trial will now be required-are nothing but the personal preferences of the man who made the rules necessary in the first place.

It is unfortunate that such rules should be needed, as they seem largely designed to legislate civility. But Mr. Berger has been less than civil in his dealings with other performers and the public. The record, for example, references complaints against Berger for catcalling at a parent who refused to allow her children to watch his performance, bringing a child to tears for giving what Berger considered an insufficient donation and threatening and calling obscenities at a Center patron. In maintaining a hospitable campus, the Center management is surely entitled to deter such behavior by individuals profiting off its patrons.

Almost seventy years ago, the Supreme Court in *Cox v. New Hampshire,* 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049 (1941), unanimously upheld a state statute that required an advance permit for anyone wishing to exhibit any "theatrical or dramatic representation" or to conduct any "parade or procession upon any public street or way, and [any] open-air public meeting upon any ground abutting thereon." *Id.* at 571, 61 S.Ct. 762. The Court's reasoning is as valid today as it was then:

> Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses. The authority of a municipality to impose regulations in order to assure the safety and con-

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> venience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend.

Id. at 574, 61 S.Ct. 762. So long as the licensing board exercised its authority in a viewpoint-neutral, even-handed, consistent way, and the fee charged was reasonable, *id.* at 576-77, 61 S.Ct. 762, the permit requirement was constitutional, *id.* at 576, 61 S.Ct. 762:

> If a municipality has authority to control the use of its public streets for parades or processions, as it undoubtedly has, it ***1065** cannot be denied authority to give consideration, without unfair discrimination, to time, place and manner in relation to the other proper uses of the streets. We find it impossible to say that the limited authority conferred by the licensing provisions of the statute in question as thus construed by the state court contravened any constitutional right.

Cox dealt with parades on public streets, but the Court reached the same result when an identically-worded city ordinance was applied to require a license to hold a religious meeting in a public park:

> The principles of the First Amendment are not to be treated as a promise that everyone with opinions or beliefs to express may gather around him at any public place and at any time a group for discussion or instruction. It is a *non sequitur* to say that First Amendment rights may not be regulated because they hold a preferred position in the hierarchy of the constitutional guarantees of the incidents of freedom. This Court has never so held and indeed has definitely indicated the contrary. It has indicated approval of reasonable nondiscriminatory regulation by governmental authority that preserves peace, order and tranquillity without deprivation of the First Amendment guarantees of free speech, press and the exercise of religion. When considering specifically the regulation of the use of public parks, this Court has taken the same position.

Poulos v. New Hampshire, 345 U.S. 395, 405-06, 73 S.Ct. 760, 97 L.Ed. 1105 (1953). *Poulos* included an admonition that my colleagues would do well to heed: "There is no basis for saying that freedom and order are not compatible. That would be a decision of desperation. Regulation and suppression are not the same, either in purpose or result, and courts of justice can tell the difference." *Id.* at 408, 73 S.Ct. 760.

Twelve years later, in the other *Cox* case, Justice Goldberg, writing for the Court, emphasized the continued validity of *Cox* and *Poulos* and the importance of rules in maintaining the very concept of civil liberties:

> The rights of free speech and assembly, while fundamental in our democratic society, still do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time. The constitutional guarantee of liberty implies the existence of an organized society maintaining public order, without which liberty itself would be lost in the excesses of anarchy. The control of travel on the streets is a clear example of governmental responsibility to insure this necessary order. A restriction in that relation, designed to promote the public convenience in the interest of all, and not susceptible to abuses of discriminatory application, cannot be disregarded by the attempted exercise of some civil right which, in other circumstances, would be entitled to protection.
>
> ....
>
> It is, of course, undisputed that appropriate, limited discretion, under properly drawn statutes or ordinances, concerning the time, place, duration, or manner of use of the streets for public assemblies may be vested in administrative officials, provided that such limited discretion is "exercised with 'uniformity of method of treatment upon the facts of each application, free from improper or inappropriate considerations and from unfair discrimination' ... [and with] a

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'systematic, consistent and just order of treatment, with reference to the convenience of public use of the highways....' " *Cox v. New Hampshire, supra,* at 576, 61 S.Ct. 762. *See Poulos v. New Hampshire, supra.*

***1066** *Cox v. Louisiana,* 379 U.S. 536, 554, 558, 85 S.Ct. 453, 13 L.Ed.2d 471 (1965) (alterations in original).

Cox v. New Hampshire and *Poulos* have never been overruled, so far as I know; indeed, the Court has built on them. *See, e.g., Ward,* 491 U.S. 781, 109 S.Ct. 2746, 105 L.Ed.2d 661 (upholding New York's sound-amplification guideline in Central Park); *Heffron v. Int'l Soc'y of Krishna Consciousness, Inc.,* 452 U.S. 640, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981) (state's interest in maintaining the orderly movement of the crowd at annual state fair sufficient to support requirement that religious group confine its distribution, sales and solicitation activities to a fixed location); *Taxpayers for Vincent,* 466 U.S. 789, 104 S.Ct. 2118, 80 L.Ed.2d 772 ("municipalities have a weighty, essentially esthetic interest in proscribing intrusive and unpleasant formats for expression").

The majority turns up its nose at *Cox* and *Poulos,* on the ground that "both cases preceded the development by the Supreme Court of specific time, place and manner standards," maj. at 1042-43, but the Supreme Court recently relied on them in *Thomas v. Chicago Park District,* 534 U.S. 316, 122 S.Ct. 775, 151 L.Ed.2d 783 (2002), where it (again unanimously) upheld a licensing requirement for any activity in a public park that exceeded 50 participants. In so doing, the Court reiterated the distinction between permits designed to censor and those designed to regulate competing uses in public areas:

"[T]he [permit] required is not the kind of prepublication license deemed a denial of liberty since the time of John Milton but a ministerial, police routine for adjusting the rights of citizens so that the opportunity for effective freedom of speech may be preserved." *Poulos v. New Hampshire.* Regulations of the use of a public forum that ensure the safety and convenience of the people are not "inconsistent with civil liberties but ... [are] one of the means of safe-guarding the good order upon which [civil liberties] ultimately depend." *Cox v. New Hampshire.*

Id. at 323, 122 S.Ct. 775 (citations omitted, alterations in original). The Court didn't ask why the city couldn't let all gatherings go forward, and then break up those that got out of hand. Rather, the Court accepted the city's estimate that a gathering of more than 50 people could cause problems and upheld the permit requirement.

Unlike the circuit opinions on which my colleagues rely, these Supreme Court cases-an unbroken line spanning more than six decades-are controlling authority, and we are bound to follow them. Applying these cases to the facts before us, I note that Seattle Center is the type of public gathering place that the Court dealt with in *Poulos, Ward, Heffron, Thomas* and *Summum.* The concerns that gave rise to the permit requirement and other regulations here are much the same as in those cases, and in *Cox v. New Hampshire* and *Vincent* as well. Despite the majority's obvious desire to reach the opposite conclusion, maj. at 1037, 1042 n. 9, we are bound to assume that the permit requirement has been administered in a neutral fashion and does not give Seattle Center authorities undue discretion, as Berger has never contended otherwise.

To me, this makes the case before us materially indistinguishable from these Supreme Court cases. The only significant differences cut sharply in favor of upholding the permit requirement. First, the rules here are considerably less restrictive. As the majority recognizes, "the permitting schemes at issue in *Cox* and *Poulos* both required applicants to 'specify the day and hour' that they planned to hold their parade or public meeting." Maj. at 1042. Here, a single permit entitles the ***1067** holder to perform at any time he wishes between 11:00 a.m. and 10:00 p.m., for as long as he wishes, in any of the

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designated locations, for an entire year. The majority somehow finds that this weighs *against* the Center, taking it as proof that the permits do not "further the government's interest in coordinating multiple uses of limited public space." *Id.* This is very strange reasoning. If the Center believes that it doesn't need a more restrictive permit to serve its ends, who are we to say that the restrictions are inadequate? The majority's clumsy effort to distinguish away the *Cox* line of cases stands the concept of narrow tailoring on its head.

The majority also criticizes the permit requirement because, unlike in *Thomas,* it's not limited to performances attracting a certain minimum audience. Maj. at 1046-47, 1057-58. But the majority overlooks *Poulos v. New Hampshire,* where the Court upheld a permit requirement for groups of any size wishing to hold an "open air public meeting" in a city park. 345 U.S. at 397 n. 2, 402-08, 73 S.Ct. 760; *see also Cox v. New Hampshire,* 312 U.S. at 571-72, 576, 61 S.Ct. 762. *Thomas,* in turn, relied on *Poulos* and *Cox*. 534 U.S. at 323, 122 S.Ct. 775.

The majority's distinction is nonsensical, in any event. When a permit is required for public meetings, as in *Thomas* and the other cases the majority relies on, the organizers can be expected to know, based on the degree of public interest, advertising and outreach, how large a group is likely to show up. The license the Center issues here is quite different: It is good for an entire year and entitles the bearer to perform hundreds or even thousands of times. The size of the crowd on any given day, at any particular hour, may be hard to predict, but it doesn't matter, as long as the Center reasonably believes that on *some* days, at *some* hours, a sufficiently large crowd may gather to impair the efficient operation of the Center.

It's ridiculous to suggest that performers may be required to obtain permits if the crowd that gathers to see them is of a certain size, but not if it is not. How is anyone to know in advance? Depending on the performer's popularity, the day of the week, the hour of the day and the availability of other attractions, a larger or smaller crowd may gather. What is the performer to do, if he doesn't have a permit? Must he count the crowd to make sure it doesn't exceed the limit and ask some to leave if he realizes there are too many? Should he stop the performance until the crowd disbands? When dealing with a performer who may give 20 or 30 performances a day, 20 or 25 days out of every month, using a numerical limit on the size of the audience, as the majority envisions, just doesn't make any sense; it is certainly not constitutionally required. The city can reasonably presume that when people engage in activities designed to gather a crowd, they will get a crowd often enough to render the activity the legitimate object of regulation.

The simple fact the majority overlooks is that street performers like Berger are not merely citizens who wish to use the park as a forum for public expression or religious worship on an occasional basis; they are operating a business and earning a living from these activities. They are repeat players-a continuing presence at the Center-taking advantage of the crowds generated by Seattle Center's organization and industry to promote their own economic well-being. To be sure, the business that these performers engage in does involve communicating with the public, and can be characterized as art or at least craft, so it deserves First Amendment protection. But there are many businesses whose object is communicating with the ***1068** public: theaters, cinemas, art galleries, record shops, night clubs, advertising agencies, investment advisors-the list is long and varied. No one has ever suggested that theaters, say, are exempt from fire laws, building codes, labor-relations regulations, taxes or the multitude of other non-content related laws that are applicable to any other business. The First Amendment simply doesn't sweep so far. *See, e.g., One World One Family Now v. City & County of Honolulu,* 76 F.3d 1009 (9th Cir.1996) (upholding a ban on sidewalk sale of message-bearing t-shirts).

Berger and other street performers are actors without a theater, circus performers without a tent.

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Not having a fixed facility, they perform in open spaces where people gather in the expectation that those who watch them will reward them. And this is not an idle hope: Rewarding street performers whose act one watches is a bit like tipping at hotels and restaurants-a social obligation that is not legally enforceable but many people feel bound to honor.

The commercial aspects of the street performer trade, which my colleagues overlook, set up the dynamics that have given Seattle Center cause for concern. A street performer's income depends on the crowd he is able to draw, so location is a very important issue-hence the strife about who gets to perform at the choicest spots. The economic incentive also can lead to aggressive solicitation of patrons, and rude remarks when patrons give what the performer believes is an insufficient donation. The economic incentive may lead street performers to find captive audiences-say, people standing in line-and start performing near them, hoping to guilt them into making a donation even if they have no particular interest in the performance.

Social conventions often create very strong obligations-such as when one leaves a sizable tip after receiving lousy table service to avoid an unpleasant reaction from the waiter-and people standing in line who have had the "benefit" of a street performance that they did not seek out or enjoy may feel pressured to cast down a dollar or two, just so others won't consider them to be moochers. The patrons may nevertheless feel put upon, and their Center experience may be tainted by having been buffaloed into this transaction.

The Supreme Court in *Summum* drew a distinction between traditional public speakers who, "no matter how long-winded, eventually come to the end of their remarks," 129 S.Ct. at 1137, and monuments in public parks, which "endure." *Id.* Because monuments are a permanent fixture of the facility, they "monopolize the use of the land on which they stand and interfere permanently with other uses of public space." *Id.* Street performers, like plaintiff here, fall somewhere in between these two extremes: They do go home at the end of the day (like occasional public speakers), but they come back the next day and the day after that, on a permanent or semipermanent basis. Each performance may attract a relatively small audience compared to a speech or a rally, but each performer will be constantly gathering crowds. A facility like Seattle Center can't accommodate an unlimited number of such performers; if there are too many at the same time, or at the same location, they begin to "interfere permanently with other uses of public space." *Id.* Cities therefore have a far greater interest in regulating the activities of permanent street performers than occasional political or religious speakers.

If, as the Supreme Court has held, municipalities have the authority to regulate eleemosynary and volunteer activities-even bible classes-in public spaces, to preserve the safety and convenience of individuals using the public facility, then ***1069** surely they have the authority to regulate street performers, who are operating small businesses within a complex that the city maintains and nurtures. My colleagues in the majority eschew this obvious conclusion by means of two arguments, neither particularly persuasive.

First, my colleagues take the view that the permit requirement is invalid because it serves no legitimate purpose, but they are mistaken, as Judge Smith persuasively demonstrates in his separate opinion. Smith at 1086. I note, to begin with, that when the Supreme Court *has* upheld permit requirements, it has not demanded a particularly rigorous, or any, justification for them, relying instead on the obvious and common-sense reasons to require a permit. In *Cox v. New Hampshire,* the court merely referred to "[t]he obvious advantage of requiring application for a permit" with no suggestion that this advantage had to be proven up to any degree of certainty. 312 US. at 576, 61 S.Ct. 762. In *Poulos* and *Thomas,* the Court made no reference whatsoever to the efficacy of the permit requirement. In all three cases, the Court's focus was on whether the permit was

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administered in a content-neutral, objective and non-discriminatory fashion and, having satisfied itself that it was, the Court did not consider efficacy to be an independent constitutional requirement. *See also Heffron,* 452 U.S. at 650-53, 101 S.Ct. 2559 (not questioning efficacy of requirement that religious group operate from a fixed location at state fair).

It's thus not clear that, when considering a licensing scheme for holding a public event such as a bible study, performance or parade in a place where there are competing or inconsistent uses, the licensing authority has to make a very convincing showing-or any showing at all-that the license serves the desired purpose. We can assume, as has the Supreme Court on more than one occasion, that the city wouldn't devote the time and resources to administering such a scheme unless it served to reconcile the various competing uses.

But if a purpose there need be, it is pretty obvious what it is here: To deter unruly behavior on the part of street performers by denying them the cover of anonymity, and to give Seattle Center authorities a means of holding them accountable when they do misbehave. To start with the obvious, requiring a street performer to obtain a permit gives Seattle Center authorities an address where they can write to him if issues arise; there is such a letter, dated October 3, 2003, in the record. Without such an address, how do the authorities proceed when they want to give the performer notice of an alleged violation? How do they notify him of their decision?

Requiring a street performer to have a license and display a badge, which can be suspended or revoked, also facilitates the imposition of discipline. If the performer is found guilty of a violation, the badge can be taken away for the duration of any suspension, or permanently, and security officers can then enforce the performance ban by stopping performances by anyone who does not display a badge. This eliminates the need to check records or settle disputes about whether or not a suspension is in effect.

Requiring a badge also makes it more likely that individuals aggrieved by the performer's misconduct will be willing and able to report it. The badge informs the public that the performer can be reported to Seattle Center if he misbehaves. Members of the public are far likelier to lodge a complaint against someone with an official badge than someone who appears to be an independent private party. The badge in this situation serves the same purpose as ***1070** badges and name-tags worn by law enforcement officers, supermarket clerks and hotel staff-it is a way of making misconduct less likely by significantly increasing the risk that it will be reported.

The requirement that the performer provide a name and display a badge also avoids confusion and misunderstandings. My colleagues in the majority may think it's perfectly OK to identify performers by such colloquial descriptions as "the hula-hooping magician" or "the puppet guy," maj. at 1044 n.14, but that's no way to run a monorail. What if the puppet guy is hit with a suspension and claims that the culprit was really the marionette guy, or that the hula-hooping magician was really the balloon-animal magician? The complainants in such cases may be tourists from another state, long gone from the scene before the dispute can be resolved. A badge with a name and picture avoids such misunderstandings and makes it far less likely that street performers will misbehave-which, of course, is the ultimate objective.

The Center could, as the majority suggests in places, call the police when street performers seriously misbehave, but it is hardly conducive to maintaining a pleasant atmosphere in the park to have the man in the clown suit hauled off in handcuffs. And how many people want to spend their vacation getting into a head-to-head confrontation with someone obnoxious, or tracking down security personnel and filling out police reports? Most people who are victims of inappropriate or rude behavior register their protest with their feet: They walk away from the place of the unpleasantness and don't come back. And they tell their friends and

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neighbors in Pittsburgh and Wilkes-Barre that this is not where they should spend their vacation dollars.

And, of course, much inappropriate behavior, like that plaintiff is accused of, *see* p. 1064 *supra,* falls far short of a criminal offense. I doubt that the Center can have someone arrested for calling a visitor a "M***** F*****"-as plaintiff is charged with doing. The majority's suggestion that police can demand identification and an address from misbehaving street performers, maj. at 1044-45, suffers from the same problem: Police can demand identification only when they have "reasonable suspicion to believe the suspect was involved in criminal activity," not when they believe that someone's been obnoxious and disruptive. *Hiibel v. Sixth Judicial Dist. Ct. of Nev.,* 542 U.S. 177, 184, 124 S.Ct. 2451, 159 L.Ed.2d 292 (2004). Police who tried to force Mr. Berger to identify himself when he throws one of his hissy fits would soon find themselves as defendants in a civil rights lawsuit.

And yet, Seattle Center "play[s] an important role in defining the identity that [the] city projects to its own residents and to the outside world." *Summum,* 129 S.Ct. at 1134. Misbehavior by performers who are a constant presence at the Center is a disaster in the making for an enterprise whose mission it is "to delight and inspire the human spirit in each person and bring us together as a rich and varied community." http:// www. seattlecenter. com/ information/ default. asp. It may be true that public parks need not reflect "a 'Truman Show' version of pristine placidity," maj. at 1059, but the First Amendment surely doesn't require that our parks resemble *The Aristocrats* either.

Operating a huge enterprise like Seattle Center, one that caters to the needs and wants of tens of thousands of visitors on an average day, is an enormously difficult and complex task. Maintaining the goodwill of the public and support of the community over the decades is at the heart of that success. When the people responsible for that enterprise tell us that a content-neutral,***1071** nondiscriminatory permitting requirement has been effective in solving a serious problem that has been eroding that goodwill, it takes considerable hubris for judges to say they know better.

The second theory under which the majority finds fault with the permit requirement is the supposed impermissibility of "single-speaker registration requirements." Maj. at 1037-40. This is a curious theory, because none of the cases on which my colleagues rely makes any reference to the number of speakers involved, and certainly none mentions the size of the group as being dispositive. All of the cases on which the majority relies were solicitation cases; one can assume that the group of speakers involved would have been small by the nature of the activity. But the theories under which the Court struck down the permit requirements in those cases were varied and had nothing to do with the size of the group.

In *Cantwell v. Connecticut,* 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940), for example, the Court struck down a state statute which forbade the solicitation of money for religious causes unless the solicitors obtained a certificate from a government official, who was required to determine that the cause in question was, indeed, religious. The Court struck down the requirement because the statute authorized a government official "to withhold his approval if he determines that the cause is not a religious one. Such a censorship of religion as the means of determining its right to survive is a denial of liberty protected by the First Amendment...." 310 U.S. at 305, 60 S.Ct. 900. The size of the soliciting group was not even mentioned; indeed, the Court made it clear that "general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose." *Id. Cantwell* undermines rather than supports the majority's theory.

This is true of each of the other cases the majority draws upon for its theory, including *Watchtower*

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Bible & Tract Society of N.Y., Inc. v. Village of Stratton, 536 U.S. 150, 122 S.Ct. 2080, 153 L.Ed.2d 205 (2002), on which the majority places the heaviest reliance. *Watchtower* was a case involving door-to-door canvassing by a religious group. In striking down a requirement that the canvassers first obtain a permit from the town authorities, the Court pointed to a number of factors, none of which had anything to do with the number of canvassers, among them "the historical importance of door-to-door canvassing and pamphleteering as vehicles for the dissemination of ideas," *id.* at 162, 122 S.Ct. 2080; that the canvassers were not engaged in the solicitation of funds, *id.* at 165, 122 S.Ct. 2080; the legitimate interest of some canvassers in anonymity, *id.* at 166, 122 S.Ct. 2080; that the advance permit requirement inhibits some spontaneous speech, *id.* at 167, 122 S.Ct. 2080; and that residents could ward off all canvassers by posting legally enforceable "no solicitation" signs, which petitioners promised to respect, *id.* at 168, 122 S.Ct. 2080. None of these factors is even remotely applicable to our case: Balloon animals and magic tricks don't feature the dissemination of ideas, street performers do solicit funds, sometimes quite aggressively, and there is no legally enforceable way for patrons to keep Berger from trying to lure their children to come watch him or prevent him from insulting them when they resist. Finally, despite the majority's repeated assertions otherwise, maj. at 1038 n. 5, 1043-44, street performers have little interest in anonymity. Hula-hooping magicians and puppeteers are hardly advocates for "unpopular causes," ***1072***Watchtower Bible,* 536 U.S. at 167, 122 S.Ct. 2080; they are entertainers, and gaining public recognition will only help their businesses. *Watchtower* and our case have about as much in common as bananas and boomerangs.

The most one can say about the cases that form the backbone of the majority's analysis is that the Court has been reluctant to approve restrictions on the rights of individuals and small groups to engage in discourse with other individuals and small groups-the kind of interactions that always arise in solicitation, canvassing or hand-billing cases. This is not really surprising, because individual-to-individual and small group-to-small group interactions generally do not pose the sort of problems that time, place and manner rules are designed to deal with. Moreover, they are very much like the interactions almost everyone has during the course of his daily life-striking up conversations with others on the street, in his neighborhood or in public places. It may thus be fair to infer a presumption against laws prohibiting such small-group interactions.

But it is a wholly different matter to derive some sort of rule that prohibits-or strongly discourages-regulation of speech by a single individual, regardless of the size of his expected audience or the disruption he may cause. Nothing in the Supreme Court's caselaw supports any such proposition, and there is much to refute it. Take the following examples, which strike me as so obvious that no case citation is necessary:

- A municipality prohibits people from falsely yelling fire in a crowded theater. Is there a constitutional exception for a single individual? I don't think so. Why? Because the effect of the single speaker on the crowd of people thrown into panic can be disastrous.

- A famous civil rights leader plans to hold a speech at the Lincoln Memorial; the speech is eagerly anticipated and half a million or more people are expected to attend. According to the majority's flawed theory, the city of Washington could not require the speaker to register in advance, or give the city notice that a large audience is expected. Indeed, any number of independent single speakers would be entitled to show up unannounced and give their speeches at the very same time and place. There's nothing in the Supreme Court's caselaw that remotely supports that proposition.

- Yo-Yo Ma is probably the greatest cellist of our time, and a free concert for the benefit of the people of Los Angeles would surely be greeted

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with enthusiasm. But if Mr. Ma wanted to set up his cello in the third lane of the West-bound Santa Monica Freeway adjacent to the Robertson exit, I have no doubt that the California Highway Patrol could engage in prior restraint by preventing him. That Yo-Yo Ma is a single artist of remarkable talent would have no effect whatsoever on that result.

• Mr. Nez, who lives in Pasadena, wants to hold a parade celebrating the Festival of Noses. And he wants to follow the route that is followed every year by another parade with a very similar name-starting north on Orange Grove Avenue near California, then turning east on Colorado for about 5 miles. Unfortunately for Mr. Nez, no one else shares his enthusiasm, so he decides to hold a one-man parade, carrying a giant paper mache replica of Jimmy Durante's head. Having read the majority's opinion, he believes that he needs no parade permit since he is, after all, a single performer. So, about 9 a.m. on January 2, he dons a ***1073** top hat and tails, holds high the effigy of The Schnozz and starts walking north on Orange Grove straddling the double yellow line. My guess is that the Pasadena police would pick him up and give him a jaywalking ticket (or worse) long before he got to Colorado. His First Amendment defense would get about as far as his parade.

I could go on, but these "silly" examples, maj. at 1058, are enough to put to rest the fatuous notion that single speakers are entitled to favorable treatment under the First Amendment. Rather, the decision always hinges on the interaction between the speaker and the activities affected by him or his speech. If you go to the desert, you can shout "fire" as loudly and as often as you wish. You can bring a thousand friends with you and all of you can shout "fire" day and night, in unison, in sequence or to the rhythm of Bolero. You can sing about cesium and recite poems about arson; you can arrange a parade celebrating fire, or noses or whatever you wish. So long as there's no one to be bothered, there's little the government can or should be able to do to stop you. But if you are in the city, if you are at a mall, if you are at a stadium where thousands of people are crowding onto moving escalators, then we can reasonably expect you to be much more circumspect about what you say and where you say it, because the effect on others may be disastrous.

Context is everything in First Amendment analysis and the majority's single-speaker rule fails because it doesn't take context into account. Even if, as the majority suggests in places, its single-speaker rule would only apply to speakers who attract audiences of less than 75 or less than 100, maj. at 1046, 1058, any such rigid numerical rule will fail because it makes no account for the performance's effect on others. The performances by Mr. Ma and Mr. Nez, for instance, would be seriously disruptive whether they gathered a large audience or no audience at all. In deciding whether Seattle Center can require advance registration of street performers, it matters not at all whether they involve a single performer, like plaintiff, two jugglers or twelve lords-a-leaping. What matters is that street performers are out for donations, and donations increase with the size of the crowd the performers attract. Thus, attracting crowds is not merely an unforeseen by-product of street performing, it is its sine qua non: A street performer who never gathers an audience would give up the pursuit very quickly.

Crowds, of course, are worrisome when dealing with large groups of people moving through a restricted area like Seattle Center and thus are a legitimate thing for the authorities to be concerned about. They can also legitimately be concerned about how performers interact with the crowds they attract, and the effect they have on the public goodwill which is, after all, the lifeblood of the Center's mission. The regulations the Center put into place to address this problem are sensible and measured. There is no evidence whatsoever that the rules have been applied in an oppressive or discriminatory manner, that they have been enforced against teen-

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agers strumming their guitars at family picnics, or against people whistling while they walk, or against political canvassers.

All of these are figments of the judicial imagination-a fertile imagination, to be sure, but woefully out of touch with the realities of running a complex enterprise which brings joy to millions of people a year. By focusing on the largely imaginary First Amendment injuries which might be suffered by largely imaginary people, my colleagues impair the First Amendment rights of the millions of actual people who come to Seattle Center to see, to hear, to learn, to enjoy, without being ***1074** subjected to the stress of dealing with overly-aggressive street performers who shout obscenities and send young children off crying. There are times when the best thing judges can do is to butt out; this is surely one of them.

GOULD, Circuit Judge, with whom Chief Judge KOZINSKI and Judge TALLMAN join, dissenting:
I dissent from the majority's invalidation of the permit and badge requirements, for the reasons stated by my colleague Chief Judge Kozinski in his dissent. The permit scheme is a reasonable response to the City of Seattle's need for order to maintain the efficacy and desirability of Seattle Center for its citizenry and visitors. I write separately to explain my disagreement with the majority's conclusions relating to the Seattle Center Rules regarding required performance locations, the allowing of only passive solicitation, and the preclusion of speech activities including performances within thirty feet of captive audiences engaging in other events at Seattle Center. These Rules are reasonable time, place, and manner restrictions on speech because they are content-neutral restrictions that are narrowly tailored and leave open ample alternative means of communication. I conclude that separate attention to each of these restraints is warranted.

In Section I, I first comment on the substantial value of street performance, while acknowledging the City's superordinate need to regulate it in the interest of order. In Section II, I explain why the performance location rule is a reasonable time, place, and manner restriction that should be upheld and why Berger's evidence stating otherwise is insufficient to preclude summary judgment in favor of the City. In Section III, I explain why the passive solicitation rule is also a reasonable restraint on the manner of solicitation and should be upheld. In Section IV, I explain why Seattle's rule protecting captive audiences should also be upheld in light of the special multi-purpose nature of Seattle Center.

By invalidating the City of Seattle's reasonable time, place, and manner restraints on solicitation and performances to captive audiences, and by generating a fictitious fact issue on performance location, the majority utterly fails to give due weight to the valid interests of the City of Seattle in protecting a smoothly running Seattle Center. These include the City's interests in "traffic control" when competing street performers want to use the same place for their expression, and the regulation of street performers who communicate at Seattle Center in circumstances that may interfere with the Center's other activities. *See* Thomas I. Emerson, *Toward a General Theory of the First Amendment,* 72 YALE L.J. 877, 946-47 (1963) (stating that by regulating "traffic control" a government can "maintain orderly expression and thereby promote freedom of expression"). The majority's holding impairs the value of Seattle Center to Seattle's residents, to visitors from worldwide locations, and to the organizations that make Seattle Center their home. Its holding is not needed to protect the free and full exchange of ideas that helps to keep our society vital. Therefore, I respectfully dissent, and elaborate my views.

I

The value of the speech from street performers impacted by the City's permit scheme is significant, but Rules F.1 and F.2 are nonetheless constitutional because of the need of the City to maintain order at this gem of a civic attraction. The City's interests are well articulated by Chief Judge Kozinski, but I

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will expand on the speech value of the street performances: Speech in the form of music, drama, ***1075** or performance has played a vital role in our society and deserves First Amendment protection. Some of our culture's most valued written works originated as spoken performances. For example, what we know now as Homer's *Iliad* and *Odyssey* likely were originally preserved through verbal performances. *See* Mark W. Edward, *Homer and the Oral Tradition,* 18/1 ORAL TRADITION 65 (2003) ("By now the facts about the nature of the oral features ... in Homer are well known and (on the whole) not controversial."); *see generally* Bruce Louden, THE ILIAD: STRUCTURE, MYTH and MEANING (Johns Hopkins University Press 1996). Music likewise has helped to develop our Western civilization. *See, e.g.,* Paul Henry Lang, MUSIC IN WESTERN CIVILIZATION XIX (W.W. Norton & Co.1997) ("Every civilization is a synthesis of man's conquest of life. Art is the ultimate symbol of this conquest, the utmost unity man can achieve."). Even if our society today does not always hold street performers in the highest of esteem, these performers continue the tradition of transmitting culture, as done by the traveling minstrels, talebearers, and acting troupes that have helped to develop what we consider our Western culture. It would be easy to underestimate the value provided by these performers, or the accompanying need for First Amendment protection, if we only looked at a single performer and especially if we had little affinity for that person's performance. However, that such performances are possible in the aggregate bestows value on a society.

The City's permit system and related regulatory restraints may require some individuals wishing to express themselves through spontaneous performance to wait until they have gained a permit and channeled their performance into a permitted location. It is true that the Supreme Court, while reviewing a restraint on private solicitation, has criticized a permit requirement in part because "a significant amount of spontaneous speech" was "effectively banned" by that requirement. *Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton,* 536 U.S. 150, 167, 122 S.Ct. 2080, 153 L.Ed.2d 205 (2002). It might also be conceded that delaying speech takes some toll on the speaker. *See* Vincent Blasi, *Toward a Theory of Prior Restraint: The Central Linkage,* 66 MINN. L. REV. 11, 82 (1981) ("[E]ven short delays take from speakers the power to determine precisely when to disseminate their communications. When government possesses the power to delay communications that it cannot suppress, speakers cannot be said truly to control, in the sense required for autonomy, their own communicative endeavors."). Nonetheless, the Supreme Court has upheld permit requirements that seek to regulate traffic control and maintain order. *See Thomas v. Chi. Park Dist.,* 534 U.S. 316, 122 S.Ct. 775, 151 L.Ed.2d 783 (2002) (upholding permit requirement for large events in public parks); *Cox v. New Hampshire,* 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049 (1941) (upholding permit requirement for parades on public streets). Every permit requirement deters some spontaneous speech. That the Supreme Court has routinely allowed permit schemes outside of the solicitation and small-group interaction contexts shows that a harm to spontaneous speech is not enough to render a permit requirement unconstitutional. Wandering musicians, poets, actors, or other street performers who come to Seattle and wish to perform a protest song or reading or drama can be required to delay their speech until they comply with the reasonable rules that the City of Seattle has established for public performance in its important Seattle Center venue.

The value to society of informal speech presented through performance of music, poetry, and drama is great. It can keep ***1076** us alert and open to societal criticisms of practices that require change. At the same time, for the reasons well stated by Chief Judge Kozinski, the need for and value of a permitting system regulating such speakers is superordinate in this context because of the unique nature of Seattle Center. Indeed, the speakers themselves benefit from the maintenance of an orderly system

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that deters interference with their performances and disputes over desirable performing locations. It would be nice to think that all of the important interests of the City of Seattle can be accommodated by reasonable time, place, and manner restrictions, but it is a reckless gamble to so conclude and I cannot say that the City should not rationally be able to protect itself, and its citizens and visitors, through the permit process. Unless and until the Supreme Court stands opposed to such permitting for such a unique venue, I conclude that a permit process should be within the City's arsenal of tools for managing order at Seattle Center.

II

I next address the performance location rule, Seattle Center Rule F.5, which I view as a reasonable time, place, and manner restraint on which the majority's analysis goes astray. As the Supreme Court declared in *Ward v. Rock Against Racism,* the government may impose reasonable time, place, and manner restrictions on speech. These restrictions must be "justified without reference to the content of the regulated speech." They must be "narrowly tailored to serve a significant governmental interest." And they must "leave open ample alternative channels for communication." *Ward,* 491 U.S. 781, 791, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989). For the performance location rule, the key issues arising under this formulation of doctrine are whether the restraint permits sufficient alternate means of communication, and whether it is narrowly tailored to meet its ends without gratuitously impeding speech.

Rule F.5 is constitutional. If it were to decide otherwise, the majority would impose an improvident burden on cities seeking to regulate speech locations in the future. It would go far to read "place" out of the general accommodation for reasonable time, place, and manner restrictions. What we should be asking ourselves here are fundamental questions about how Rule F.5 affects speech. It is, in my view, a paradigm restraint on location. It funnels performance speech into sixteen locations near the most popular Seattle Center attractions, where the performers will be readily visible but should not impair Seattle Center's ability to welcome guests, both resident and tourist, who want to sample its attractions. The performance location rule does not in any way say what performers can or cannot say or do, it merely ensures they will present their speech in locations that do not unduly impede the commerce of the City. Thus alternative means of communication are ample and secured. At the same time, I conclude the restraint is sufficiently and narrowly tailored. It does not gratuitously impede any speech, it just channels it to a convenient place to accommodate both the speaker's interest and the interests of Seattle Center patrons. What is wrong with this? Nothing, under any balanced First Amendment analysis.

The City has established that without the performance location rule there would be a likelihood of conflict and chaos that will interfere with Seattle Center's important functions. The undisputed evidence in the record shows that before the location restrictions were imposed street performers often set up in close proximity to one another, leading to territorial disputes and altercations. Street performers also ***1077** set up in locations that could not accommodate the gathering audience or that blocked pedestrian access. The City received weekly complaints about pedestrian access problems. This evidence satisfies our First Amendment requirement "that municipalities provide tangible evidence that speech-restrictive regulations are necessary to advance the proffered interest in public safety." *Menotti v. City of Seattle,* 409 F.3d 1113, 1131 (9th Cir.2005) (quotation omitted). The performance location rule would help eliminate confrontations between street performers over location and would ensure that pedestrian walkways remain clear.[FN1] *Cf. Cox v. Louisiana,* 379 U.S. 536, 554-55, 85 S.Ct. 453, 13 L.Ed.2d 471 (1965) (stating that "[g]overnmental authorities have the duty and responsibility to keep their streets open and available for movement" and that "[a] restriction in that relation, designed to promote the public convenience in

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the interest of all, and not susceptible to abuses of discriminatory application, cannot be disregarded by the attempted exercise of some civil right which, in other circumstances, would be entitled to protection"). Accordingly, the Rule meets the Supreme Court's narrow tailoring requirement that a "regulation promotes a substantial government interest that would be achieved less effectively absent the regulation." *Ward,* 491 U.S. at 799, 109 S.Ct. 2746 (quoting *United States v. Albertini,* 472 U.S. 675, 689, 105 S.Ct. 2897, 86 L.Ed.2d 536 (1985)). [FN2]

FN1. Thus the performance location rule serves both of the traffic control interests identified by Professor Emerson. Emerson identifies two cases in which the government has a legitimate interest in traffic control. One situation occurs "where two or more groups desire to hold a parade, demonstration or meeting in the same place," and the other "becomes necessary in situations where a group wishes to engage in some form of communication at a place which will interfere with the normal flow of traffic or the activities of other persons engaged in other affairs." *See* Emerson, 72 YALE L.J. at 947.

FN2. In its attempt to avoid summary judgment favoring the City on this Rule, the majority adopts a counterintuitive conception of what realistically is meant by the term "street performer." As the majority sees it, this term would include Gene Kelly Singing in the Rain or any person who whistled while they worked or whistled while they walked. I agree with Chief Judge Kozinski that there is no realistic danger the City will interpret its definition so broadly and that the City's limiting construction cures any perceived danger. The record generated in the process of adopting the Rules shows what the City was aiming at, which certainly wasn't an impromptu version of Singing in the Rain or the casual whistler. The language used by the City in Rule F.5 does not reasonably contemplate such a broad definition, and so the majority's argument about an overbroad and thus constitutionally invalid definition of "street performer" should not be credited.

Contrary to the majority's view that there are unresolved fact issues on this matter, the City has shown that the performance location rule provides ample alternative channels for communication. All that is needed to satisfy the "ample alternatives" test is "that the government refrain from denying a reasonable opportunity for communication." *Menotti,* 409 F.3d at 1141 (quotation omitted). The City has met its burden. The record includes a map of the performance locations, which shows that the locations are adjacent to major pedestrian thoroughfares and are situated near all of the most popular Seattle Center attractions, including the Space Needle, KeyArena, Pacific Science Center, and the Experience Music Project. In response, Berger makes two unsupported statements that some locations are far from walkways or are occasionally blocked by equipment. Berger does not identify the specific locations to which he objects, and he does not directly dispute the authenticity of the City's map. "A summary judgment motion cannot be defeated by ***1078** relying solely on conclusory allegations unsupported by factual data," *Taylor v. List,* 880 F.2d 1040, 1045 (9th Cir.1989), but that is precisely all that Berger provides. The majority nonetheless recites that Berger's conclusory evidence is sufficient to defeat summary judgment and even creates a reasonable inference of unconstitutionality. Its conclusion is inconsistent with our summary judgment standard as it has been explained by the United States Supreme Court and elaborated in our precedent. *See Lujan v. Nat'l Wildlife Fed'n,* 497 U.S. 871, 880, 110 S.Ct. 3177, 111 L.Ed.2d 695 (1990) (stating that although Fed.R.Civ.P. 56(e) allows a party to defeat summary judgment through affidavits that establish a genuine factual issue, "[t]he object of this provision is not to replace con-

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clusory allegations of the complaint or answer with conclusory allegations of an affidavit.").

Rule F.5 allows for ample alternative channels of communication even if we accept Berger's factual allegations as true. I agree with the portion of Judge N.R. Smith's analysis that explains why under our precedent and that of the Supreme Court, Berger's conclusory allegations do not create any material fact dispute that would preclude summary judgment in favor of the City. The City presented uncontested evidence that even at peak times fewer than half of the designated performance locations are in use. Therefore, even if some of the locations are undesirable, Berger has provided no evidence that the location restrictions preclude the entire medium of street performance or deny street performers a "reasonable opportunity for communication." *Menotti,* 409 F.3d at 1141 (quotation omitted); *see also Colacurcio v. City of Kent,* 163 F.3d 545, 555 (9th Cir.1998) ("The Supreme Court generally will not strike down a governmental action for failure to leave open ample alternative channels of communication unless the government enactment will foreclose an entire medium of public expression across the landscape of a particular community or setting."). I conclude that the City is entitled to a summary judgment upholding the performance location rule. The majority's remand for factual determination on alternative channels of communications is unnecessary and incorrect.

III

I next address the passive solicitation rule. Rule F.3.a provides that no street performer "shall actively solicit donations, for example by live or recorded word of mouth, gesture, mechanical devices, or second parties." The Rule does permit passive solicitation by allowing performers to provide a receptacle for donations and display "a written sign that informs the public that such donations are sought." By misconstruing the passive solicitation rule as being "content-based," the majority again misapplies the general rule permitting reasonable, time, place, and manner restrictions, this time reading "manner" out of the permitted restraints.

The ban on active solicitation is neutral in content. Applying the Supreme Court's "principal inquiry in determining content neutrality," I conclude that the City did not adopt its passive solicitation rule "because of disagreement with the message [soliciting speech] conveys." *Ward,* 491 U.S. at 791, 109 S.Ct. 2746. The Rule does not depend on the content of the solicitation, there are no favored organizations or persons-no street performer advancing any cause can solicit funds from Seattle Center patrons in an active way, none can demand money verbally. Street performers cannot implore people to give them money, but they can post a passive sign alerting their listeners that they would appreciate a contribution, and providing a proper receptacle. In sum, there is no evidence that the City disagrees with the views of Seattle Center street performers, ***1079** nor is the City stifling messages of solicitation completely. If this is not a reasonable manner restriction, then probably nothing is.

The majority argues that the passive solicitation rule is based on content because it restricts a particular set of messages, namely requests for donations. But under this analysis any regulation of solicitation would be a content-based restraint because such a rule would have to differentiate words that solicit from ordinary speech. The majority's analysis places it in tension, if not explicit conflict, with United States Supreme Court authority, which has held that solicitation restrictions may be content-neutral restraints. *See United States v. Kokinda,* 497 U.S. 720, 736, 110 S.Ct. 3115, 111 L.Ed.2d 571 (1990) (plurality opinion) (upholding ban on in-person solicitations and calling "the inherent nature of solicitation itself, a content-neutral ground"); *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.,* 452 U.S. 640, 648-49, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981) (stating that restriction on solicitation locations in public fairgrounds is content-neutral because it "applies evenhandedly to all who wish to ... solicit funds"). Under the majority's ana-

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lysis, however, the *Kokinda* and *Heffron* restrictions would be content-based restraints because they would, as the majority states, restrict individuals "from communicating a particular set of messages-requests for donations." The majority's analysis eliminating any possibility of a reasonable restraint on manner of solicitation is difficult to reconcile with Supreme Court precedent that has upheld such restrictions.

Our decision in *ACORN v. City of Phoenix,* 798 F.2d 1260 (9th Cir.1986), also supports a holding that the passive solicitation rule is content-neutral. In *ACORN* we said that an ordinance prohibiting solicitation of vehicle occupants is content-neutral because it "does not single out any group or the content of any speech. The ordinance applies even-handedly to every organization or individual, regardless of viewpoint, which would desire to solicit contributions, business, or employment from the occupants of vehicles traveling on Phoenix streets." *Id.* at 1267 (citing *Heffron,* 452 U.S. at 648-49, 101 S.Ct. 2559). The majority distinguishes *ACORN* because it sees no indication that the ordinance in *ACORN* forbade asking drivers or passengers to contribute by mail, as opposed to contributing on the spot. However, the majority cites no language in *ACORN* indicating that the ordinance at issue prohibited only the immediate physical exchange of money. The text of the ordinance states only that a person may not "solicit, or attempt to solicit, employment, business or contributions from the occupants of any vehicle." *Id.* at 1262.

The majority's reasoning for deciding that the City's passive solicitation rule is content-specific would have required a different result in *ACORN* because the ordinance in that case restricts people from "communicating a particular set of messages-requests for donations," while allowing the same individuals to approach stopped drivers and communicate other ideas. The majority does not claim to overrule *ACORN,* and thus in my view *ACORN* compels us to hold the City's passive solicitation rule content-neutral because it also applies even-handedly to anyone who solicits by certain meth- ods.

Rule F.3.a is constitutional because it is content-neutral, is narrowly tailored, and allows for ample alternative channels of communication. To hold otherwise, as does the majority, is in substance to say there cannot be a reasonable regulation of manner of solicitation, and in my view that position cannot be correct.

***1080 IV**

Finally, I address Rule G.4, the captive audience rule. I conclude that a close case is presented on this rule but that it should nonetheless be upheld because of the special nature of Seattle Center. The Supreme Court has stated that the government may "shield the public from some kinds of speech on the ground that they are more offensive than others" when a "degree of captivity makes it impractical for the unwilling viewer or auditor to avoid exposure." *Erznoznik v. City of Jacksonville,* 422 U.S. 205, 209, 95 S.Ct. 2268, 45 L.Ed.2d 125 (1975). We have overturned rules restricting speech near captive audiences when we have determined that the audience in question was not captive at all. *See Kuba v. 1-A Agric. Ass'n,* 387 F.3d 850, 861 n. 10 (9th Cir.2004).[FN3] But until now we have never held that a captive audience could never exist in a public park. The majority's blanket rule will preclude courts from addressing an audience's possible captive state on a fact-specific basis. Moreover, the majority's approach is singularly inappropriate when we consider the unique nature of Seattle Center, containing many outstanding venues for entertainment, theater, ballet, sports, and dining.

> FN3. In *Kuba* we did not, as the majority suggests, hold that all patrons of a place of public entertainment could not be a captive audience unless they were particularly vulnerable. Instead, we emphasized that the highly mobile individuals in *Kuba* were not "constricted" to a particular location

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> while they walked towards a concert venue. *Kuba,* 387 F.3d at 861 n. 10. Visitors to Seattle Center must keep their place in line in order to gain entry to limited-access buildings or events.

Seattle Center is an unusual public complex that contains many captive audiences who are observing or awaiting the major events that are presented at McCaw Hall, KeyArena, or the Bagley-Wright Theater, waiting in line for rides at the Fun Forest Amusement Park, or simply attending other Center attractions, including the popular Center House restaurant venues. Seattle Center also hosts special events such as Bite of Seattle, which in theory may be impacted if the majority treatment of the Rules at issue here is sustained. The very viability of Seattle Center, the ability of Seattle residents and tourists to take advantage of the unique opportunities showcased there, in my view is placed in danger if the City is not permitted fairly and effectively to regulate the conduct of all those who may interfere with Seattle Center events. The fair regulation of street performer speech does not entirely cancel the speech out, but rather subjects it to a regime that can coexist with Seattle Center's other activities in a way that does not unduly damage its commerce and value to the City.

The majority is correct that Seattle Center is a public forum, and this categorization affects our choice of precedents to apply. But there are important differences between Seattle Center and the typical open-air public park. Seattle Center is a unique urban center defined not solely by trees and open fields but also by museums, theaters, concert halls, amusement rides, and other special attractions for the City and its visitors. Visitors pay considerable sums to see these attractions, and they must often wait in line before attending. Unlike in a traditional public park, these patrons, should they be confronted by unwelcome or harassing performances, cannot just walk away to the next available shade tree. Rather, to avoid the nuisance these patrons must give up their place in line, potentially forfeiting their ability to enjoy the Seattle Center event they paid to attend. The City has a significant governmental interest in ensuring that these patrons have an enjoyable experience, so ***1081** that Seattle Center and the City as a whole may continue to be a desirable and commercially profitable destination. See *Thomas,* 534 U.S. at 323, 122 S.Ct. 775 ("Regulations of the use of a public forum that ensure the safety and convenience of the people are not 'inconsistent with civil liberties but ... [are] one of the means of safeguarding the good order upon which [civil liberties] ultimately depend." (quoting *Cox v. New Hampshire,* 312 U.S. at 574, 61 S.Ct. 762)).

The captive audience rule applies to "speech activities" rather than to only street performers. The majority imagines that the City will enforce the captive audience rule against those who make "the mildest remark." But, as Chief Judge Kozinski aptly explains in his dissent, there is no indication that the City has or ever will enforce this Rule in such a draconian manner. *See Washington State Grange v. Washington State Republican Party,* 552 U.S. 442, 128 S.Ct. 1184, 1190, 170 L.Ed.2d 151 (2008) ("In determining whether a law is facially invalid, we must be careful not to go beyond the statute's facial requirements and speculate about 'hypothetical' or 'imaginary' cases."). The majority relies on *Board of Airport Commissioners of the City of Los Angeles v. Jews for Jesus, Inc.,* 482 U.S. 569, 574-75, 107 S.Ct. 2568, 96 L.Ed.2d 500 (1987), to say that overbroad regulations are unconstitutional. But there the Supreme Court invalidated the ordinance after concluding that there was no feasible limiting construction. *Id.* at 575-76, 107 S.Ct. 2568. However, the majority has engaged in no such analysis of the captive audience rule, and therefore its overbreadth analysis is incomplete. *See Broadrick v. Oklahoma,* 413 U.S. 601, 613, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973) ("Facial overbreadth has not been invoked when a limiting construction has been or could be placed on the challenged [rule].").[FN4]

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FN4. The majority claims that any bias in favor of commercial over noncommercial speech is by itself cause to invalidate a regulation. However, the majority's precedential support is limited to regulations on signs or billboards. *E.g., G.K. Ltd. Travel v. City of Lake Oswego,* 436 F.3d 1064, 1081 (9th Cir.2006) ("[A]n ordinance is invalid if it imposes greater restrictions on noncommercial than on commercial billboards or regulates noncommercial billboards based on their content." (quotation omitted)). The majority's analysis on this point proceeds from the fact that although the captive audience rule applies to "both political speech and commercial speech," it does not apply to "licensed concessionaires," such as food and drink vendors. Licensed concessionaires, however, are subject to a myriad of other restrictions not applicable to noncommercial speakers. Moreover, Seattle Center patrons waiting in line might welcome an opportunity to purchase food or drink.

It is unrealistic and unwise to expect patrons paying to visit an attraction to give up their right to access the attraction when confronted with unwelcome behavior. Before instituting the captive audience rule, the city received weekly complaints about street performers harassing individuals in a captive audience. The captive audience rule is a reasonable method of achieving the City's legitimate interest in the safety and convenience of Seattle Center patrons. It leaves open alternative channels of communication-in a designated location for street performers and anywhere away from a captive audience for everyone else. By contrast, the majority's incorrect analysis echoes its earlier errors by reading "place" and "manner" out of the general rule that allows reasonable time, place, and manner restrictions. I would hold that the captive audience rule is a reasonable restriction on speech.

V

Accordingly, I would reverse the district court's rejection of the permit and badge ***1082** requirements for the reasons aptly stated by Chief Judge Kozinski in his dissent, and also would reverse the district court's decisions declaring unconstitutional Rule F.5, Rule F.3.a, and Rule G.4, respectively governing performance locations, passive solicitation, and captive audiences. The latter three Rules are reasonable time, place, and manner restrictions that allow for ample alternative channels of communication. They are justified by the City's legitimate interest in protecting the safety and desirability of Seattle Center as a major tourist draw and a wholesome venue for Seattle's citizens, and if the Rules are followed they do not pose a significant threat to the exchange of speech and ideas. Although I recognize a significant value to speech in street performance, the majority's elimination of the City's permit scheme and the other regulatory rules adds only a negligible marginal speech value, and this at the cost of public order. The stakes for the City of Seattle in maintaining order at Seattle Center are high, because this is a prerequisite to the full enjoyment of Seattle Center by Seattle's residents and visitors who together make up the millions of annual users of Seattle Center. I respectfully dissent from the majority's invalidation of the permit requirement and Rules governing passive solicitation and presentation near captive audiences, and from the majority's remand on the Rule governing location of performance.

N.R. SMITH, Circuit Judge, concurring in part and dissenting in part, with whom Chief Judge KOZINSKI joins in Parts III and IV, with the exception of the first and last paragraphs of Part IV:

Because our precedent forces me to treat the Seattle Center as a traditional public forum, I agree that the City of Seattle's permitting requirements and ban on active solicitation for street performers at the Seattle Center are facially unconstitutional. I also agree with the majority's invalidation of the City's captive audience rule. However, the City's performance location rule is constitutionally valid. There-

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fore, I join Parts I, II, III, V, and VI of the majority opinion.

I write separately, because (1) the characterization of the Seattle Center as a public forum is essential to this decision; (2) although the permitting scheme is not narrowly tailored, it relates to and meaningfully promotes the City's legitimate interests; (3) the City has met its burden to show that the performance location rule is a constitutionally reasonable time, place, and manner restriction; and (4) while the City's active solicitation rule is not content-neutral, the majority's analysis seems to hold that any restriction on solicitation is necessarily content-based.

I

We are constrained to view the City's rules regulating speech in the Seattle Center through the lens of the Supreme Court's forum analysis. *See Greer v. Spock,* 424 U.S. 828, 836, 96 S.Ct. 1211, 47 L.Ed.2d 505 (1976) (adopting a forum analysis as a means of determining whether the government's interest in limiting use of its property outweighs the interest of others wishing to use the property for other purposes). Our conclusion as to the nature of the forum in which the regulations apply not only informs our analysis but largely shapes the outcome, "because the extent to which the Government may limit [speech] depends on whether the forum is public or nonpublic." *Cornelius v. NAACP Legal Def. & Educ. Fund,* 473 U.S. 788, 797, 105 S.Ct. 3439, 87 L.Ed.2d 567 (1985). Therefore, the disposition of this case hinges almost entirely on whether we characterize the Seattle Center as a traditional public forum.

The majority states, without much analysis, that the record supports characterizing***1083** the Seattle Center as a traditional public forum. I agree. However, given the significance of the majority's holding and the fact that the majority strikes down most of the City's challenged rules as facially unconstitutional, we should not fail to fully consider the nature of the forum at the Seattle Center.

There is no contention that the Seattle Center is a nonpublic forum.[FN1] The record plainly shows that the Center is publicly owned, free and open to the public, and available as a forum for public communication. Yet a determination of the precise type of public forum is still necessary to guide our analysis.

> FN1. A nonpublic forum is a place that does not, by tradition or designation, serve as a forum for public communication; thus, content-based restrictions in nonpublic fora need only be "reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n,* 460 U.S. 37, 46, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983).

If, as the City argued before the district court, the Seattle Center is a "limited public forum," our review is somewhat lenient. A limited public forum is considered "a type of nonpublic forum that the government has intentionally opened to certain groups or to certain topics." *Cogswell v. City of Seattle,* 347 F.3d 809, 814 (9th Cir.2003) (citations and internal quotation marks omitted). Under this analysis, the City's regulations would be upheld "as long as (1) the restriction does not discriminate according to the viewpoint of the speaker, and (2) the restriction is reasonable." *Id.* at 814 (citations omitted). Nothing in the record indicates that the City has limited the use of the Seattle Center to certain groups or dedicated it solely to the discussion of certain subjects. Further, the record suggests that the Seattle Center has historically been a public forum. Therefore, the Center is not a limited public forum.

If the Seattle Center is a traditional public forum, "the government may not prohibit all communicative activity" and, to enforce any content-based exclusion, the state "must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end." *See*

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Perry Educ. Ass'n, 460 U.S. at 45, 103 S.Ct. 948 (citing *Carey v. Brown,* 447 U.S. 455, 461, 100 S.Ct. 2286, 65 L.Ed.2d 263 (1980)). Reasonable time, place, and manner restrictions can be imposed if they are "content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." *Id.* (citations omitted).[FN2] Quintessential public fora include "streets and parks which 'have immemorially been held in trust for the use of the public, and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.' " *Id.* (quoting *Hague v. CIO,* 307 U.S. 496, 515, 59 S.Ct. 954, 83 L.Ed. 1423 (1939)).

> FN2. If the Seattle Center were a "designated public forum," our analysis would be the same, because the Center continues to be open to the public. Public property, that is not traditionally a public forum, may nonetheless be "opened for use by the public as a place for expressive activity." *Perry Educ. Ass'n,* 460 U.S. at 45, 103 S.Ct. 948. In such a "designated public forum," while the state is "not required to indefinitely retain the open character of the [forum], as long as it does, it is bound by the same standards as apply in a traditional public forum." *Id.* at 46, 103 S.Ct. 948. A designated public forum includes "a place or channel of communication for use by the public at large for assembly and speech, for use by certain speakers, or for the discussion of certain subjects." *Id.* (citing *Cornelius,* 473 U.S. at 802, 105 S.Ct. 3439).

To determine whether a venue is a traditional public forum, courts have considered a number of factors, including (1) the compatibility***1084** of the dedicated uses of the forum with expressive activity; (2) whether a speaker has a reasonable expectation that their speech will be protected in the forum; (3) the historic use of the forum; (4) the current use of the forum; (5) whether the public has had free access to the forum; (6) whether the forum is a public thoroughfare; (7) the value of the area as an expressive locale; (8) the government's interest in commercial revenues; (9) any purpose for which the land may have been dedicated and the consistency of that use with free speech. *See ACLU of Nevada v. City of Las Vegas (ACLU I)*, 333 F.3d 1092, 1100 & n. 7 (9th Cir.2003) (citations omitted) (collecting cases describing factors that courts have applied to determine the nature of the forum).

Our case law emphasizes three factors in determining the nature of the forum: "1) the actual use and purposes of the property, particularly status as a public thoroughfare and availability of free public access to the area ...; 2) the area's physical characteristics, including its location and the existence of clear boundaries delimiting the area ...; and 3) traditional or historic use of both the property in question and other similar properties...." *Id.* at 1100-01 (citations omitted).

A reasonable application of these factors to the facts in this record confirms the majority's characterization of the Seattle Center as a traditional public forum. The record shows that the Center is free and open to the public. It is a gathering place for cultural and political rallies. It hosts formal events, including concerts, plays, ballets, athletic events, and other cultural activities. It is a forum for countless informal gatherings every day as thousands of people frequent the Center to "congregate on the sidewalks and parks that are open to the public." With more than ten million visitors a year, the current use and purpose of the facility is unavoidably public. The Center's own literature characterize the Seattle Center as "one of the nation's most extraordinary urban parks and entertainment centers .... a social and cultural gathering place for people around the world .... [a] host to remarkable arts, cultural, educational and community programs and international festivals .... [and] a gathering place and public space open to everyone [and] reflective of the Northwest's diversity and alive with innova-

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tion...."

The Center's physical characteristics and location also support the conclusion that the Center is a traditional public forum. It is publicly owned and centrally located in the heart of Seattle. Of the eighty-seven acres, twenty-three are open spaces and plazas with numerous walkways and access points to the downtown area and surrounding neighborhoods.

Further, the traditional and historic uses of the land also supports its designation as a traditional public forum. When the land was dedicated to the City over one hundred years ago, it was dedicated for "the use of the public forever." Nearly fifty years ago, the Seattle Center was home to the 1962 World's Fair, and it has continued to welcome the public ever since.

I also note that, given the express purpose of the Seattle Center, the forum is also clearly compatible with expressive activity. Based on the Center's mission and history as a gathering place for cultural, social, political, and artistic expression, patrons of the Center could reasonably expect that their speech would be protected. The Center is also clearly a pedestrian thoroughfare for the ten million people who visit the center each year, and the Center has obvious value as an expressive locale. While the City no doubt has an interest in commercial revenues, the City's interests and the stated purposes of the ***1085** Center are not inconsistent with free speech.

I acknowledge that the Seattle Center is not the average public park. It is a dynamic and complex evolution of public space, ripe with modern innovation and offering the public a wealth of educational, social, cultural, and commercial opportunity. The City's challenge is to balance the competing uses and manage the Center in a way that fosters mutual enjoyment of these multiple uses. This is no small task. Yet, regardless of the novel attributes of Seattle's "most extraordinary urban park," the Seattle Center remains a traditional public forum and the City's regulation of speech "is subject to the highest scrutiny." *Int'l Soc'y for Krishna Consciousness, Inc. v. Lee (Lee),* 505 U.S. 672, 678, 112 S.Ct. 2701 (1992).

II

The City's permitting scheme is not a valid time, place, or manner regulation, because it "burden[s] substantially more speech than is necessary to further the government's legitimate interests." *Ward v. Rock Against Racism,* 491 U.S. 781, 799, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989). The City's goal is to promote the safety and convenience of the public by regulating the conduct and location of those who (1) regularly attract crowds when performing in the Seattle Center and (2) who are overly aggressive, abusive, or harassing when soliciting donations from those who pass by. The City's interest is both significant and legitimate. Yet, the broad brush of the permit requirement, on its face, sweeps within its prohibition not only the problematic aggressive behavior of regular street performers, but also any spontaneous or informal artistic expression by anyone. "Government may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals." *Id.* at 799-800, 109 S.Ct. 2746 (citing *Frisby v. Schultz,* 487 U.S. 474, 485, 108 S.Ct. 2495, 101 L.Ed.2d 420 (1988)). For those wishing to comply with the law, the prior restraint of the permit requirement would inevitably result in delays, deterring and effectively banning a significant amount of protected expression. *See Grossman v. City of Portland,* 33 F.3d 1200, 1206 (9th Cir.1994) (the delay caused by complying with a permitting procedure prevents immediate response to immediate issues and can deter or even preclude immediate responses to late-breaking events) (citations omitted). Because the rule would burden all artistic expression and reach substantially more individuals than the few problem street performers, it is not narrowly tailored. *See Frisby,* 487 U.S. at 485, 108 S.Ct. 2495.

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Additionally, while a permitting scheme might be justified for large groups, there is nothing to suggest that the City's interest is sufficient to justify the prior restraint of a single-performer in this public forum. *See Grossman,* 33 F.3d at 1206 (permit requirement was unconstitutional where it could apply to "the actions of single protestors"); *Rosen v. Port of Portland,* 641 F.2d 1243, 1247-48 (9th Cir.1981) (same). Because (1) prior restraints are disfavored and (2) this prior restraint is targeted at individual speakers, the permit requirement must be found unconstitutional, if the state could achieve its purported goals in a less restrictive manner. Even if the permit requirement were more efficient in preventing the evils associated with the street performers, punishment of actual wrongdoers could achieve the City's interests without burdening all forms of artistic expression with the prior restraint. *See, e.g., Riley v. Nat'l Fed'n of the Blind of N.C., Inc.,* 487 U.S. 781, 795, 108 S.Ct. 2667, 101 L.Ed.2d 669 (1988) (enforcement of antifraud laws sufficient to protect citizens from possible fraud resulting from fundraising solicitations). As the majority illustrates, there are also alternative ***1086** means of coordinating multiple uses of the Seattle Center, such as reasonable time and place restrictions, without requiring permits for all artistic expression.

With regard to the permitting scheme, I disagree with the majority's characterization that the permitting requirements do not promote the government's interests "in any meaningful way." The majority states that "[t]here is ... no reason two street performers with permits would be less likely to engage in a territorial dispute than two street performers without permits." The majority also states that the permit requirement "bears no apparent connection to the City's stated interest in reducing hostile performer behavior .... [because] there is no reason why a performer with a permit is likely to be less hostile than one without a permit." This analysis fails to view the permit requirement in the context of the entire permitting scheme. Contrary to the majority's reasoning, the permitting system advances the City's interest, because performers (who violate the Seattle Center rules) risk temporarily losing their permit and, thus, their ability to perform. If a performer engages in a territorial dispute (ostensibly because he does not abide by the first come, first serve rules regarding the designated performance locations), he might also lose his permit. Likewise, a performer who engages in hostile behavior towards other performers or patrons likewise risks losing his permit. The potential to lose the right to perform is a substantial, common sense deterrence to the undesirable conduct the City seeks to regulate.

Further, I disagree with the majority that the permitting requirements do not aid in coordinating multiple uses of the Seattle Center. While the permit system does not limit the total number of permits, nor assign particular performers to specific locations at specific times, it does provide an orderly means for allocating and prioritizing the use of performance locations among competing uses. That is, permitted performers have priority to use the performance locations over non-permitted performers. Further, the permitting scheme allocates the use of particular spaces among permittees on a first come, first served basis. A permitted street performer is protected if he abides by the rules, and he stands to temporarily lose his permit (and right to perform) if he does not. While there may be other schemes that might better clarify or coordinate the use of the Seattle Center for street performances, the majority's conclusion that the permit rule does not promote or have any connection to the City's interest ignores the punitive and deterrent elements of the permitting scheme. Although I agree that the permitting scheme is not narrowly tailored nor is the City's interest significant enough to justify such a prior restraint on individual speakers, the scheme otherwise relates to and would meaningfully advance the City's interest.

III

I dissent with regard to the City's performance loca-

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tion rule. Drawing all reasonable inferences in favor of the City, *see Anderson,* 477 U.S. at 255, 106 S.Ct. 2505, I agree that the City has met its burden with unrebutted evidence that demonstrates a significant, legitimate interest, which "would be achieved less effectively absent the regulation." *See Ward,* 491 U.S. at 799, 109 S.Ct. 2746 (citation omitted). With regard to whether the rule allows for ample alternative channels for communication, I disagree with the majority, which concludes that Berger's declaration presents "conflicting evidence concerning whether the sixteen dedicated locations provide adequate access to the intended audience." Majority Op. at 1050.

In imposing time, place and manner restrictions, the government must only "refrain***1087** from denying a ' *reasonable* opportunity' for communication." *Menotti v. City of Seattle,* 409 F.3d 1113, 1141 (9th Cir.2005) (emphasis added) (citing *City of Renton v. Playtime Theatres, Inc.,* 475 U.S. 41, 54, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986)). The Supreme Court has instructed that reasonable time, place, and manner restrictions need not preserve the most effective means of communication; rather, such restrictions must only guarantee that individuals retain the "ability to communicate effectively." *Id.* at 1138 n. 48 (citing *City Council of City of Los Angeles v. Taxpayers for Vincent,* 466 U.S. 789, 812, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984); *Hill v. Colorado,* 530 U.S. 703, 729, 120 S.Ct. 2480, 147 L.Ed.2d 597, (2000) (upholding a law that prohibited individuals from having a position that maximized accessibility to the target of their speech)).

In *Menotti,* we held that a city order prohibiting protest demonstrations in certain areas during a World Trade Organization ("WTO") meeting left open ample alternative channels of communication. *See id.* at 1138-43. The city order effectively prevented protestors from delivering their message directly to WTO delegates in the facilities where the WTO meetings were held. *Id.* at 1138. Instead, protestors were relegated to areas directly across the street from the meeting location, as well as throughout the rest of downtown Seattle. *Id.* In concluding that the city order provided ample alternative means of communication, we noted that "[t]he Supreme Court generally will not strike down a governmental action for failure to leave open ample alternative channels of communication unless the government enactment will foreclose an entire medium of public expression across the landscape of a particular community or setting." *Id.* at 1138 (citations omitted). "A time, place, and manner restriction does not violate the First Amendment 'simply because there is some imaginable alternative that might be less burdensome on speech.' " *Id.* (citing *United States v. Albertini,* 472 U.S. 675, 689, 105 S.Ct. 2897, 86 L.Ed.2d 536 (1985)). Further, we recognized that "the First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired." *Id.* (citations omitted). "The 'ample alternatives' cannot be taken to mean that each protestor has the right to convey his or her message in the manner preferred by that protestor." *Id.* at 1140. The order afforded protestors a reasonable opportunity to communicate, because "[t]he protestors could reasonably expect their protest to be visible and audible to delegates, even if not as proximate as the protestors might have liked." *Id.* at 1138.

Berger's declaration asserts only that "many[of the locations] are far off the walkways where it is very difficult to notice the performer." [FN3] Giving Berger's assertion the benefit of very generous inferences, we might conclude that some of the City's designated performance locations are less favorable to Berger, because he would not be as close to his audience as he would like. However, the First Amendment does not guarantee Berger the right to convey his message in the most effective manner, in the manner he prefers, or as close to his audience as he might like. *See id.* at 1138-40.

> FN3. The majority also cites Berger's assertion that construction equipment at the Seattle Center temporarily blocked access

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> to certain of the designated performance locations. This assertion is inapposite to the facial validity of the performance location rule. Further, even if construction impeded the use some performance locations for "weeks on end," such a temporary condition cannot be relevant to determining whether the rule provides reasonable opportunity to communicate.

Further, Berger's conclusory expression of opinion does not create any material ***1088** dispute of fact that would foreclose summary judgment in favor of the City. For instance, Burger's declaration does not dispute the location of the designated performance areas as portrayed by the City's evidence. Berger's declaration also does nothing to negate the other facts evident from the record. For instance, the record confirms that the location rule does not exclude performers from the Seattle Center, but limits access to sixteen locations within the forum. The record also shows that some ten million people visit the Space Needle, Key Arena, Pacific Science Center, and the Experience Music Project each year. The map showing the performance locations places the street performers in areas that are plainly accessible to the corridors of traffic and very near places where the public would naturally congregate as they visit the City's famous attractions. The record shows that the performance locations were selected as a result of a public process in which the street performers themselves provided significant input. These sixteen locations provide more than reasonable opportunity to communicate to the five to eight performers who typically perform on the Seattle Center grounds at peak times. Further, if the performance locations prove inadequate for a particular performance, a performer can request special approval for an alternate performance location.

Based on Berger's assertion that "many" of the locations are "far off the walkways," the majority concludes, that "there are conflicting inferences to be drawn regarding material facts pertinent to the dispositive consideration, adequacy of access to the intended audience." Majority Op. 1050. By inference, the majority suggests that the location rule must guarantee a level of access that meets the speaker's subjective expectation, something that our cases have not previously required. In answering whether Berger and other street performers have an objectively reasonable opportunity to communicate, the record shows that the performance locations are all (1) within the Seattle Center, (2) adjacent to pedestrian walkways, and (3) near the Center's most popular attractions. On this basis, the street performers can reasonably expect that their performances will be "visible and audible to [their intended audiences], even if not as proximate as [they] might have liked." *See Menotti,* 409 F.3d at 1138. Berger's assertion is, at most, an expression of his subjective view that the designated locations prevent the most effective form of communication. It does not create conflicting evidence as to whether the performance locations objectively provide "reasonable opportunity for communication." *Id.* at 1141. Therefore, I would hold that the record is sufficiently developed, and the City has met its burden to show that street performers have ample, reasonable alternatives for communication.

IV

I join in the majority's conclusion that the active solicitation ban is unconstitutional as presently written. Yet, I am concerned that the majority opinion could be read to hold that any restriction on solicitation is necessarily content-based and therefore subject to strict scrutiny.

I agree that solicitation falls within the protection of the First Amendment. *See Vill. of Schaumburg v. Citizens for a Better Env't,* 444 U.S. 620, 628-32, 100 S.Ct. 826, 63 L.Ed.2d 73 (1980).[FN4] Contrary to ***1089** the majority's assertion, however, First Amendment jurisprudence generally treats regulation of solicitation as content-neutral. The Supreme Court has characterized "the inherent nature of solicitation itself, a content-neutral ground." *United States v. Kokinda,* 497 U.S. 720, 736, 110 S.Ct.

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3115, 111 L.Ed.2d 571 (1990). Likewise, in *Heffron v. International Society for Krishna Consciousness, Inc.*, 452 U.S. 640, 648-49, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981), the Court found a regulation limiting solicitation in a public fairground to certain locations to be content-neutral, because it applied to all who sought to solicit funds.

> FN4. I note that *charitable* solicitation has been held to receive the full protections of the First Amendment. "[C]haritable solicitations 'involve a variety of speech interests ... that are within the protection of the First Amendment,' and therefore have not been dealt with as 'purely commercial speech.' " *Riley*, 487 U.S. at 788, 108 S.Ct. 2667 (quoting *Schaumburg*, 444 U.S. at 632, 100 S.Ct. 826). *Non-charitable* solicitation may not be entitled to the same measure of protection as charitable solicitation. *See id.* at 796, 108 S.Ct. 2667. If such solicitation is motivated purely by profit and follows a provision of goods or services, it may be more akin to commercial speech, and not fully protected expression. There has been no argument that the solicitation rule in this case regulates only commercial speech. And it is clear that the regulation applies to both charitable and non-charitable solicitation by street performers. Therefore, the majority correctly applies the test for fully protected expression. Nonetheless, it seems likely that the street performers targeted by the City's regulations perform with an expectation of receiving remuneration. Although the record is not clear, I suspect that most of the street performers are in the business of entertainment and provide entertainment services and accept "contributions" and "donations" as a source of personal income. For them, their craft is their ware and their solicitation is inevitably commercial in nature.

Our own case law confirms that solicitation regulations can be content-neutral. *See ACORN v. City of Phoenix*, 798 F.2d 1260 (9th Cir.1986). In *ACORN*, the solicitation ordinance in question prohibited solicitation of vehicles while they were stopped in traffic. *Id.* at 1267-68. The ordinance provided: "No person shall stand on a street or highway and solicit, or attempt to solicit, employment, business or contributions from the occupants of any vehicle." *Id.* at 1262 (quoting Phoenix City Ordinance § 36-101.01). The ordinance did not ban solicitation of contributions altogether, but only regulated the location and permissible targets for such activity. *Id.* at 1267. The ordinance also permitted other forms of communication (e.g. oral advocacy and distribution of literature). *Id.* We concluded that the ordinance was content-neutral, because it did "not single out any group or the content of any speech." *Id.* We further explained that the ordinance was not passed to suppress any particular viewpoint but "was adopted to promote the city's interest in 'public peace, health and safety.' " *Id.* at 1267-68.

The majority relies on our decision in *ACLU of Nevada v. City of Las Vegas* (*ACLU II*), 466 F.3d 784 (9th Cir.2006), for the proposition that a regulation banning conduct associated with solicitation is content-neutral, while a regulation regulating the speech associated with solicitation is not. In *ACLU II*, we considered whether an ordinance banning solicitation at certain Las Vegas locations was content-neutral. The ordinance prohibited any solicitation, defined as " 'to ask, beg, solicit or plead, whether orally, or in a written or printed manner, for the purpose of obtaining money, charity, business or patronage, or gifts or items of value for oneself or another person or organization.' " *ACLU II*, 466 F.3d at 788 (quoting Las Vegas Municipal Code § 10.44.010(A)). The ordinance was interpreted to prohibit the distribution of handbills or leaflets that solicit money or donations, regardless of whether they involved a request for immediate or future donations. *Id.*

The three-judge panel concluded that the ordinance was not content-neutral because, "in order to en-

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force the regulation, ***1090** an official 'must necessarily examine the content of the message that is conveyed.' " *Id.* at 794 (quoting *Forsyth County, Ga. v. Nationalist Movement,* 505 U.S. 123, 134, 112 S.Ct. 2395, 120 L.Ed.2d 101 (1992)). In other words, because law enforcement would have to read the content of the message conveyed to determine whether it fell within the ban, the ordinance was content-based. *See id.* at 794 & 796. The three-judge panel distinguished *ACORN* and prior Supreme Court cases, which had previously held solicitation regulations to be content-neutral, by characterizing those cases as involving regulations of the "act of solicitation" and not "words of solicitation." *Id.* In essence, the panel held that solicitation regulations can be content-neutral only if they regulate "an element of conduct interwoven with otherwise expressive solicitation." *Id.* at 795 (quoting *Lee,* 505 U.S. at 705, 112 S.Ct. 2701 (Kennedy, J., concurring)). But, if the regulation restricts only the speech associated with the solicitation, it is content-based and therefore violates the First Amendment unless it survives strict scrutiny. *See id.*

The distinction, made in *ACLU II* between an "act of solicitation" and "words of solicitation," would not make any difference under the majority's content-neutrality analysis. Based on *ACLU II,* the majority distinguishes the outcome in *ACORN,* reasoning that the regulation there prohibited only an act of solicitation: the immediate physical exchange of money.[FN5] Therefore, under the majority's reasoning, a ban on in-hand solicitation involving the physical exchange of money would be content-neutral. But applying the logic of *ACLU II* to the facts of *ACORN,* the distinction fails to reconcile the different outcomes.

> FN5. While the majority interprets the ordinance at issue in *ACORN* as prohibiting "only the immediate physical exchange of money," I disagree. I read the ordinance as clearly applying to any solicitation of or "attempt to solicit employment, business or contributions" regardless of whether money was physically exchanged. *See ACORN,* 798 F.2d at 1262.

As a practical matter, there can be no act of solicitation without words of solicitation. That is, all solicitation involves expressive speech or conduct. A solicitation is nothing more than a request in which the solicitor communicates, in some fashion, his desire that the person solicited do something, such as give money, join an organization, transact business, etc. [FN6] If there is no such expression, it cannot be said that any act of solicitation has occurred. Therefore, whether the regulation restricts conduct or speech, the applicability of the regulation depends on an evaluation of the content of the speech associated with the conduct.

> FN6. A common dictionary defines "solicit" as "to approach with a request or a plea (as in selling or begging) ... to endeavor to obtain by asking or pleading...." Webster's Third New International Dictionary 2169 (1993).

For example, to determine whether an exchange of money is the result of a solicitation or a voluntary gesture of gratitude between old friends, there must necessarily be an evaluation of both conduct (the in-hand exchange of money) and the expressive communication associated with it. What did the recipient of the money communicate that led to the exchange? If he asked for money, then the regulation applies. If he merely expressed gratitude for his old friend and the donor volunteered the money, the regulation does not apply. Under the majority's reasoning, no regulation that applies to an "act of solicitation" can ever be content-neutral, because conduct only becomes an act of solicitation when it is associated with words of solicitation. And to find words of solicitation, there must necessarily be some evaluation***1091** of the content of the communication associated with the conduct.

Under the majority's reasoning, the ordinance in *ACORN* should have been held to be content-based, because to determine its applicability, law enforce-

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ment was required to evaluate the content of communications to determine whether individuals standing alongside stopped vehicles were asking the occupants for money, as opposed to simply communicating their views on political issues. Therefore, either *ACORN* or *ACLU II* was wrongly decided. Given the broad treatment of general solicitation regulations as content-neutral, I suggest the latter. In my view, *ACLU II* took the term "content-based" to its literal extreme and employed a hyper-technical analysis that effectively precludes any reasonable time, place, or manner restrictions on solicitation. Consequently, I find the majority's reliance on *ACLU II* to be misplaced.

The mere fact that a regulation requires an evaluation of the content of a communication is not determinative as to whether the regulation, on its face, is an impermissible content-based regulation. *See Ctr. for Bio-Ethical Reform, Inc. v. Los Angeles County Sheriff Dept.*, 533 F.3d 780, 789 n. 5 (9th Cir.2008). Any regulation of solicitation necessarily requires an evaluation of the communication to determine whether it falls within the regulation. But such an evaluation is not necessarily dependent on the substantive content of the message. It turns, instead, on the general character or form of the communication or the type or class of speech involved.

In Hill v. Colorado, 530 U.S. 703, 722, 120 S.Ct. 2480, 147 L.Ed.2d 597 (2000), the Supreme Court upheld a Colorado statute banning any leafletting, displaying of signs, engaging in oral protest, education, or counseling within eight feet of any person within a radius of one-hundred feet of a health care facility.[FN7] The Court considered whether such a proscription was content-neutral, because enforcement of the statute required an examination of the oral statements made by a person suspected of violating the statute. *Id.* at 720, 120 S.Ct. 2480. In holding the statute to be content-neutral, the Court noted:

> FN7. In *Hill*, the challenged statute provided, "No person shall knowingly approach another person within eight feet of such person, unless such other person consents, for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling with such other person in the public way or sidewalk area within a radius of one hundred feet from any entrance door to a health care facility...." *Hill*, 530 U.S. at 708, 120 S.Ct. 2480 (citing Colo.Rev.Stat. § 18-9-122).

> It is common in the law to examine the content of a communication to determine the speaker's purpose. Whether a particular statement constitutes a threat, blackmail, an agreement to fix prices, a copyright violation, a public offering of securities, or an offer to sell goods often depends on the precise content of the statement. We have never held, or suggested, that it is improper to look at the content of an oral or written statement in order to determine whether a rule of law applies to a course of conduct.
>
> *Hill*, 530 U.S. at 721, 120 S.Ct. 2480. The Court reasoned that even if a "cursory examination" were required to determine whether the statute applied, such an examination would not be problematic. *See id.* at 721-22, 120 S.Ct. 2480.

First Amendment case law demonstrates that we afford varying degrees of protection to different *types* of speech. Political speech, for example, is at the core of First Amendment protection and any restrictions placed upon it must weather an exacting, strict scrutiny. *See, e.g.*, ***1092***McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 347, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995) (citing *Roth v. United States*, 354 U.S. 476, 484, 77 S.Ct. 1304, 1 L.Ed.2d 1498 (1957)); *ACLU of Nevada v. Heller*, 378 F.3d 979, 988 (9th Cir.2004). In contrast, purely commercial speech has been afforded a more "limited measure of protection, commensurate with its subordinate position in the scale of First Amendment values." *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 456, 98 S.Ct. 1912 (1978). Presumably, a regulation that applies only to commercial speech re-

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quires an evaluation of the content of the speech to determine the character or type of speech (whether it is commercial). Yet, this type of evaluation has not generally been held to be content-based and does not trigger strict scrutiny review. In the same way, an evaluation of a particular communication to determine whether it is a solicitation is not based on the substantive content of the message or the viewpoint of the speaker. It is, instead, a cursory evaluation to determine the general character or form of the speech itself. This evaluation of form does not make the regulation content-based.

Further, in the abstract, a simple solicitation of funds does not necessarily involve the exposition of any ideas. As the Supreme Court has stated, charitable solicitation falls within the greater protection of the First Amendment, because it "is characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views on economic, political, or social issues." *Schaumburg,* 444 U.S. at 632, 100 S.Ct. 826. "[C]haritable appeals for funds ... involve a variety of speech interests-communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes-that are within the protection of the First Amendment." *Id.* Consequently, the substantive content of a solicitation triggering constitutional protection is not the mere request for funds, but the viewpoints, ideas and persuasive speech that are intertwined and communicated with the solicitation. A regulation that asks only whether the communication is a solicitation of any kind does not require an evaluation of any substantive content. Therefore, the type of evaluation required by a typical solicitation regulation (i.e. whether the communication is a solicitation) is not the type of content-based evaluation that the First Amendment disfavors.

In my view, a solicitation regulation is content-neutral if (1) the underlying purpose of the regulation is not to suppress a particular viewpoint or any substantive idea; [FN8] (2) the regulation, on its face, does not single out particular substantive content for differential treatment; [FN9] and (3) the regulation does not single out a particular group.[FN10] In other words, if a solicitation rule applies even-handedly to anyone who solicits, it is content-neutral. *See Heffron,* 452 U.S. at 648-49, 101 S.Ct. 2559.

> FN8. *See Ward,* 491 U.S. at 791, 109 S.Ct. 2746 (stating that the government's purpose in adopting the regulation is the primary consideration).
>
> FN9. *See Foti v. City of Menlo Park,* 146 F.3d 629, 636 n. 7 (9th Cir.1998).
>
> FN10. *See ACORN,* 798 F.2d at 1267 (a restriction on solicitation that "does not single out any group or the content of any speech" is content-neutral).

However, I join the majority in invalidating the City's active solicitation ban, because this particular regulation does more than generally ban solicitation or regulate only the manner of solicitation. It singles out a particular group that is defined, in part, by the medium through which they express themselves and the substantive message they convey. It also requires more than a technical evaluation ***1093** of the general character of the communication. To enforce the ban, an official must first determine whether the communication was a solicitation (which would be a permissible content-neutral evaluation). The official must then determine whether the solicitation was active or passive (also a content-neutral evaluation). If the speech is an active solicitation, then the rule requires the official to (1) determine who made the solicitation and whether that person is a street performer, and (2) evaluate whether the active solicitation was made in connection with the street performer's artistic expression or performance (as opposed to soliciting funds for some other cause). As written, the rule targets only those involved in artistic expression. In my view, it improperly focuses on who is doing the soliciting and for what purpose they are soliciting, converting the rule into an impermissible content-

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based regulation.

C.A.9 (Wash.),2009.
Berger v. City of Seattle
569 F.3d 1029, 2009 Daily Journal D.A.R. 9302

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RECOMMENDING COMMITTEE MEETING OF
August 3, 2010

VERBATIM TRANSCRIPT – ITEM 3 – BILL NO. 2010-31

UPDATES THE REGULATIONS GOVERNING CERTAIN COMMERCIAL, ENTERTAINMENT AND SOLICITATION ACTIVITIES WITHIN THE PEDESTRIAN MALL. PROPOSED BY: BRADFORD R. JERBIC AND COUNCILMAN GARY REESE

APPEARANCE LIST:

RICKI Y. BARLOW, Councilman

BRAD JERBIC, City Attorney

STAVROS S. ANTHONY, Councilman

BEVERLY K. BRIDGES, City Clerk

BETSY COMELLA, City Attorney's Office

UNIDENTIFIED MALE

VAL STEED, Chief Deputy City Attorney

JIM NICHOLS, Deputy City Manager

JEFF VICTOR, President, Fremont Street Experience, LLC

GABRIELA PORTILLO-BRENNER, Deputy City Clerk

MAGGIE McLETCHIE, Staff Attorney, American Civil Liberties Union of Nevada

(9:04 - 11:52)

2 hours 46 minutes

Typed by: Gabriela Portillo-Brenner/Vicky Skilbred

Proofed by: Angela Crolli

COUNCILMAN BARLOW

Now we'll move to Abeyance Item, Bill No. 2010-31, which ups, updates the regulation (sic) governing certain commercial, entertainment and solicitation activities within a pedestrian mall. Proposed by Bradford R. Jerbic, City Attorney, and Councilman Gary Reese.

Brad, like to hear from you.

BRAD JERBIC

Thank you, members of the Committee, Councilman Barlow, Councilman Anthony, Brad Jerbic from the City – Attorney's Office. I've prepared a PowerPoint that will help walk you through several things this morning that will explain four things. The first part is dedicated to the history of the Fremont Street Experience, and I think it's necessary to understand how we got where we're at. The next portion is devoted to the history of the litigation. The next portion is devoted to the reason for regulations in the Pedestrian Mall. And the last portion is devoted to Bill No. 2010-31, being the ordinance that's before you that proposes to impose these regulations.

With that, let me start with the history of the Fremont Street Experience. The Fremont Street Experience was conceived in the early 1990's as a way to draw people to the ailing dent, ailing downtown gambling area. The, a number of proposals were heard before the Fremont Street Experience project was the project that was decided upon. There was a project called Las Venice (inaudible) that was a dug out on the street and (inaudible) and boats. There was (sic) other projects that involved building a replica of the structure, a (sic) enterprise that would have elevator ramps going down to the hotel/casinos. Ultimately, the Fremont Street Experience, designed by the (inaudible) Corporation was selected as the project.

The street was permanently closed and, to vehicular traffic in 1994, and the structure began that year, and the Fremont Street Experience opened a year later, in 1995. It's a cooperative venture, owned, operated by a group of downtown hotel companies, with ongoing involvement by the City of Las Vegas, and I'll get into that in a moment. If you have any questions, by the way, as I go through this, please feel free to stop me and ask.

The original Fremont Street Experience, as conceived, was the Fremont Street Experience Canopy, which then did not have lights under it; it had sky floats under it. These were floats that zipped up and down a line and up and down the street, and were based in the parking garage, where they were operated and maintained. It – always included the removal of the streets and sidewalks, to be replaced by a pedestrian mall. The construction of the parking garage and the Fremont Street Experience was also contemplated between Fourth and Las Vegas Boulevard.

I just wanna point out that before the project, the sidewalks had always been opened to speech, but that the former street itself had only been used for vehicular traffic. In order to make this deal happen, the original four-party agreement was drafted in October of 1993, included four entities: the City of Las Vegas, the City of Las Vegas Redevelopment Agency, the Fremont Street Experience Limited Liability Company and the Fremont Street Experience Parking Garage, Limited Liability Company. So, this is, when I refer to the four-party agreement, these are the four parties that are involved. And, let me just state, the Fremont Street Experience Limited Liability Company has the same members as the Fremont Street Experience Parking Garage Limited Liability Company. One is in charge of the garage; the other in charge of the Experience and the operation and management of the Experience.

COUNCILMAN ANTHONY

It's like that today?

BRAD JERBIC

That's correct.

COUNCILMAN ANTHONY

Okay.

BRAD JERBIC

That's still to this day, same management (inaudible). There may be some slight tweaking of the individual members of the LLC, so, as you're aware a number of the hotel/casinos sold, some members may have dropped in or dropped out. I think they added members as opposed to lost members, but, nevertheless, that's essentially the same group that's existed since 1993.

In September of 1995, the four-party agreement was amended and restated to reflect the final version of the Fremont Street Experience and the parking garage. So, things happened in those few years. One, the project evolved, from just a pedestrian mall with its (inaudible), the sky parade to the Pedestrian Mall with a light show, there was no longer a need to house the parade in the parking garage, so it became just a parking garage.

A number of things, though, came up during the course of the construction that needed to be addressed. One was, the parking garage sat on a site that was largely controlled by the City, but a number of parcels had to be condemned and acquired by the City. We estimated the amount of money that would be necessary, to acquire those parcels, about $6.4 million, knowing it could

well go over 6.4. The question became: What would happen if it did? So, the amended agreement also memorialized the fact that the Fremont Street Experience Parking Garage, LLC, would pick up the cost and any overage, overruns on the acquisition cost of the – land for the parking garage. So, memorialize the final project, the light show, memorialize who's responsible for the acquisition of the property overruns.

Again, Fremont Street is responsible now for the operation and maintenance of the Fremont Street Experience, including, but not limited to, the operation and maintenance of the Pedestrian Mall, and operation and maintenance of the canopy light show. When I say canopy and light show, until a few years ago, that canopy wasn't LED; it was light bulbs, and every light bulb needed changing from time to time, and the electricity cost was enormous. The Fremont Street Experience, LLC, was responsible for operation and maintenance of that canopy, and the canopy as it exists today, with the LED's, responsible for the electric bill, responsible for programming the computers that generate the show, responsible for maintenance of the mall, for the watering of the trees, for cleaning up every stick of gum that somebody spits out on the mall. All operation and maintenance, it's a hundred percent Fremont Street Experience, LLC.

The Fremont Street Experience Parking Garage is responsible for repaying taxpayers, the cost overruns and acquiring the property for the parking garage, that comes out of the net retail proceeds from the retail on the first floor of the parking garage, which today consists of Walgreens, Hennessey's and Mickey Finn's. That net retail proceeds comes to the City of Las Vegas until we get paid back all the overage cost. So, we have a direct financial interest in the success of the parking garage itself. The Fremont Street Experience, LLC, derives all of the profits from gross revenues of the Pedestrian Mall, to offset the cost of operations and maintenance, including the leasing of retail space in the mall, special events and any other

commercial use permitted by the development agreement. Which means that all the things I just discussed that Fremont Street pays for, electricity, light show, the maintenance of the canopy, the computer programming, and alike. They fund out of pocket that portion which isn't raised by retail profits from the mall. That is largely the sale of the kiosks, the rental of the kiosks of the mall. That is any left over money from – the net retail, after (inaudible). That is any other money they raise from special events, like closing the street for New Year's Eve, and things like that.

How was the Pedestrian Mall funded? This is also important to understand. There were four main sources of revenue that built the Fremont Street Experience. The first was a room-tax bond. The hotels on Fremont Street agreed to have imposed on them an additional two percent tax on rooms. And those hotels just a block or two off of Fremont, agreed to a one percent additional tax on rooms. That allowed accountants, and alike, to look at a revenue stream that that would produce, and they could estimate what kind of bond you could issue, based on that revenue stream. That generated a bond of approximately $20 million; it was in the 18, 22 million dollar range. But it – generated a bond worth, at that much, a twenty-year bond. Again, the payment of that bond falls on the taxpayers, unless the room tax is sufficient. So, success of the rooms, room revenue is critical paying back that bond issue. The tax increment bond is funded by the tax increment generated by the Redevelopment Agency. Which, back then, wasn't terribly much, so we maximized the bond to get every ounce of tax increment financing we could out of it. And was, again, an 18 to 20 million dollar bond. That bond is – pretty good today, because tax increment of the Redevelopment area has gone up instead of down. So, if you have any questions, I'd be glad to address them. But that's how the tax increment bond works.

There was a contribution from the Fremont Street Experience; that is, the member entities of the LLC contributed money to, one, when the change was made, to upgrade from floats to a light

show, there were additional costs involved. That was all absorbed by the Fremont Street Experience. In addition, they were in for another 10 to 15 million dollars of their own money to make the project work. And the final thing, and this becomes important because of just the bad publicity and – misconceptions that occurred as a result of it. There was a six million dollar grant from the Las Vegas Convention and Visitors Authority. This was a one-time grant. For the first six years of the project, LVCVA gave a million dollars a year. That's long expired. For the six years of the project, beginning in '95, $6 million a year, where it was given to the project, a million dollars a year.

Who owns the Pedestrian Mall? Before the Pedestrian Mall was constructed, as I said, it was sidewalk and street. Street is called right-of-way. Streets are things that are owned by the City for a particular purpose. In this case, right-of-way, vehicular traffic. We cannot sell streets; we cannot sell sidewalks. The method that cities get rid of those things is called vacation. So, when you see on the afternoon agenda of the City Council to vacate a street, or vacate a sidewalk, or a portion thereof, that's how we give things back. It says, we don't need them anymore. And by operation of the law, the underlying interest reverts back to the adjoining property owner.

So, Councilman Anthony, if you and I have a house across the street from each other, and there's a street down the middle of it, and it's decided that the street is no longer needed, and it's vacated, I will now own everything from the front of my property line to the center line of the street. And you will on your side as well. That's how it works when you vacate your interest in something. Again, we could not sell the street to the Fremont Street Experience, we could not give it to the Fremont Street Experience; we could only vacate it or try and convert it.

Here's the problem. Unlike most places in the City of Las Vegas, where you own the dirt under your house, and it would go to the center onto the road, if we vacated the street, the hotels

downtown are not built on parcels they own. For the most part, every hotel downtown is built on leased parcels, and some case (sic) multiple-lease parcels. And, I think at the time we did this project, there were 95 sub-parcels. I could be off on that number, but it was right in that area. And, as a result, if the street were vacated, the ownership interest would not go to the hotels from the centerline; it would go to the lease holders that had the property that they leased the property from, to the centerline. Which would mean you would have to assemble about, you know, 80, 90 people that have no interest in running hotel/casinos, but just leasing their property to try and make the Fremont Street Experience Pedestrian Mall happen. And that, practically, was absolutely impossible. So, vacating the street was not an option.

But what we ended up with was whether or not we could actually build a pedestrian mall on the former street. And we worried that if we used it for something other than vehicular traffic, it would be a de facto vacation, which would mean it would revert back anyway, 'cause you treated it like it wasn't a street anymore. And because you weren't using it as a street, it ended up in the hands of the leaseholders that leased the property of the casinos.

We went to the Nevada Legislature, and we had the law changed. NRS 268.812, Subsection 5, now allows the City of Las Vegas to convert right-of-way into pedestrian mall without losing the ownership or the control of the property (inaudible). So, the answer to the question: who owns the Pedestrian Mall, is, the City of Las Vegas owns the dirt under the Mall and the surface of the Mall, but the improvements to the top of the Mall, the canopy and everything, were built and paid for by the Fremont Street Experience.

Another myth that has existed over the years off and on, is that the Fremont Street Experience was funded using park money, or in some way is a park, or works like a park. Let me destroy this myth once and for all. The Las Vegas Convention and Visitors Authority is allowed to exist

under Nevada Law 244(A).599. If you look at that section of Nevada Law, you will see it doesn't say convention and visitors authorities. It says County fair and recreation boards. The Las Vegas Convention and Visitors Authority is a fancy name they picked for a County fair and recreation board. That's what they were organized under. And County fair and recreation boards have the authority to do certain things, and fund certain things. And there's a list in NRS 244(A) alludes things they can fund –

END RELATED DISCUSSION – RESUMED RELATED DISCUSSION

BRAD JERBIC

I'm sorry. For the record, we had a glitch in the recording. We're back on the record, and, so, I'm gonna just repeat the last few sentences of this slide. Next (inaudible) Fremont Street Experience funded using park money or is it a park? There was a misstatement made years ago that led to this myth, that the Fremont Street Experience is either a park or was funded with park money, and I would like to destroy that myth today once and for all.

First, it's important to understand that the six million dollar grant that came from the Las Vegas Convention and Visitors Authority was a one-time grant, but it's, so it's important to understand how they're able to make that grant, under what authority do they have to make a six million dollar grant to the Fremont Street Experience. The LVCVA –

COUNCILMAN ANTHONY

Brad –

BEVERLY BRIDGES

What?

BRAD JERBIC

– is created and organized under NRS 244(A).599, which doesn't say anything about convention and visitors authorities. What it does is it gives counties the authority to form county fair and recreation boards. So, the LVCVA is really a county fair and recreation board, and county fair and recreation boards have their own restrictions and their own limitations as to what they can do. There's a list in the Nevada Revised Statutes that says, if you have one of these boards, you can fund certain things. One of them is recreational facilities. One of them is fair grounds. One of them is parks, and there's a whole laundry list.

We were concerned whether or not the LVCVA, as the County Fair and Recreation Board, could fund a pedestrian mall under the Nevada Revised Statutes. To make it abundantly clear that it was perfectly permissible for them to fund it, we asked that the Nevada Revised Statutes be changed. So, NRS 268.816, Subsection 3, was amended in 1993 to make it clear that a pedestrian mall is a recreational facility, not a park, a recreational facility eligible for funding under NRS 244(A).599. No park money was ever used to construct the Fremont Street Experience, nor has Fremont Street Experience ever been a park.

After the four-party agreements were executed, that said who's gonna manage the Experience, how the Experience is gonna be built, what the Experience is gonna be, what the sources of funding are, who's gonna be responsible for the over, overruns and con, and property acquisition, was also important to enact a couple of ordinance, ordinances to deal with conduct and the Mall itself. In 1993, the City adopted the very first ordinance regarding the Pedestrian Mall, the first

Pedestrian Mall ordinance, which established the Fremont Street Experience Pedestrian Mall, set its initial boundaries, set what the perimeters of the Mall were, and charged the FSE, LLC, with managing and operating the Pedestrian Mall. It also prohibited a number of things in the Mall. It prohibited parades, bicycles, unicycles, skateboarding; things of that nature. It also prohibited solicitation. At the same time this ordinance was adopted, or I should say within three months of it, the City enacted – a new solicitation ordinance to reflect – new laws across the country with respect to having to regulate solicitation.

So, in January of 1995, the City adopts Ordinance No. 3862, creating new definitions of solicitation and coercion, and limiting the places a person can solicit, and prohibiting solicitation within the Pedestrian Mall.

Let me stop there for a moment. There's a definition in this section of the law as to what solicitation is. Then there's complete prohibition City-wide, not just within the Fremont Street Experience, that prohibits coercive or aggressive solicitation. That has never been disturbed, the coercive solicitation hasn't. The courts have had problems, as we'll discuss in a moment, with the definition of solicitation itself and whether or not it's content neutral and – countered all the qualities that the Ninth Circuit wanted to see. But coercive solicitation, generally speaking, across the country, cities that have banned coercive or aggressive solicitation have been upheld over and over again.

The other thing in this ordinance that has been upheld over and over again across the country are bans on places people can solicit. A number of cities have adopted an ordinance that prohibits solicitation within 20 feet of an automatic teller machine. Those have been upheld, because you're a captive audience at an automatic teller machine. The money's coming out, or the person asking for money is standing right there. Within 10 or 20 feet of the entrance to a business, the

City picked 10 feet, but there are cities that have gone even more than 10 feet, from the entrance to a business, cannot solicit. Upheld over and over again.

Anywhere within a public transportation facility or upon a public transportation device, like a bus or a commuter train. Again, captive audience. That's been upheld over and over again across the line. Anywhere in a public parking garage. We looked at those laws and those cities, adopted their history and put those laws on our books. And we added one more thing, and we thought we made a record that would sustain it. We added a complete ban on solicitation within the Pedestrian Mall.

Let's talk about the Fremont Street Experience, as it exists today, and we'll get to the litigation in a moment. Currently, the Pedestrian Mall is a major tourist attraction in the downtown area. It occupies the western most five blocks of Fremont Street. I can stop right here and add that, it has been added to since it was originally conceived. There were cul-de-sac bulbs on First Street and Third Street on both ends. The Fremont Street Experience has been expanded from Third Street. Now it goes all the way to Ogden, and First Street went all the way to the street immediately to the south. Those cul-de-sac bulbs, (inaudible) went past those.

The main attraction is the canopy itself. More than 12 million dollar, or 12 million LED lamps illuminate the overhead canopy. The primary focus, create an environment of entertainment, retail and outdoor dining opportunities. It's also home to the Neon Museum, which places historic signs, which is another addition to the Mall since it was built. The other thing that's happened since the Mall was built is you've seen a Starbucks outside the Golden Nugget, so there's outdoor dining there at that location, down the block that is the form, formerly known as the Neonopolis block, there are outdoor dining experiences there at Hennessey's, Mickey Finn's

and at the former Jillian's location. You also see kiosks up and down the street, which we're gonna talk about in a moment as well.

That's pretty much the Fremont Street Experience as it is today. The same four-party agreement is in place. It's been amended several times, same financial relationship.

The conclusion is this: Was it originally conceived as a privately operated and managed public attraction, although built on publicly-owned land? That's how it was conceived. The revenue derived from the commercial operation alone would be used to operate the light show and maintain the Pedestrian Mall, and no taxpayer money would ever be used to operate and maintain the Fremont Street Experience. Our money was the upfront money on the bond issues, which still haven't been paid. The downstream benefit was we'd never put another dime into maintaining Fremont Street or the Experience again.

Litigation, inevitable. ACLU versus City of Las Vegas, Case No. 9701419, began in 1997. The first lawsuit filed by the ACLU alleged that the solicitation and Pedestrian Mall ordinances were unconstitutional because they prevented solicitation, leafleting, unauthorized vending and the unauthorized erection of tables and structures in the Mall.

Let me stop for a moment. I'm using the word leafleting today. As it appeared in the original ordinance, it didn't say leafleting. It said the handing out of materials to passerbys (sic), or words to that effect. When I use the word leafleting, I'm referring to that language. So, I don't want somebody to correct me later in the record and saying that that was an inappropriate use of the term. I'm aware that I'm substituting the word leafleting for it. That's exactly what handing out papers to passerbys (sic) is. It's leafleting, not handbilling (sic).

The Federal District Court upheld the solicitation banning and tabling banning. That's the local Federal District Court here in Las Vegas. But it enjoined the enforcement of the leafleting and

vending restrictions. Each side appealed the decision that the Ninth Circuit dismiss these appeals. Let's stop there for a moment to say that in the original ordinance, the City carved out an exception for labor activities. We felt that while the constitution gave you x-amount of protection, the National Labor Relations Act gave unions even more protection. And we felt that in the original ordinance, we recognized that additional protection, that the National Labor Relations Act gave unions to handbill, picket, or things of that nature, and we made an exception for them. The local District Court did not like that exception, felt that it we couldn't legally do that, to add in, to – opt out of that. So, they ruled in favor of the ACLU in that issue, and on the tabling, and favored with the City on the other issue.

The Federal District Court granted a summary judgment for the City in 2001, but with regard to solicitation and tabling ordinances, granted a summary to the ACLU with regard to (inaudible) leafleting and vending ordinances. The ACLU challenged the constitutionality of the provisions of the Pedestrian Mall relating to prohibitions involving free speech. The Federal District Court of Nevada upholds most of the provision of the ordinance, pretty much like a summary judgment motions back and forth, but now we're into the merits of the case. A summary judgment is when a court says there are no issues of material fact. We don't need to have a hearing, and based on what is in the record right now, I'm able to make a decision as to who's right or who's wrong. Everybody tried to appeal that to the Ninth Circuit. They didn't want to hear the appeals from the summary judgment. They wanted the final ruling from the court. So, the court in 2001 upholds the, most of the provisions of the ordinance, but, most importantly, made a finding that the Fremont Street Experience was not a public forum. That finding was later gonna be overturned by the Ninth Circuit. I'll get into that in a moment. But when you make a finding that an area is not recreational public forum, all you need is a rational relationship between what you're trying

to accomplish and – what your goal is and what the problem is. It's a very lull standard. A very different standing than what I'm about to get into in a moment. Then we felt that under that standard, the City of Las Vegas met the test, for the most part, in the original ordinance. Didn't meet the test, when it came to tabling and this labor exemption that we had carved out. The ACLU then appealed that decision to the Ninth Circuit Court of Appeals.

The Ninth Circuit, in that appeal, determined that the Pedestrian Mall should be classified as a traditional public forum for the purposes of First Amendment Analysis. Evaluating the ordinances under the more demanding standard in a traditional forum, the Ninth Circuit upheld the injunction against leafleting and vending and remanded the case. So, the ACLU on the two issues that we appealed on, was upheld by the court. On the two issues they appealed us on, we were overruled by the court, and sent back to the District Court, who said, District Court, you got it wrong. It's a traditional public forum, you have to apply the more demanding task to see if these restrictions still pass constitutional muster.

The Ninth Circuit recognized that all the ordinance is, at that time anyway, including the vending restriction, were content neutral time, place and manner restrictions. Back again in District Court. The Court reanalyzes the solicitation and tabling ordinances, and then held the solicitation banned as a valid content neutral time, place and manner restriction, even under the more strict public forum analysis. Under that analysis, you have to have a substantial interest, as a government, in the regulations. You have to leave alternative channels for communication open when you use these time, place and manner restrictions. And they felt, at least the local District Court felt that we had. Additionally, the Court granted certain judgment for the ACLU in its claim on the table. Again, this labor stuff is still in there. They won on that and on the tabling portion.

Back again. Third time in the Ninth Circuit Court of Appeals, and this time the Ninth Circuit overturned everything that the City of Las Vegas had done and validated all the prohibitions in the Pedestrian Mall ordinance against solicitation, leafleting, tabling and vending in the Pedestrian Mall. With the ordinance pretty much gutted and out the window, the City adopted new legislation. The City felt, at the time, that we were complying, and we still feel that we complied with the Ninth Circuit decision. The City eliminated the ban on leafleting found in the Municipal Code at Section 11.68.100, Subsection 1, and removed the exception for labor related activities. The section I mentioned that we carved out for labor. We removed that from the Code. The City also adjusted the definition of solicitation. We felt to comply with the language of the Ninth Circuit Decision and the ACLU filed the challenge for the new Pedestrian Mall ordinance. Back again in Federal District Court locally. The Federal District Judge granted a summary judgment in March 2009. The result was the definition of solicitation was declared unconstitutional. Even though it had been adjusted, the new judge felt that there were still some problems. The prohibitions against Mall vending, advertising and entertainment were declared unconstitutional. The prohibition against erection of tables and other structures was declared unconstitutional. And the prohibition against solicitation was declared unconstitutional. So, both the definition of solicitation and the prohibition against soliciting in the Mall, both unconstitutional.

That's where we're at today. Since then, there have been some discussions as to what the judge's order means. There have been some agreements as to how the Fremont Street Experience security will enforce the law, or in the Pedestrian Mall, given the judge's decision in 2009, I can tell you, as counsel for the City, there's nothing in the judge's order that says the City can't adopt new ordinances. That's what we're here to discuss today.

Before we get to the new ordinance, discuss why our regulation is necessary in the Pedestrian Mall. No regulation means there'll be no viable commercial opportunity in the Mall for the commercial activity that's out there, specifically, the rental of kiosks and other stakes in the Pedestrian Mall. As I mentioned before, as originally conceived, the Pedestrian Mall was a commercial entertainment complex. The Fremont Street Experience, LLC, has the ability, and (inaudible) control of the Mall, operate the Mall and maintain the Mall. They have the opportunity to rent portions of the Mall and use portions of the Mall for the commercial benefit of the Fremont Street Experience, which has a collateral benefit to the City of Las Vegas. That commercial revenue derived from those kiosks and the sale from those kiosks on Fremont Street, and from any other retail sales, from the closing of Fremont Street on New Year's Eve, to the New Year's Eve party, and any other event that they charge money for, to the money they pay for bands to attract more people downtown that fill more rooms and help pay the room tax bonds. We benefit collaterally from the retail that exists on Fremont Street. And those commercial opportunities are severely disruptive as a result of new regulation, and I'll get into the case for that in a moment.

Unregulated speech also competes with the primary purpose of the Mall. This wasn't built to be a soapbox. This was built to be a place where people could come and enjoy the light show at night, which runs about every hour, after the sun sets. The stage shows, there are two stages on First Street and Third Street where they have live performances on a regular basis. For special events, there are car rallies down there. I went to an antique car show down there a couple of months ago. When NASCAR's here, they do events related to it. There are probably a plethora of special events, including New Year's Eve, that Mr. Victor, the President of the Fremont Street Experience is in charge of staging, and he'll talk about that in a moment. The retail kiosks and

outdoor cafés that I mentioned earlier, those are all disrupted and hampered without regulation of the Mall, and we'll see how in a moment.

Let me go to the first video. Now, before we play this, Betsy (inaudible), I'm sorry, Comella, is my legal assistant who is going to run the video here, and I'll show you (inaudible). I wanna state a couple of things before we go to these. These are snippets of larger videos, and anybody who wants to see the full videos can have access to them at any time. If the ACLU wants copies, I'd be glad to provide you copies of everything. These are the relevant portions I wanted you to see so you know what's going on in the Mall. One of the things I wanna qualify before playing these videos, many of these have got content that is of a religious nature. In other words, this is an anti-abortion protest. There'll be a – pro-Jesus protest, for want of a better term. I'm not playing these for the content of the video. It doesn't matter what these people in these videos are talking about. So, when we see the content, I don't want you to consider the content. I want you to consider several things I'm about to point out. The amount of space they take up. The type of mechanism they use to deliver their message; in other words, amplification systems. The type of structures they bring with them to the Mall. And the amount of pedestrian traffic that they interfere with in the Mall. And what happens to the flow of pedestrian traffic, to the use of the retail kiosks, and the traditional use of the Mall while these activities are underway.

Betsy, will you play the first video, please. This occurred earlier (inaudible) 2009, or last summer 2009. You'll see the distraction. This is a loud speaker in the middle of the structure. These are metal structures, metal pipes bolted together with foam board in-between. You can see they're 20, 30 feet long, all bolted together, and probably 8 to 10 feet deep. They were in front of all of the businesses, including Third Street and Fourth Street, on the north side of the street, and adjoining the kiosks. Again, using the loud speaker system. This is the gentleman on the loud

speaker. You can see the people around the signs are watching the people associated with putting up the signs. You don't see tourist traffic. You don't see people walking by. You can see them walking on the outskirts of it.

Let's go to the next video. (Inaudible) sorry. I gotta do this. Oh, you got it. This is the next video. These are the kiosks around the same display you just saw with the audio system. Play the video. You'll look at these kiosks, and you'll love this, there is not a pedestrian or a tourist around any of them. In fact you won't even see the vendors themselves around their own kiosks. While this activity is taking place in the Mall, the kiosks adjoining the activity were essentially vacant and almost abandoned, with the merchandise just sitting there. Mr. Victor, who was present for most of this, who saw the videos, will also authenticate them and verify what I've put on the record.

Next video. Mall entertainment. You know, I guess, entertainment is in the eyes of the beholder, and there will be some argument that some of this entertainment is protected by the First Amendment Speech or (inaudible) some such thing. We beg to differ, and I would like to provide you a couple of examples of the type of entertainment that has been occurring unfettered in the Fremont Street Experience Pedestrian Mall. This is Mr. Animation. Play the video, please. You can see Mr. Animation sets up in the Mall. He's in the intersection. This looks like, this is Third Street. A circle of people around him, many, many people, nobody's walking through the middle of the wall now because of the crowd that he's attracted. Mr. Animation is out there for purely commercial purposes. At the end of the video, you're gonna see him step off the stage. Individual to the right has got a handful of cash. Mr. Animation is gonna grab a large, black bag and he's gonna walk around with this black bag while people put money. Unfortunately, the video that we played for you today has been cut a little short. It continues on for another couple

minutes, and the full video will be entered into the record. You'll see they're also selling his DVD's.

Again, this is not activity that was authorized by the Fremont Street Experience, neither programmed by the Fremont Street Experience. It's kind of an ad hoc thing that happens downtown.

Next video. Well, that looked a lot, let me go back. Let me see if I can do this. I'll try again. This, again, is another group that came downtown. Just ad hoc, set up tables, amplification systems, microphones, set up a choir. And don't pay any attention to the content; pay attention to the conduct. The conduct, again, taking up an enormous portion of the Pedestrian Mall, around the kiosks, and the like, as seen, a few people watching from the outskirts. No tourists, no activity going on within the area that this group has taken for themselves for their expressive conduct. Again, look at the size of the tables and the fact that they have the amplicated (sic). And, again, outdoor café tables, completely abandoned, nobody standing there.

COUNCILMAN BARLOW

Brad.

BRAD JERBIC

Um, hum.

COUNCILMAN BARLOW

I just noticed something in this video. If you could just go back. Can you rewind that a little bit? Or you, it goes back to the beginning?

BETSY COMELLA

Replay?

COUNCILMAN BARLOW

Yeah, replay. If – you notice the gentleman in the left-hand corner, in just a moment, he's –, look like, yeah, about right there, looks like he's handing something out. Hold on. It's right after this. As a tourist was passing by. It's coming up. Here it comes. Right there. The gentleman in the yellow shirt.

BRAD JERBIC

Yeah.

COUNCILMAN BARLOW

Right there.

BRAD JERBIC

I don't know who he's associated with or what he's doing. But we'll talk about hand billing and leafleting in a moment. That is not the activity, oddly enough, I want you to – take away from this. I want you to remain with the size. There's an enormous amount of space that they occupy, and the inconsistency of this activity with the kind of activity this Mall was designed to promote, which is commercial, entertainment activity.

UNIDENTIFIED MALE

Commercial.

BRAD JERBIC

Is this the next one?

BETSY COMELLA

No.

BRAD JERBIC

There it is. Again, now we're going to see what happens at night. Another group. Play the video. I want you to notice, this looks like a portaphone (sic), it looks like a megaphone, he's got it hanging around his shoulder. This is at night. You can see the lights are out. The light show is about to begin, or shortly, has just ended. He's out with the megaphone, walking around the Mall. Again, here's another individual. I don't know what kind of expressive conduct he's entering into here, but he is apparently having some very lively conversation with the tourists at the side. You can see when the lights go dark and the show begins, the amplification system doesn't stop, neither does the activity. This is completely inconsistent with the whole purpose of having a light show and sound show that goes with the light show.

Next video. This is another group of individuals that were downtown for gay pride about a year ago. Go ahead and play this. What you're gonna see, this is 4th Street. Fourth Street is one of the two areas, as you're aware, that vehicular traffic crosses the Pedestrian Mall. Their expressive activity attracts a crowd that you'll see (inaudible) step forward, but as the camera goes down,

you're going to see that this expressive activity has essentially created a plug on the 4th Street and the Fremont Street Experience, to the point where people are standing in the street can't get into the Pedestrian Mall. In a moment, you're gonna see, as the video pans to the right, you're gonna see the gates that close the street for the parade are still open. The street is still open to vehicular traffic. And, as a result of the conduct that you're seeing out here, forget the content, you're looking for conduct, of individuals standing in the middle of a travel street. They, (inaudible). Once, again, at night, another individual. Literally, it appears, play it, Betsy, literally, it appears, standing on his (inaudible) on his soapbox in the middle of the 1st Street intersection, at night, again, an amplification system. What are the people doing? Nobody is going through this intersection or coming anywhere near this guy. Again, activity completely inconsistent with the Pedestrian Mall.

The next video. Oops, I'm sorry. That was me.

BETSY COMELLA

Sorry.

BRAD JERBIC

This is Mr., we call him Robot Man, but he is another freelance performer that shows up ad hoc on Fremont Street, sets up in various locations. We've got individuals complain to us that this is a public area open to this kind of expressive activity, and he even made the argument that this is First Amendment protected expressive activity. Let's see what Mr. Robot Man has to say about that. Tourists were taking this video account. We'll see some pictures in a moment. Again, amplification systems to the right. He's being videotaped. He's telling them you can't film me;

you can't film me. Get out of here. The, this is an individual that a lot of people might think is associated with the Fremont Street Experience. They might think he's a freelance performer, regardless of what they think. This is a guy who, supposedly, is there entertaining, jumps off his platform, tells them not to videotape and then scares them away. This again, completely inconsistent with the reasons this Pedestrian Mall was created and the kind of conduct for freelance performers that is not conducive to commercial entertainment activity within the Mall.

Next video. Back again at night on Fremont Street. (Inaudible). You'll notice, once again, individual with this particular group (inaudible) tourists, signs that you'll see when we pan back in this video and the next one, pretty much line this particular intersection, which is a thoroughfare for pedestrian traffic. You'll see people staying away from this entire area while they're there. Again, at night, with a megaphone, walking around. Again, pay no attention to the content; pay attention to the conduct.

One more. It's getting a little redundant now. I'll do one more for you on this one. Again, created for a light show, sound show, retail experiences, and here's somebody with an amplification system, not just speaking speech. We'll talk about that separately later. The amplification system and the conduct is what I want you to see.

Okay. That's the end of the videos. There is one more video that we were unable to have transformed into the PowerPoint. In, is a video that you'll see pictures of in a moment. When I get to the pictures, I'll describe the video for you. Again, it involves entertainers on Fremont Street.

Let's go to a couple of things that are in this ordinance. The new ordinance, which we are going to talk about in a minutes, has got a prohibition against three things outright anywhere in the Mall, amplification systems, prohibition against throwing things in the Mall, as throwing or

objects over into the Mall, and a complete prohibition against hula hoops, which I've been asked why hula hoops. This is why. These are just pictures. An individual showed up with an entrepreneurial spirit thinking that he would rent oversized hula hoops to individuals to use in the Pedestrian Mall. As you can see, this is a four foot, five foot (inaudible) hula hoop that you would probably have as kid that you might have used. These are rather large hula hoops. The size that shouldn't be seen, as I said, in the Pedestrian Mall. The next several slides all show how big these things are, how much space they take up. Again, we're not looking at expressive speech; we're looking at the conduct itself and the consequences on the primary use of the Mall. Here's a picture of another entertainer in the Mall. I don't know what his name is, but, as you can see, this fellow sets up orange traffic cones. Huge circle in the Pedestrian Mall. Blocks it out for himself. (Inaudible) performance. Has right next to him a bucket for money. So this is not, he's trying to – raise some funds here. And this is the collection that he has with him, and the bucket, as you can see, in the upper left-hand corner of his (inaudible). This is Mr. Robot Man again. I wanted to show this (inaudible) in the original video, but (inaudible), it's a bucket with the dollar sign on. He's doing this for cash. Once again, Mr. Robot Man at a different location. Once again, a slightly different location, his bucket and his amplification system.

This is the video that we couldn't, unfortunately, get (inaudible) up, but I will introduce it into the record before the Council meeting. You can find it on YouTube, if you go to thriller downtown-Las Vegas. It's, a couple of guys dressed up as members of the rock band Kiss. The Fremont Street Experience runs a number of like and sound (inaudible). One of them is a tribute to the rock band Queen. One of them is a tribute to the rock bank Kiss. So two entrepreneurial fellows decided they would dress up as members of the rock bank Kiss with pretty good makeup and costumes, come downtown and see if they could get their pictures taken with tourists for

$20. When tourists were asked, I don't know who paid and who didn't, this particular individual did not –

COUNCILMAN BARLOW

Brad?

BRAD JERBIC

Um, hum.

COUNCILMAN BARLOW

Couldn't we go online and pull that up from online?

BRAD JERBIC

You might be able to. It's a, it's about a five-minute video, if you wanna watch the entire thing. I can describe it for you, and I can later on play you a small portion at the Council meeting. I downloaded it last night myself and was able to convert it again. We have two of the three copies provided on Fremont Street that just didn't play. But if you really wanna see it –

VAL STEED

We're blocked today.

BEVERLY K. BRIDGES

YouTube is blocked.

BRAD JERBIC

YouTube is blocked. There's your answer. We have no access to anything. We have no access to anything (inaudible). So –, I can't even (inaudible)

COUNCILMAN BARLOW

(Inaudible)

COUNCILMAN ANTHONY

(Inaudible)

BRAD JERBIC

Yeah, you can get it on your iPhone, but you can't get it on the City's computer. What you're about to see is just a couple of snippets. These individuals dressed as members of the rock band Kiss, and I'm gonna speculate something here. This is not by accident. This is my speculation. With a – show devoted to Kiss, two people dressing up like Kiss, I would bet that there is a lot of confusion amongst tourists as to whether or not these individuals are entertainment provided consistent with the light show by Fremont Street Experience or entrepreneurs. We don't know, we didn't know the answer one way or the other. But I wanna show you what happens. They come down. The individual in the red shirt appears to be associated with them. This is one of the members. This is another member of the – two guys dressed up as Kiss, and he's arguing with a tourist in a white T-shirt. You can't see the handwriting. What you can see is that somehow, during this altercation, and we don't have good sound on it or anything, so he set this to Michael Jackson's Thriller, which is why the video has its name. But what we see is the member of the

rock band Kiss appears to have in his hand a handheld device, which appears to be a Taser. He's carrying it throughout portions of the video, and then, at some point in time, he puts it right into the chest of the tourist and he hits the button. You can see the light blue spark coming from his hand into the chest of the tourist. When the video concludes, you can hear somebody saying, get out of here, or words to that effect, and, oh, he owes $20. Mr. Victor will testify to this event in a moment, when he gets to a portion of the presentation. But, I think, there's a feeling that these individuals charging people money for photographs, and this individual didn't pay. Got into some kind of altercation and that resulted in him being Tasered.

Again, this is the kind of unregulated activity that's completely inconsistent with the Pedestrian Mall, with its function, its primary purpose and the commercial entertainment complex we tried to create.

The new ordinance. What, that brings us to the ordinance before you today at Recommending. Bill No. 2010-31, recognizes that the Pedestrian Mall is a traditional public forum, subject to reasonable time, place and manner restrictions. The government must demonstrate a significant interest in said regulation, and the restrictions must be narrowly tailored, leaving alternatives to speech available. We're aware of the standard. I have no doubt that as, the end of this you're gonna hear contrary reasons to what that standard is and isn't and whether or not we meet that standard with this particular ordinance. But, I'm here to make the case for why we do.

Right now, I wanna point out something I said earlier in the presentation. There are a number of things the City can do, right now, that wouldn't require any laws. They're not going to be enough to regulate the Mall. But they could be done right now, and I doubt there would be any successful litigation against the City. We can prohibit sol, coercive solicitation, that's blocking, threatening, (inaudible) or forcing someone (inaudible). We could do that right now City-wide,

including Fremont Street. We can prohibit solicitation within 20 feet of an ATM or 10 feet of the entrance of a commercial building. That's in the law right now. All of those building owners on Fremont Street, and alike, we can right now prohibit it within 10 feet.

Solicitation in convention centers; there's a local case, the Las Vegas Convention and Visitors Authority were able to keep people that were hand billers and leafleters (sic), and alike, off the space of the Convention and Visitors Authority during shows that were going out there. The ones like Comdex and CES and things like that. The court said, that's being used for another purpose. They can be regulated and put in another place during those events.

Convention protestors, the World Trade Organization in Seattle, Washington, many years ago, they cited the City of Seattle to separate the protestors from where the delegates were in the convention. The Ninth Circuit Court of Appeals said, sure, they have, it's content neutral, they can be in a separate place. And that was upheld. I'm not gonna introduce that case into the record.

So (inaudible) public fairgrounds. In Minneapolis, individuals showed up from the Society for Christian Consciousness; they were not allowed to go anywhere in the fairground and speak their First Amendment Speech, although it was a traditional public forum. They were restricted to a particular area. The content of their speech wasn't regulated at all. It was just a time, place and manner restriction the court found constitutional.

And beach vendors in Waikiki Beach. For a five-mile section of Waikiki Beach, there's a restriction to the type of express activity there can occur on or near beachfront.

So these are things, and there are other cases as well that talk about what could be prohibited right now as a matter of law as it exists in the Ninth Circuit (inaudible).

With that, let me show you what it means with respect to the Pedestrian Mall. I'm gonna show you a number of slides up here. We're gonna start with Main Street. This is Main to 1st, 1st to Casino, Casino to 3rd, 3rd to 4th, 4th to Las Vegas Boulevard. The 3rd Street spur, that we're gonna talk about in a moment, it's a location for the free expression zones. This is North 3rd Street,' north of the Pedestrian Mall, and this is North 1st Street of the Pedestrian Mall. These are all, this is the entire Mall, as currently defined in the Pedestrian Mall Ordinance. What you have in front of you is a piece of paper that looks like this that has it all put together. In front of you, is a colored version of the document I have in front of you. I've given a copy to the Clerk, and I'd like it marked as an exhibit and (inaudible) here.

This particular map represents, and Mr. Victor will testify to it, represents the Pedestrian Mall with the Kiosks and the building entrances, although I think it lacks, in some portions, the outdoor cafes. So let's just talk about the map itself, as it exists. We believe, and we'll make the case for it at the Council meeting as well, that when we enacted the ordinance that banned solicitation within 10 feet of a building entrance, although we could have gone bigger, as some cities have, within 20 feet of an ATM, we didn't look at the ban near kiosks, 'cause we didn't have kiosks. At the time they weren't really an issue. If we were to look at such a prohibition, you would have to ask yourself: is a kiosk more like an ATM or more like a building entrance? Well, we submit that the record be substantial that it's more like an ATM. And why? When you walk into a building, you're walking into a business – entrance. You probably have money, you're probably gonna go shopping, and that's why the law says, you could prohibit solicitors from being within 10 feet of you when you walk through a building entrance, because they know you're likely to be a person that can give them something, and you're more a captive audience at that choke point.

At an ATM it's 20 feet, 'cause you're (sic) no longer, potentially, have money in your pocket; you got it coming out of a machine. Your card is right there; you're a very captive audience. So the distance is bigger at ATM's. The same exists at a kiosk. You're not going into a business; that is a business. The cash drawer is right there. Your cash or credit card are (sic) coming right out. You are the same kind of captive audience you are at an ATM. So, I think there's a compelling case, in fact, an overwhelming case that the distance separation we set for kiosks, to keep solicitors away, be 20 feet, not 10 feet.

But let's look at the math. At the kiosks, you have an inner circle, that's a 10-foot circle, you've got a 20-foot circle. With a case made for a 20-foot diameter around the kiosks, you can see, looking at your handout map, that the circles overlap, substantially, throughout the Pedestrian Mall. An argument could be made, right now, that with no change in the law, just with those distance separations, you could prohibit solicitation activity at anytime, anywhere within those circles. What that leaves you is the space in-between, where you see no circles for pedestrian traffic and other activity. We look at this as a possible alternative to a new ordinance. We call it the Swiss cheese map, for obvious reasons. If you were to enact an ordin, or just leave the ordinance alone, not enact anything. Just use the existing law, coercive solicitation, solicitation within 20 feet of a kiosk, 20 feet of an ATM, 10 feet of a building entrance. I wanna say existing law, we would add kiosk, so make the case for the 20 feet. If you were to do that, you would end up with something that looks like this, which would be absolutely unenforceable.

Why would it be unenforceable? One, nobody knows where 19 feet ends and 21 feet begins. You would have to, literally, on the pavement, around every kiosk, every time you move them, draw a circle so everybody knew where you could be and where you couldn't. And the kiosks are from time to time rearranged.

The other thing that you would have is a temporal problem. Individuals who complain about activity within these areas would have to pretty much catch them and prove it, because let's face it, by the time the cop gets there, proving it, and the exact place that they were, it's gonna be almost impossible. So enforcement of this kind of model is – almost impossible, and, as a result, in considering it, we felt it didn't work.

We also looked at the spaces in-between, and Mr. Victor will testify to this as well, and said, could you have free expressions zones in-between those circles? And the answer was no, because of the amount of pedestrian traffic. Those are areas, I mean, that Mall, as you've seen at night, is packed. And when there's (sic) special events it's even more packed. And, as a result, it was felt, the need to keep the pedestrian flow moving, and to keep access to the retail going, it didn't work in this portion of the Mall.

Let me talk about what the court decision, rendered by Judge Ezra of the last go around meant. Judge Ezra said a number of things. Ultimately –, all the regulations that the City had in place on the Mall were thrown out. But before they were thrown out, Judge Ezra acknowledged a number of things the Ninth Circuit had found, and that he had found. And I'm putting them all together on one nice slide. Court decisions concerning the Fremont Street Experience have recognized that the ACLU and any person challenging the ordinance has to challenge: 1) that restrictions upon the act of solicitation, content neutral, that the City and the Fremont Street Experience have a significant interest in ensuring safe, efficient and orderly movement of pedestrians in the Pedestrian Mall. That's a given. We don't have to argue that. Of course, we know that. The City and the Fremont Street Experience have a significant interest in protecting the local merchant economy from an unfair competition. What kind of unfair competition? What happens when you put up a free table with T-shirts, very much like the T-shirts that are being sold by a person at a

kiosk who's paying $5,000 a month or more to rent a kiosk? That's, obviously, not fair competition, and Mr. Victor's gonna talk about the effect of that kind of activity on kiosk owners.

Another given is that the City and the Fremont Street Experience have a significant interest in protecting visitors from solicitors in an environment where freedom of movement is restricted. The City and the Fremont Street Experience have a significant interest in preventing the destruction of mall entertainment, and the destruction of visitors enjoying the Mall Experience. And, finally, the City and the Fremont Street Experience have a significant interest in protecting the aesthetic appearance of the Mall by eliminating visual blight caused by an unsightly vendor. Those facts, I think, have been established by the videos and the pictures, and they will be enhanced by testimony from Mr. Victor in a moment.

But let's talk about what we came down with. The City, as I said, added three things to the list of things prohibited in the Mall, anywhere in the Mall, in addition to unicycles, parades, bicycles, skateboarding, and the like, we added amplified sound for reasons, I think, I've already made clear in the record that I made. Throwing things in the Mall, which I don't think anybody has any argument with that's not any kind of expressive activity protected by the constitution. Shouldn't have probably been there in the first place when we enacted the ordinance, and hula hoops, which we made the case for, which I don't think is expressive activity either protected by the constitution.

What did we prohibit Mall-wise that's only allowed in free expression zones? Three things in the ordinance: solicitation, as defined in the Municipal Code, leafleting and Mall entertainment. Before I go any further, I'm gonna tell you that when we drafted the ordinance, we had a lot of evidence. Mr. Victor, he provided a lot of evidence. Reports that I've read provided a lot of

evidence. I am gonna tell you as of right now, in my opinion, that evidence does not arise to a level that I think would support limiting leafleting only to free expression zones. And, so, today, we will ask that this, if it does pass out of Recommending, passed out as amended, so that only solicitation and mall entertainment are limited to free expression zones. We are not, at this point in time, gonna include leafleting. If in the future, the activity in the Mall rises to a level that I feel we can make a case here at the Recommending Committee, before the City Council and before a court of law, we may bring it back. So, I reserve the right to do that. But, today, I will tell you, in all candor, I don't think the law, the evidence rises to that level. I think it does with respect to solicitation and mall entertainment.

COUNCILMAN ANTHONY

Mr. Chair, can I ask a question?

COUNCILMAN BARLOW

Yes.

COUNCILMAN ANTHONY

What's the definition of leafleting?

BRAD JERBIC

Handing out material by hand.

COUNCILMAN ANTHONY

So –

BRAD JERBIC

It can be cards, pamphlets, literature –

COUNCILMAN ANTHONY

Holding a sign?

BRAD JERBIC

Holding a sign is not leafleting. (Inaudible) holding a sign is completely (inaudible)

COUNCILMAN ANTHONY

So it's just standing – there, walking around?

BRAD JERBIC

Right. You don't even have to have –

COUNCILMAN ANTHONY

You don't (inaudible) –

BRAD JERBIC

Standing still or walking around, handing out material.

COUNCILMAN ANTHONY

Handing out material.

BRAD JERBIC

Basically, to passersby, not – a stationary zone, that's never been included. A box that has literature in it, that's not leafleting. An individual handing things out.

COUNCILMAN ANTHONY

So, the – one video where somebody is there with a sign and they're yelling something, what's, what is, where does –

BRAD JERBIC

That is nothing. That has never been prohibited since the ordinance was enacted.

COUNCILMAN ANTHONY

So, where does – that fit into soliciting leafleting and entertainment?

BRAD JERBIC

It doesn't.

COUNCILMAN ANTHONY

So, that would be allowed?

BRAD JERBIC

That's allowed.

COUNCILMAN ANTHONY

Okay –

BRAD JERBIC

But we will take a look at –

COUNCILMAN ANTHONY

Under – (inaudible)

BRAD JERBIC

– structures, and we'll look at things like that, but I think, because we need to go back at some point in time, 'cause this ordinance isn't gonna fix everything. But one of the things we need to go back and take a look at as well are (sic) structures in the Mall. Now, I don't think under any circumstances it's a sign of the type that you saw going to be a structure that would be prohibited. A small sign, what I was seeing there is two foot, four foot by four foot sign, something like that. At some point in time, we'll get to what you saw, like the anti-abortion poster, which was a large metal structure.

COUNCILMAN ANTHONY

Right.

BRAD JERBIC

And that's completely different and what we need to is, and we will come back in the future and look at this, is the structures. Unsafe structures all over the (inaudible). But we have one definition in the Building Code. We have another definition of it here. We actually need a specific definition, I think, in the Pedestrian Mall, to – address structures in that. But what I wanted you to see with the solicited conduct was the megaphone, the speaking, the – free expression coupled with the signs, literally, shoulder to shoulder blocking pedestrian traffic. Any single one, might be hard to argue it blocks anything, depending on what the person's doing.

COUNCILMAN ANTHONY

Right.

BRAD JERBIC

Conceivably it could; conceivably, it couldn't. Several people shoulder to shoulder, standing in front of an intersection, I don't think there's any argument at all, blocking traffic.

COUNCILMAN ANTHONY

But the – two guys standing there with a sign, will they, that would not be prohibited activity (inaudible) –

BRAD JERBIC

No. Unless they're asking for something, that is not prohibited.

COUNCILMAN ANTHONY

Okay.

BRAD JERBIC

Free expressions. What did we look at? I just explained that we looked at the Mall itself. Let's talk about the park where the canopy exists. The canopy exists between Main Street and 4th Street of the north and south of the former Fremont Street. We look at that area, and, as you can see by the Swiss cheese map, there are very few opportunities for free expressive activity in that area, because of, one, the kiosks; two, the light show draws people to the entire center of the Mall during the evening presentations. And the stages on 1st Street and 3rd Street also draw huge crowds. The other thing (inaudible). The other thing Mr. Victor will testify to is that the whole Mall, in spite of the kiosks, is used for a lot of special events, particularly car shows and things like that, where vehicles are parked in all of those free spaces and other things are moved around to help accommodate the pedestrians. But it's always a challenge when programming the Mall for a special event, allowing the retail kiosks to be viable and allow pedestrians to move back and forth. So, that was looked at, and decided that that was not viable, as a place for these types of zones.

We looked at 1st Street. First Street is vacated on the south side of the Golden Nugget and Pioneer Club, so that's privately owned now. That's no longer Pedestrian Mall. The south side, including the north side, which is not vacated, is where the new 1st Street stage is. That stage itself precludes its use as a free expressive area.

We looked at Casino Center, which is a thoroughfare still open to pedestrian traffic, or vehicular traffic, and that's not a place for (inaudible). We looked at 4th Street, also opened to vehicular

traffic. And we looked at the area far to the east. That's the area between 4th Street and Las Vegas Boulevard. Technically, it's part of the Pedestrian Mall. It was not looked at as a viable alternative, because, one, I think, a good argument could be made by anybody challenging the ordinance that you took people completely away from the canopy part of the Fremont Street Experience, put them in another area that's kind of (inaudible), but, two, the ki, the restaurants in that area are more plentiful than any other place in the Fremont Street Experience. There are outdoor cafes at Hennessey's, Mickey Finn's and at the former Jillian's. There may be more in the future. Those are places where you can (inaudible) solicitation, (inaudible) with tables and the like, but that doesn't really matter. If you're a tourist, you're having a nice lunch or a dinner outside, or a local as well, you're not gonna leave money as a tip for anyone, or want to pull cash out if soliciting activity is occurring next to your dining table. So, we didn't look at that as a viable area (inaudible).

What we looked at was 3rd Street, and 3rd Street is also problematic. Third Street, all the way to Ogden, is part of the Pedestrian Mall. And, while a lot of people may look at it and say, you know, it's the old 3rd Street, 3rd Street is a very viable venue for Fremont Street Experience. They consider it prime real estate. That real estate is used for car shows. It's used for setting up vending opportunities. I think they have (inaudible) stages there. It is very active and used as part of the Fremont Street Experience as a whole. It's also the place where the neon signs exist and part of the expanded Neon Sign Museum. And, most importantly, and a concern I'm sure to this Council, is the fact that that is the connector between the Fremont Street Experience and the Mob Museum and the new CIM project that used to be called the Lady Luck. You go by the Lady Luck, today, you'll see windows open in both towers. There's active construction going on. That is a project that's expected to be completed and opened in the near future. And there is a fear that

if you create a gauntlet of solicitation and other activity on 3rd Street, you're going to hurt the commercial viability of that project, and you're going to prevent individuals wanting to move back and forth in the new Mob Museum and the Fremont Street Experience.

So it wasn't likely that we look at 3rd Street; it also has problems. But not the problems that I identified as existing on the Fremont Street Experience, or Fremont Street itself and the – area by Neonopolis.

What we did was identify two initial zones, based on the amount of expressive activity seen in the Mall in the last couple of years. Two zones have been identified. There is a new map that looks very much like the slide you're looking at now, that is gonna replace Exhibit 1 or Exhibit A (sic) in your backup material. This is produced by our Planning Department. This is a digital depiction of the free expressive zones that we propose in this ordinance. They are approximately 20 feet back from the shade line of the Fremont Street Experience canopy. That still allows pedestrians to move in front. The areas are 12 feet wide on each side, on the west and east side of 3rd Street, and they are a hundred feet long. So, two, 1200-foot areas, 2400 square feet would be reserved for expressive activity involving solicitation and mall entertainment. This activity would be completely unregulated and subject to first come, first serve, completely content neutral. We don't care what you do out there with respect to solicitation of all activity, provided, (inaudible) solicitation (inaudible) prohibited (inaudible) solicitation, you can do whatever you want. Council?

COUNCILMAN BARLOW

Brad, you continue to mention the fact that the content of those individuals performing within this proposed area on 3rd and Fremont, and you mention on several occasions that these individuals will not be regulated, who patrols or regulate (sic) the Mall?

BRAD JERBIC

Let me say this, the Mall, right now, is in the City. The Metropolitan Police Department has a force down there, from time to time, patrolling the Mall. The Fremont Street Experience has its own private security down there, and those are the two entities that are responsible for securing the Mall right now. I can tell you, my guess is that Mr. Victor will shake his head yes or no about (inaudible) percentages, probably Fremont Street Experience private security that is patrolling the Mall right now and handling those kinds of issues.

COUNCILMAN BARLOW

Okay. So, within the 12- by 100-foot radius area in which is being proposed to this Recommending Board today, who's going to regulate or enforce that the entertainers remain within that geographic location?

BRAD JERBIC

That would be the responsibility of the Fremont Street Experience security and the Las Vegas Metropolitan Police Department.

Let me explain what this is and what this isn't. We're only saying two types of conduct: solicitation and mall entertainment are limited to these two areas. Nothing else. Mall

entertainment and solicitation. We're not gonna tell you what kind of entertainment. We're not gonna tell you what kind of solicitation. We have no interest in the conduct, or excuse me the content of your solicitation. We have no interest in the content of your mall entertainment. Not gonna do it with loud speakers, 'cause that's gonna be prohibited, Mall-wide. There's (sic) no exceptions. You're not gonna get to go in these zones and turn on an amplifier. That's still inconsistent with the Mall, right next to the light and sound show, will drown it out and compete with it, and it's not consistent. But what we will allow is any kind of solicitation activity and any kind of mall entertainment, first come first serve in those areas.

I want to state, for the record, that Mr. Rebel is here on behalf of the Fremont Hotel. Believe me, it was no easy task explaining to individual entities downtown that we're gonna have free expression zones, and they're gonna be somewhere. And these have to be, at least one of them, has to be right next to the Fremont Hotel. These areas were selected because, based on the size of –, the numbers (inaudible) at the same time they solicit would fill (inaudible) one of these areas right now, and Mr. Victor will testify to that. So, we made it even larger. So, we did and will accommodate any individual who wants to come.

But these are not necessarily carved in stone. This is the first cut. If these turn out to be in the wrong place and inconsistent, we reserve the right to come back and move them, in the future. We will always provide them, but we will reserve the right to come back and move them. We'll reserve the right to come back and expand them. If it turns out there are more people interested in protected conduct or mall entertainment, which I don't think is protected conduct, but if there are people interested in protected conduct and there's not enough room for them here, we will come back with a recommendation to expand the free expression area.

But we believe that these not only are, one, let's talk about time, place and manner. There's no time restriction. This is any time I want. There's no manner restriction. We're not putting any regulation on how you do it, or what to say you say or what the content is. There's just a place restriction. That's all we're doing, is a place restriction.

The other thing we're looking at is: are there alternative means to express your act, your First Amendment Speech of solicitive (sic) speech? Well, one, you're (inaudible) the entire target audience of the Pedestrian Mall from this area. But, second, look at the Pedestrian Mall. This is a footprint, five blocks long, along what used to be Fremont Street. The entire perimeter of the Pedestrian Mall is publicly-owned sidewalk, which has never been regulated and completely open to First Amendment Speech or expressive speech. Anybody who comes in that Mall, you can get 'em on the sidewalk outside the Mall and solicit them all you want. We're only talking within the Pedestrian Mall. So, you can reach the target audience anywhere around the perimeter of the Mall as you enter. And once in, you can reach them from 3rd Street.

Again, another picture of the expression zone. At the back of this, you can see this is looking from north to south, with the 3rd Street stage visually depicted in the graphic. And this is the area as it looks today. I wanna say, right now, before anybody jumps me. This particular photograph shows a really large newspaper vending machine in this area. That's gonna be carved out. That's gonna be removed. This area is gonna be completely cleared, except little palm trees. There won't be anything obstructing it, and it's gonna be painted either with a line around the perimeter or shaded in the middle so everybody knows exactly where the area is and where the lines are, much like the area we painted downtown at the courthouse for wedding chapel solicitors. That has worked perfectly since we put it into effect. It's going to be painted or marked clearly on the ground, signage identifying it, and there'll be one (inaudible).

Tables will be allowed in this area, but not your table. You want a table, they will be provided on a first-come, first-serve basis, free of charge, and virtually immediately by the Fremont Street Experience. That's to control the type of structure people are bringing in to the Mall. People – bringing in dangerous things, flimsy tables, things that – wouldn't withstand wind or tourists hitting it, or something like that. But we'll provide all the tables you want for free, any time within these free expression zones. So tabling is back, solicitation is back, and mall entertainment is back in these two areas.

Councilman?

COUCILMAN BARLOW

Brad, I've been to other communities, many communities around the country, and those cities seem to require entertainment for individuals, permits in order for them to go out and entertain; have we considered that?

BRAD JERBIC

Yes. Let me – tell you about the one I looked at the most. The Mayor asked me to look at another one; I haven't finished looking into that.

Let's talk about a couple of places where they built (inaudible). If you've ever been to Waikiki Beach, you'll see people not exactly on the beach, but off to the side, and most particularly at night. You'll have some guy with a parrot. You'll have a – parrot sitting on your shoulder, take a picture for 20 bucks. Other people doing other kinds of activities. I don't know how they regulate that or how they (inaudible). The one I'm familiar with that is a bit analogous to the Fremont Street Experience is the 3rd Street Promenade in Santa Monica, California –

COUNCILMAN BARLOW

Santa Monica.

BRAD JERBIC

Now, the difference, and I've been asked this about Fremont, why don't we do what they do? What they do is they pick and license entertainers, because they feel, and maybe appropriately so, that entertainment in the 3rd Street Promenade in Santa Monica is conducive to tourists coming downtown and creates part of the ambiance of the pedestrian mall in Santa Monica. So, when you come down, you're not just there to walk up and down the Promenade and visit the restaurants and the shops. You're there for the entertainment as well. It's kind of catchy and kind of fun. And because they look at it that way, they license the people that do entertainment down there, and they kinda pick and choose a little bit, but they also have applications that people fill out, and the like, and they (inaudible) the spaces that they use.

The difference between Santa Monica's Promenade and Fremont Street Experience is that Fremont Street Experience picked its entertainment from the day this project was conceived. This wasn't built to just be one big mall where you walk up and down between a bunch of casinos. If that were the case, you could pretty much have left the whole situation alone and let people walk up and down the sidewalks. This was conceived as a project that not only provided a pedestrian mall experience and retail experience to pay for all of it, but provided its own entertainment. The entertainment being stage shows. So, when the Beach Boys come here, it's playing on the 3rd Street stage. That's because Mr. Victor and his clients pick that kind of entertainment and they program it. When you see the light shows overhead at night, they decided that's the entertainment we want. They decided they didn't want to go with the occasional

entertainer block by block by block. You didn't, if that's what they would have wanted, or the City wanted, you didn't have to build a canopy for that, and they don't have a canopy in Santa Monica. It's just a big, wide, open mall.

So, like I say, I think it's really just a programming choice and a policy choice that was made many, many years ago. And that choice was, the primary purpose was an organized, pretty much, predictable on the spot sound and light show. People knew when it started, when it ended, so they could be out there on the street and watch it. Stage shows that we promoted in advance, occurring during seasons of the year, at different times. Kiosks. But you can see Fremont Street, right now, Fremont Street, right now, could have entertainers that they pick in that Mall. And from time to time, they do, not just on the stage, but it's their mall, under the operation of the management agreement, controlling the program –

COUNCILMAN BARLOW

Mayor – Goodman, not. Brad –

BRAD JERBIC

They have decided to not allow this freelance, freeform activity.

COUNCILMAN BARLOW

Very good point, which basically takes me back to my initial question, or comment in relation to Santa Monica versus Fremont Street Experience. If Santa Monica can regulate and license their acts, then what would prohibit someone from going out into – the area of Santa Monica and just setting up? Because, to me, it's a – question of – legality, of freedom of speech again.

BRAD JERBIC

Well, let me – go out on a limb here and say that, I think, even the courts have recognized that an unregulated, completely, anybody, anywhere, kind of situation, even the 3rd Street Promenade, doesn't work. They have the same rights to pedestrian flow, and to a – hassle-free environment, so-to-speak, as we do. And – I'm gonna say (inaudible), you know, more or less, act upon act upon act, where you have to run a gauntlet of people before you can get where you wanna get, with one person playing this instrument, another playing the other, drowning each other throughout. This doesn't work, as a practical matter, regardless of what kind of speech you're talking about.

But, again, I would –, you know, I think there's a lot of debate as to whether or not this activity that you're looking at, when it comes to entertainment, is protected activity by the First Amendment. I mean, some of it could be. Some isn't. Some is in-between. But that's what people go to law school for, is to kind of argue where the shades of grey are. But, you know, a lot of this stuff is just a hundred percent commercial, just a hundred percent commercial. And probably, can be completely, you know, regulated, prohibited or whatever under any ordinance. Some of it may have a First Amendment component to it. But we're not gonna pick and choose which does and which doesn't. We're going to say entertainment, that's where you go. That's where you can perform (inaudible).

We think it's content neutral. We think it's reasonable time, place and manner. We think it leaves open all viable alternatives for individuals to reach that same audience, to pick their say and speech, content, (inaudible), anyone they wanna talk to.

COUNCILMAN BARLOW

Okay.

BRAD JERBIC

That concludes my presentation as to the new ordinance, the history, the legislation, and leaf regulation. I would, with your permission, ask Mr. Victor to come to the microphone right now.

JIM NICHOLS

Right here.

JEFF VICTOR

Down here?

BRAD JERBIC

Actually, anyone you want, Jim. You wanna sit next to me, I'll move.

COUNCILMAN BARLOW

Are you going to swear him in under oath –

BRAD JERBIC

You have that map marked as Exhibit A or 1 or?

GABRIELA PORTILLO-BRENNER

I do, as Exhibit 1.

BRAD JERBIC

Exhibit 1; okay. So, we're gonna refer to the map of the Fremont Street Experience. Can you just state your name and, for the record, and tell us where you work.

JEFF VICTOR

My name is Jeff Victor; I'm the president of the Fremont Street Experience.

BRAD JERBIC

And as president of the Fremont Street Experience, Mr. Victor, what are your duties and responsibilities?

JEFF VICTOR

We operate the Fremont Street Experience, LLC, which is the common area between businesses that line Fremont Street, from Main Street down to Las Vegas Boulevard. We also operate the parking garage that's located between 4th Street and Las Vegas Boulevard. We have about 300 employees, I'm sorry, 100 employees in the company, which are made up of a mix of security guards, cleanliness folks, entertainment and special events operators, and technicians, marketing, finance, public relations.

BRAD JERBIC

Very good. How long have you been the president of Fremont Street Experience, LLC?

JEFF VICTOR

A little over four years.

BRAD JERBIC

And, were you president of the LLC before the ruling by the Federal District Court Judge in 2009 that struck down the ordinances regulating the Mall?

JEFF VICTOR

Yes.

BRAD JERBIC

And you've obviously been president after those ordinances were struck down, correct?

JEFF VICTOR

Correct.

BRAD JERBIC

Have you noticed the difference in the type of activity in the Pedestrian Mall after the court decision in 2009 striking down the Pedestrian Mall Ordinance?

JEFF VICTOR

Absolutely.

BRAD JERBIC

What kind of differences have you noticed?

JEFF VICTOR

In particular, the amount of individuals that come down to solicit for tips by providing, what I guess they would consider, entertainment experiences in the Mall, has exploded from the day that the – decision was made until now.

BRAD JERBIC

And have you – had complaints from individuals, let's start with tourists or visitors to the Mall, regarding conduct in the Mall by individuals involved in commercial entertainment.

JEFF VICTOR

Numerous complaints from guests, but the complaints haven't been limited to the guests, but, clearly, the guests are not comfortable, in large part, with the activity out on the Mall.

BRAD JERBIC

Did you have an opportunity to sit here during the presentation that I gave regarding pictures and videos of the Fremont Street Experience during the latter 2009 and early 2010?

JEFF VICTOR

Yes.

BRAD JERBIC

Did my representation on the record accurately reflect the content of those videos and the conduct that was displayed in the videos?

JEFF VICTOR

Yes.

BRAD JERBIC

The, did you, are you aware of the incident involving individuals dressed as members of the rock band Kiss on the Fremont Street Experience?

JEFF VICTOR

Yes. I was not there that evening, but I am aware of it. Our se, if you see the video, you'll see that one of our security guard (sic) actually leaves his post from, he has a fixed post during the light show, at the intersection of Casino Center, he's wearing a yellow vest, and you'll see him leave his post to come and deal with the distraction and disruption, and he actually filled out a statement. And I have seen the full video that was provided, by the way, by a guest who had just filmed that and put it up on YouTube.

BRAD JERBIC

Are you aware of the results of the investigation conducted by the Fremont Street Experience into that incident?

JEFF VICTOR

Only to the extent that the customer decided not to file a complaint, and – left.

BRAD JERBIC

Did you become aware of what happened even though he didn't file a complaint?

JEFF VICTOR

Again, I –, my best source and knowledge is through the video that you find on (inaudible) on YouTube, and then what our security guard witnessed at the event and trying to just deal with the aftermath of it.

BRAD JERBIC

Very good. The, you're also familiar with other street entertainers, Mr. Animation, Robot Man, and the like, in the Pedestrian Mall?

JEFF VICTOR

Yes.

BRAD JERBIC

Are there other street entertainers that appear in the Pedestrian Mall aside from the ones whose examples we've played before the Recommending Committee today?

JEFF VICTOR

Oh, dozens. Yeah. Things like the person that sells balloon animals, the showgirls that walk up and down the Mall taking photos. There are statue characters. You name it, we've – got it.

BRAD JERBIC

Have you also become aware of other expressive activity, and it's the type you saw in the videos and in the pictures that included the anti-abortion protest, the – rally at the gay rights parade, and the pro-religious people that were speaking on Fremont Street?

JEFF VICTOR

Yeah. We do have folks coming out to either exploit their private businesses, or send a – message. There – are pretty regular set ups up and down the Mall for purposes of commercial activity.

BRAD JERBIC

Have both the individuals not involved in entertainment and individuals involved in entertainment actually used amplification systems to broadcast their message?

JEFF VICTOR

Yeah. Absolutely. We saw a lot of it in the video, and we have it on a regular basis, whether it's connected to a car battery or it's battery-operated, we have amplified sound on a regular basis.

BRAD JERBIC

Does that activity, in your opinion, is it consistent with the programming of the Pedestrian Mall by the Fremont Street Experience of both the light, stage and sound shows?

JEFF VICTOR

No. I mean, the sound system in Fremont Street Experience is quite extraordinary. It was engineered with a great deal of concern for the smooth flow of sound from one end to the other, and a total of 550,000 watts of sound blowing through over 200 speakers, with very clear separation of distance. We have the ability to zone those speakers out, so that we can control individual experiences, either from the stages or between the stages, and do that on a regular basis. But when somebody brings their own amplified sound and drops it in the midst of that, clearly, it's a –, creates inaudible (inaudible) muddiness or confused experience to what we're trying to create.

When you're talking about the – stages themselves or, like we had a street entertainer that's been out there for ten years under our – guidance, his name is Carl Ferris. We escort Carl out there and set him up with a Fremont Street Experience truck and sound system. We provide him, the zone for him, both audibly and – in the sky, on the canopy above with his image. When somebody that also plays saxophone just appears and wants to stand next to Carl while he's performing, you know, the Fremont Street Experience approved performance, it's – absolutely

disrupted. Somebody comes down and sets up an amplifier so they can do something, whether it's saxophone or otherwise, absolutely a disruption.

BRAD JERBIC

The individual that you program, though, you pick the exact place, time and manner in which he entertains individuals and he's limited to that particular –

JEFF VICTOR

Absolutely.

BRAD JERBIC

And it's not open to other individuals? You said if others come down while he's doing anything, it competes with him, drowns him out or –

JEFF VICTOR

Absolutely.

BRAD JERBIC

The, with respect to the individuals who use amplification systems, have you observed the effect of those amplification systems on the tourist traffic that moves up and down the Pedestrian Mall?

JEFF VICTOR

Yes. It's intimidating. You know, some people, I assume, believe that this is something that we've sanctioned, like Carl, and some people are – weary that it's somebody we've not sanctioned, and it's intimidating, and for some folks scary.

BRAD JERBIC

People tend to shy away and move away from those individuals that have amplification systems?

JEFF VICTOR

Sure.

BRAD JERBIC

And, in the process of moving away, does it create fewer places in the Pedestrian Mall for pedestrians to move back and forth?

JEFF VICTOR

Yeah. It alters the flow of traffic.

BRAD JERBIC

The, sometimes completely impede the flow of traffic in the Pedestrian Mall?

JEFF VICTOR

Yes.

BRAD JERBIC

Has it on occasion completely plugged the traffic, stopped traffic in the Pedestrian Mall?

JEFF VICTOR

Especially around intersections and (inaudible), yes.

BRAD JERBIC

Let me call your attention to Exhibit 1, which is the map that you have in front of you and the (inaudible) version (inaudible), have you had occasion to look at that map prior to appearing at this Recommending Committee today?

JEFF VICTOR

Yes, I have.

BRAD JERBIC

And are you familiar, is that an accurate depiction of the Pedestrian Mall, roughly, as it appears both in physical description, that is the perimeter, and the location of kiosks through the Pedestrian Mall?

JEFF VICTOR

Yeah. Largely, I – see a few changes like the Golden Nugget's expansion down here on – 1st Street isn't represented. There may be a, it's hard to tell 'cause there're so many overlapping circles. There may be a change in the – outdoor dining experiences. And, clearly, the locations of the kiosks change on a regular basis. By and large, this is the Fremont Street Experience.

BRAD JERBIC

How many kiosks do you have in the Fremont Street Experience?

JEFF VICTOR

Thirty-eight.

BRAD JERBIC

Do the individuals who have those kiosks have an arrangement, financial arrangement with the Fremont Street Experience?

JEFF VICTOR

Yes. They have – a contract that they signed and pay lease amounts for on a monthly basis.

BRAD JERBIC

Do those lease amounts vary from kiosk to kiosk?

JEFF VICTOR

They do.

BRAD JERBIC

Can you give us the range that people pay to lease the kiosks on Fremont Street?

JEFF VICTOR

Roughly, 2,000 to $5,000 a month.

BRAD JERBIC

Two thousand to five thousand a month? And are there individuals who pay more?

JEFF VICTOR

Yes.

BRAD JERBIC

To cover their kiosks that way you get a percentage of the gross receipts as part of the kiosk rental?

JEFF VICTOR

Those would be the ones that would exceed the – higher (inaudible).

BRAD JERBIC

Got you. And those individuals signed that agreement knowing that they will have an opportunity to commercially vend, whatever their product is they have, on that particular kiosks?

JEFF VICTOR

That's correct.

BRAD JERBIC

And do you get involved in selecting the type of commercial product that individuals vend from their kiosks?

JEFF VICTOR

Absolutely.

BRAD JERBIC

So you wouldn't allow someone to vend something that you consider inappropriate in the Fremont Street Experience?

JEFF VICTOR

Absolutely not.

BRAD JERBIC

So, you also don't want individuals in the kiosks to sort of compete with each other, so you wouldn't, for example, have 38 people selling jewelry, or 38 people all selling paintings or statues?

JEFF VICTOR

That's right. We work hard to reduce the redundancy.

BRAD JERBIC

So you have a lack of redundancy for commercial opportunity. And the individuals who pay for those kiosk, do they sign those leases for a period of time, a term?

JEFF VICTOR

They do.

BRAD JERBIC

What's a typical term?

JEFF VICTOR

They're, usually, really month-to-month. Most of our vendors have been there for years.

BRAD JERBIC

Have you had occasion to work personally with the kiosk vendors regarding complaints regarding activity within the Fremont Street Experience, that they feel is either repeating or inconsistent with the retail commercial use of the Mall?

JEFF VICTOR

Yeah. Almost without exception, all of the retailers have come to both our retail director, and then myself to complain about how disruptive this has been both to the Experience and the customer trying to shop and ultimately to their ability to conduct sales.

BRAD JERBIC

Did you hear my representation earlier that kiosks are places where individuals actually pull their money out in a public area and they have a financial transaction with the kiosk operator?

JEFF VICTOR

Yes.

BRAD JERBIC

Is that accurate?

JEFF VICTOR

Yeah. You're completely exposed 'in the middle of the street. Sure.

BRAD JERBIC

In your opinion, is a kiosk more like an ATM or more like an entryway to a business with respect to the amount of space you need to provide between a kiosk vendor and a – solicitor?

JEFF VICTOR

I'd say, given the proximity of the cash drawer, it'd be more like the keyboard on a (sic) ATM.

BRAD JERBIC

Have you had individuals express to you a desire to not pay rent or get reduced rent as a result from competition from unregulated activity in the Pedestrian Mall?

JEFF VICTOR

Yes.

BRAD JERBIC

What have they told you?

JEFF VICTOR

They feel as though their sales have been dramatically affected, some kiosks more than others, depending on the type of product that they sell. But they have very much expressed that, you know, we're responsible for maintaining the Mall, and that we've not done so, that they think we're responsible for adjusting their rent.

BRAD JERBIC

(Inaudible) decline as a result of individuals pointing out kiosks or retail opportunities in the Mall or the Fremont Street Experience being able to operate and maintain the Pedestrian Mall under the existing contract with the City of Las Vegas and the Redevelopment Agency?

JEFF VICTOR

We have several sources of funds. The retail kiosk is a significant portion of what we do. If that were to decline, significantly, it would, in fact, impact our ability to maintain the Mall, in terms of the cleanliness to secure the Mall, patrol the Mall, and then, of course, it would impact our ability to invite guests down to marketing, PR activities, and then once we got 'em here, it would impact our ability to entertain and keep them here and help – ensure that they come back for another visit.

BRAD JERBIC

Did you work with the City of Las Vegas in the last year to look at the possible creation of free expression zones within the Fremont Street Experience?

JEFF VICTOR

Yeah.

BRAD JERBIC

Did you have an opportunity prior to that to look at things like the map that's marked as Exhibit 1?

JEFF VICTOR

Yes.

BRAD JERBIC

The, turning your attention to that map for a moment, do you see the circles on that map that I have represented the outer most circle being 20 feet, the inner most being 10 feet?

JEFF VICTOR

Yes.

BRAD JERBIC

Those are circles around retail kiosks; is that correct?

JEFF VICTOR

Yes. It appears.

BRAD JERBIC

Do you also see other semi-circles or lines around entryways to buildings, for example, Fitzgerald's, Fremont, and the like? Do you see those lines?

JEFF VICTOR

Yes –.

BRAD JERBIC

Those all represent areas that are currently under existing solicitation law? Areas that are prohibited for solicitation?

JEFF VICTOR

Yes.

BRAD JERBIC

Or would be if we had, if we looked at the kiosk situation?

JEFF VICTOR

Right.

BRAD JERBIC

The areas in-between those circles, what are those dead areas used for, those blank areas used for?

JEFF VICTOR

That would be where the people go.

BRAD JERBIC

If individuals were to set up solicitation stations in that area, would you have a smooth flow of pedestrian traffic?

JEFF VICTOR

You know, as you can see, there's, Fremont Street is not very wide. It's only 80 feet wide, and, so there's a fair amount of obstacles throughout the Mall anyway. The legs to the canopies, the canopy itself, aren't shown here, and some other structural things, including electrical junction boxes and stuff are not shown. Anything that we do to add clutter to the Mall, it's – problematic in terms of moving guests around.

BRAD JERBIC

Well let me cut to the chase, if we, if there were first (sic) expression zones created in those blank areas in-between those circles, would that, in your opinion, impede pedestrian traffic in the Pedestrian Mall?

JEFF VICTOR

Yes.

BRAD JERBIC

Was there a time when there was a discussion about setting up free expression zones around the poles themselves on the Pedestrian Mall?

JEFF VICTOR

Yes.

BRAD JERBIC

Were models constructed to see if that worked?

JEFF VICTOR

Yes.

BRAD JERBIC

Were you present when those were demonstrated and looked at?

JEFF VICTOR

Yes.

BRAD JERBIC

In your opinion, did they work?

JEFF VICTOR

I don't think they provided the ample amount of – room for the folks that are gonna come, wanna come down and take advantage of these things. I didn't think they were ideal locations for the – entertainers themselves, and they fell largely within the circles shown here on page; no, they didn't work.

BRAD JERBIC

Is this a, is this an attempt to actually build a round table around the round poles that support the canopy itself?

JEFF VICTOR

Yeah. We – mocked up a model.

BRAD JERBIC

And did that have an impact on pedestrian traffic, as well as the other problems you identified?

JEFF VICTOR

Yes.

BRAD JERBIC

And as a result, was that thrown out, I guess, as an option for free expression zones?

JEFF VICTOR

Yeah. We tried to find a more viable option.

BRAD JERBIC

Did you also look at other areas within the Fremont Street Experience, including 1st Street, and the area around the old Neonopolis shopping area?

JEFF VICTOR

Yes. We did.

BRAD JERBIC

Were there viable areas on 1st Street?

JEFF VICTOR

No. Very limited, because most of that is behind the stage. The park on 1st Street south is privately owned by the folks that own the Pioneer Building. The space over by Neonopolis would be ideal for us, and I'm sure that that offers a kind of exposure to the audience that the entertainers would decide.

BRAD JERBIC

Are there also more outdoor cafes in the Neonopolis area, that is the block between 4th Street and Las Vegas Boulevard in the Fremont Street Experience?

JEFF VICTOR

Yeah. That's actually the largest concentration of outdoor cafes, down in that area.

BRAD JERBIC

And, without revealing any names, are there potentially more restaurants about to go into that area?

JEFF VICTOR

I've got a couple that are looking at a space that we operate. I don't know what's happening on the Neonopolis side.

BRAD JERBIC

Okay. But, without revealing any names, you are looking at more restaurant activity –

JEFF VICTOR

Yes.

BRAD JERBIC

– in that particular area? Would that includes (sic) outdoor dining opportunities?

JEFF VICTOR

Yes.

BRAD JERBIC

And, as a result of that, that area was also rejected because you didn't feel it was close enough to the audience that was being affected by the restriction and the outdoor dining being affected by this at all?

JEFF VICTOR

That's right.

BRAD JERBIC

Did you have an opportunity to look at 3rd Street as an alternative for this type of activity?

JEFF VICTOR

Yes.

BRAD JERBIC

And when you looked at 3rd Street, what were the issues posed by locating free expression zones there?

JEFF VICTOR

Well, you know, 3rd Street is an extremely valuable area for – us. That is an area that we use regularly for special events, in particular. It's also, when we do concerts, where the crowd backs into. But, in terms of special events, it's, as you can see by the – rest of the circles on the – page,

that is our special event space. And, so the – concern with giving up any of that is that we've hurt our ability to do special events.

BRAD JERBIC

Did you have occasion to talk to individuals who're responsible for the operation and management of Fremont Hotel to see how they felt?

JEFF VICTOR

Yes, I did.

BRAD JERBIC

And how did they feel about having free expression zones located next to their property?

JEFF VICTOR

Not thrilled, by any means. Understanding, as we are, of the – situation, but not – thrilled that it would be there.

BRAD JERBIC

Did you have occasion to talk to the Mayor of the City of Las Vegas regarding the possible impact of the free expression zones on 3rd Street and the new Mob Museum?

JEFF VICTOR

Yes, I did.

BRAD JERBIC

And was that problematic?

JEFF VICTOR

Yeah, he's, you know, this is the gateway to what would be the Mob Museum and – CIM Group's investment in the Lady Luck, and it's not considered unimportant that we would be altering that, the use of that space.

BRAD JERBIC

You do understand that if the Council, with the Recommended Committee, forwards this ordinance and the Council approves it, that you will lose 2400 square feet of area on 3rd Street?

JEFF VICTOR

I'm aware.

BRAD JERBIC

Are you able to, in spite of the challenges, program around that?

JEFF VICTOR

I believe so.

BRAD JERBIC

Good. Do you, did you participate with the City in looking at any or all other means of providing alternative space for solicitation and mall (inaudible)?

JEFF VICTOR

Yes.

BRAD JERBIC

And was this the final analysis the (inaudible) thought that it would be a reasonable alternative to the entire Mall?

JEFF VICTOR

Yes.

BRAD JERBIC

I would also ask you, are you familiar with the area outside the Pedestrian Mall, that is the actual perimeter of the Mall, that is the area outside of Fremont Street that goes around the entire perimeter of the map you see as Exhibit 1?

JEFF VICTOR

Oh, sure.

BRAD JERBIC

Is that area all open public sidewalk?

JEFF VICTOR

Yeah.

BRAD JERBIC

That's all area where individuals can stand and solicit or speak any kind of speech they want?

JEFF VICTOR

Yes.

BRAD JERBIC

And I qualify it by saying exactly those kinds of speech that are otherwise prohibited by law with regards to speech, or other speech that has always been held to be illegal, strictly, (inaudible) fighting (inaudible) and things like that.

Mr. Victor, just in general, would you describe the Mall as more orderly or less orderly after the last decision of the (inaudible) judge?

JEFF VICTOR

Far less orderly.

BRAD JERBIC

I don't think I have any further questions for Mr. Victor.

COUNCILMAN BARLOW

Okay.

BRAD JERBIC

The Council has any? You have anything you need to add?

COUNCILMAN BARLOW

You – have questions for Mr. Victor?

COUNCILMAN ANTHONY

Well, for both.

COUNCILMAN BARLOW

Mr. Victor, if you wouldn't mind remaining – in your seat. Council has questions for both Brad and yourself –

BRAD JERBIC

If I could (inaudible), and I'll just leave it up to you, I wanna put into the record a case Hampton International Communications vs. the Las Vegas Convention and Visitors Authority. It's the case I told you of the local ruling that allowed the restriction of individuals during shows put on at the

Las Vegas Convention Center, saying (inaudible) owns property and certain parts of the property and the sidewalks, soliciting or leafleting during the convention.

I want to put on the record a copy of Efron vs. International Society for Krishna Consciousness. That's the Minneapolis Fairground case I told you about, where individuals who were soliciting (inaudible) literature (inaudible) fairground.

I wanna put on the record One World One Family Now vs. City of Honolulu, which is a case that limited expressive activity along Honolulu.

I wanna put on the record a copy of Menotti vs. City of Seattle, which is a case that restricted the people of the World Trade Organization protests to certain areas in (inaudible) wanted to be.

I wanna put on the record two cases involving court decisions that looked at alternative channels of communication that must be left open when you restrict speech. That is Smith vs. City of Fort Lauderdale and Ghesham vs. Peterson (inaudible).

And I'd also put on the record two cases that discuss speech and conduct and expressive activity that interferes with revenue, since that is something we can also consider in regulating. Those cases are Children of the Roses vs. City of Phoenix and Lebron vs. National Railroad Passenger Corporation (Amtrak). Those I'm going to file with the Clerk.

I would also at this time would like to make part of the record the entire record of the City Council meeting, the Recommending Committees that were held involving the 1993 Pedestrian Mall Ordinance, all revisions to that ordinance, the 1995 Solicitation Ordinance, and all record that has been created with respect to the Pedestrian Mall and the regulations of the Pedestrian Mall to this time.

With that being said on the record, I have nothing more to add. I'd be glad to answer any questions of the Recommending Committee.

COUNCILMAN BARLOW

Thank you. And, for the record, Mr. Brad, Mr. Jerbic has submitted all of those case files to the Clerk. At this time, I'll open up for discussion. Councilman.

COUNCILMAN ANTHONY

All right. Brad, on – Page 5, on Line 22, it talks about the following expressive conduct that's permitted in a free exercise (sic) zone. So, if I heard you correctly, leafleting you're gonna take out?

BRAD JERBIC

That's correct. It'll be our recommendation that at the end of this Recommending Committee, when you vote to pass or don't pass the bill, you do it as amended, and the amendment would be to strike Line 24, it says, two, leafleting and – so the new version of this ordinance would read: the following expressive conduct is permitted to any free expression zone. 1) solicitation is defined in LVMC 10.44.010, and 2) mall entertainment. And that's it.

COUNCILMAN ANTHONY

Okay. So, on Page – 2, on Line 18, where it defines leafleting, are you – taking that out?

BRAD JERBIC

No. We're going to continue to have the definition in.

COUNCILMAN ANTHONY

Okay.

BRAD JERBIC

We're not gonna restrict those.

COUNCILMAN ANTHONY

Okay. So, the, so when somebody reads this ordinance, they will see that what the definition of leafleting is, but there – won't be any mention of whether it's allowed or, just say, it, there won't be any mention (inaudible) –

BRAD JERBIC

That's correct.

COUNCILMAN ANTHONY

– but it will be defined, so if somebody wants to leaflet on Fremont Street Experience, they can do it?

BRAD JERBIC

That's correct.

COUNCILMAN ANTHONY

And, as, from what you're telling me, this definition is sufficient so if any – citizen reads that, they'll know exactly what leafleting is? The police will know what it is? Security will know what it is? So there won't be any conflict when somebody reads this? And do you agree with that, Jeff? When you read that line, is that –

JEFF VICTOR

I'm sorry, I don't have it in front of me. Let me look for it.

COUNCILMAN ANTHONY

I – just wanna be real clear that people know what they can do in the leafleting area.

JEFF VICTOR

I guess, I would have questions about what leafleting means, anything with a piece of paper, or if it means it's an ad or a coupon or (inaudible). I have my own questions.

COUNCILMAN ANTHONY

Well, if Jeff can't define it, then –

BRAD JERBIC

I will work with Jeff on it and security, because I can tell you that after this ordinance, if it passes, there will be a considerable amount of education (inaudible), with respect to the Fremont Street Experience, security and with Metro. That particular sentence, to me, and (inaudible)

passing out of anything, written, printed or graphic, so it can be a picture. It can be something printed on a card. It can be something handwritten. But that's what it is.

COUNCILMAN ANTHONY

Okay. But somebody – standing on the Fremont Street Experience with a big sign, a huge sign, is that permissible under leafleting?

BRAD JERBIC

It's not leafleting and it's permissible. That, that's something that we call just carrying a sign, for want of a better way to put it. It's not solicitous activity. What you just described, merely holding a sign –, is not solicitation activity. It's not leafleting.

COUNCILMAN ANTHONY

So, it'd be allowed?

BRAD JERBIC

Right.

COUNCILMAN ANTHONY

So, I could stand –

BRAD JERBIC

I mean, there might be other things that prevent it. I mean, a sign with a big metal spike and it's dangerous, or it's a weapon or something like that, that may be something different.

COUNCILMAN ANTHONY

But, under this ordinance, if I stand there with a big sign, save the whales, save the whales, that would permitted activity?

BRAD JERBIC

Permitted with one caveat. Blocking or impeding and obstructing traffic is prohibited City-wide, including in the Mall.

COUNCILMAN ANTHONY

Okay.

BRAD JERBIC

But, if you're just standing there and you're not impeding anybody, you're fine.

COUNCILMAN ANTHONY

Okay. So –, leafleting, what you're talking about, is actually handing out material?

BRAD JERBIC

Right.

COUNCILMAN ANTHONY

Okay. All right. But, if you could just take another stab at that with Jeff, just to make sure that if somebody grieves that, they know exactly what is permitted activity under leafleting.

BRAD JERBIC

(Inaudible)

COUNCILMAN ANTHONY

Okay. Now, under, okay, under solicitation and mall entertainment, so those two are going to be prohibited, except in the free zone areas. Now, soliciting and mall entertainment could be a – commercial enterprise or it could not be a commercial enterprise, correct?

BRAD JERBIC

Correct.

COUNCILMAN ANTHONY

I mean, you could stand out there and entertain and not ask for money, you just wanna entertain people, and you're not, you don't have anything out there asking for money, throw coins, and you're the same as soliciting, correct?

So, Jeff, how much – soliciting and mall entertainment occurs on Fremont Street Experience where there's no commer, no currency attached to it? See – what I'm asking there?

JEFF VICTOR

Zero. Everybody out there is conducting business.

COUNCILMAN ANTHONY

Zero. So, nobody goes out there to – sing and dance and not ask for money at the same time.

JEFF VICTOR

No.

BRAD JERBIC

Let me – ask this. I know there was an article in the paper, and I don't know the answer, but I wanna make sure that we do not (inaudible) the record that – later on (inaudible), should it get approved. Was there a time when there was somebody out on the Pedestrian Mall tap dancing that security stopped, and were they asking for money?

JEFF VICTOR

I don't know whether they were asking for money or not, to be honest with you.

BRAD JERBIC

To answer your question, there may be times when somebody just went out there, because they either wanted to express something or, to be blunt, wanted to pull a stunt just to see how the Experience would react. Some people got out there and literally tested the boundaries of the prohibitions, or lack thereof, to see what would happen. And I don't have a doubt in my mind

that some that are out there, and probably most that are out there aren't even aware of the litigation or the case law that's been submitted. They're just going out there to (inaudible). But, I can also tell you that there are others that have gone out there that have been, for want of a better term, doing things just to see if they can generate a reaction from security or from Metro to see where the boundaries of enforcement are. I don't have a doubt. Some of those people are put up by organized, organizations that are interested in litigation. I don't have a doubt that some of those people are out there because they themselves may be interested in litigation. Some may just be ordinary citizens that are just curious as to how much freedom they enjoy in that Pedestrian Mall.

I don't know the percentages of them either. But I do know that some of them out there are doing it for free just to see what happens.

JEFF VICTOR

Councilman, my answer was too absolute. I apologize. I mean, the vast majority, almost without exception, folks are coming down there to – conduct commerce. And, so, may there be some examples out there, I don't know whether they're out there doing something with other intentions, perhaps, but, by far, the vast majority are out there to conduct commerce.

COUNCILMAN ANTHONY

The – reason I ask is, I mean, you , Jeff testified that, you know, he, it's his responsibility, or the Fremont Street's (sic) responsibility to have organized commercial enterprises, so they have kiosks and people pay a certain amount, and that's all organized, and, thought –, well planned out. So, if – somebody goes down there and sets up their own commercial enterprise, such as

standing there dressed in silver, asking for money, could – that be banned as a commercial enterprise from Fremont Street Experience, because they have the authority to organize that? That – in and of itself, could that be completely prohibited anywhere on Fremont Street?

BRAD JERBIC

We, we've always though so, under the original ordinance, that, certainly, the authority on the original Pedestrian Mall Ordinance that was given to Fremont Street (sic), as well as the development agreement. The development agreement charged that, with operation and maintenance of the Mall. And, remember, when we go back in time to day one, we thought, as did the local District Court Judge who agreed with us that one time, that it was – not a traditional public forum. It was complete authority to regulate all activity. So, as it's been whittled away by various court decisions, we have the final decision, which threw virtually everything out, we have a contract, which charges Fremont Street (sic) with total regulation and total control and total management. And a set of laws disappearing that. A set of laws that says, you really can't go that far, 'cause it is a traditional public forum, and, as a result, you're limited to the type of restrictions that you can impose.

I would agree with you, Councilman, that purely commercial speech is completely controllable, even under First Amendment Law by the Fremont Street Experience.

COUNCILMAN ANTHONY

It is?

BRAD JERBIC

Purely commercial speech. But not when it comes to –

COUNCILMAN ANTHONY

So why would you –

BRAD JERBIC

– (inaudible) are – commercial –

COUNCILMAN ANTHONY

– set up –

BRAD JERBIC

But there's some – First Amendment limits to that. There's (sic) various kinds of commercial speech that the courts have chipped out little exceptions for. But, by and large, commercial conduct, setting up a kiosk of your own, just to make money, hypothetically, would be completely prohibited by the Fremont Street Experience.

Here's where we get into problems –

COUNCILMAN ANTHONY

So, why would you set up a free zone for that then?

BRAD JERBIC

Where we get into problems, there are, one, we want that commercial space in the Mall to be prime commercial space reserved for Fremont Street to make money on and enhance the pedestrian and tourist experience. That's the reason for it. But there are times when, if this were all black and white, this would be so easy. But we have, like I explained it to somebody the other day, what if you went out in the Mall and you set up a table and you started selling white Hanes T-shirts, just white T-shirts. Purely commercial. No content. No speech. No nothing. I think that could be completely prohibited. But now I stamp a message on it. I stamp, you know, I'm for Jesus, or screw the government, or vote for John Edwards, or whatever you might wanna put on this, now you might have a message that is looked at in addition to your plain white T-shirt. And, because you have a hybrid, courts begin to look at this a little bit different. And they begin to look at that kind of speech. It may be not just commercial, but having a free speech component as well.

Entertainment. Anyone talk (sic) about entertainment, individuals who – express through stripping, courts have said, and they have a First Amendment component. There may be some communicative speech going on there. You get tipped for it, paid for it.

There are lots of things that we look at today that just aren't as black and white as you would think. You might think that if you sell any kind of product, that's always commercial speech. (Inaudible) the product. What if you sell crucifixes?

COUNCILMAN ANTHONY

Okay. So, –

BRAD JERBIC

Or you sell rosaries?

COUNCILMAN ANTHONY

– what I'm hearing you saying is there is a possibility that you could ban commercial-type speech, but, I guess, what I'm hearing you saying, is, on a safe side –

BRAD JERBIC

Um, hum –

COUNCILMAN ANTHONY

– instead of banning it, is to move it to a free –

BRAD JERBIC

Right.

COUNCILMAN ANTHONY

– zone?

BRAD JERBIC

If you're asking for money, that's what we're looking at here. If you're asking for anything of value for yourself or your business, and let me read the definition of solicitation, as it's rewritten. The word immediately has been taken out of that. Solicitation means the act of solicitation,

including asking, begging, soliciting or pleading for the purposes of taking money, charity, business or patronage, or gifts, or items of value for oneself, another person or organization. That, we are saying is in the free expression zone only, mall entertainment, whether it's protected by the First Amendment or not, then the – free expression zone only. That's it. Those are the two restrictions.

COUNCILMAN ANTHONY

Whether you're asking for money or you're not asking for money?

BRAD JERBIC

Right. In the Mall (inaudible), whether you're asking or not, you're in there.

COUNCILMAN ANTHONY

You're in the free –

BRAD JERBIC

That's correct.

COUNCILMAN ANTHONY

But, what I'm hearing you saying is if you're just a commercial, if you're entertaining for money, if you wanted to ban that completely, you're –, kind of, it's not completely clear whether you could do that or not?

BRAD JERBIC

Let me see if I understand the question. If you are an entertainer just asking for money?

COUNCILMAN ANTHONY

Yeah. If you're –

BRAD JERBIC

Theoretically, I think you can ban all of that. If you are literally an entertainer, let's say, you're Wayne Newton. You wanna put on a show on Fremont Street Experience, you wanna charge tickets for it, I think that could probably be banned.

COUNCILMAN ANTHONY

Okay. But, with this ordinance, it would not be banned, it would just be moved to the free zone area?

BRAD JERBIC

The problem, like I say, is getting into which speech is allowed and which isn't. Now, you're gonna hear, I know you're gonna hear from the ACLU, and you may hear from others, that may say very well or completely disagree with me that all this entertainment is all expressive, and it's all allowed, and it's all part of speech. And I think that, as you look at the case law on this stuff, it really evolves over time. You know, as we sat here writing these first round of ordinances, we looked at every word with respect and with a desire to comply, that was written by the Ninth Circuit and we still have a disagreement among the courts.

So, when it comes to entertainment, again, I really think the better way to look at this is that, on paper, Fremont Street (sic) has the ability to regulate it, limit it, and you pick only their own, and they get to pick and choose the entertainment. In reality, the courts could very well say a lot of this is protected speech.

COUNCILMAN ANTHONY

Okay.

BRAD JERBIC

And that's why rather than argue whether it is or it isn't, whether it's real entertainment or commercial entertainment, or this or that, (inaudible) call it entertainment and put it in a zone.

COUNCILMAN ANTHONY

Okay. That answers my question. Thank you.

COUNCILMAN BARLOW

Is that it, Councilman?

COUNCILMAN ANTHONY

Yeah.

COUNCILMAN BARLOW

Okay. Mr. Jerbic, solicitation, the definition that you provided, would there be an issue if, in fact, one of the entertainers would be out on the Mall entertaining, and have a bucket in front of them; however, they did not ask anyone for any currency?

BRAD JERBIC

Yeah. They may say, I'm not an entertainer; I'm a solicitor, and that's all I solicit and that's protected. And that's how you get around it, you say, your solicitation is protected speech, but we're not gonna separate that anymore. We're saying entertainment, we don't care if you got a bucket or not, we don't care if you're soliciting or not, 'cause soliciting and mall entertainment are two categories that are gonna be in the free expression zone. We're not gonna get involved in making that decision anymore, whether you're looking for money or not, whether it's commercial or solicitation –

COUNCILMAN BARLOW

I – understand that, but my – pointed question is, is it solicitation, if in fact, an entertainer, whether be in the zone or out of the zone, if an entertainer had a bucket in front of them, and they did not ask any of the stand, those who are standing by, observing them or being entertained, is that considered solicitation?

BRAD JERBIC

Yeah. The, I don't know the answer to that. And I think that's why the Court (sic) Circuit is saying, too, you don't wanna go there. Courts really frown on laws and activity that requires any

judgment by a human being at all, 'cause human beings can pick and choose. You may walk down, as a security guard, and see a bucket, somebody tap dancing in front it. Well, it's clear, to me, he's begging, pleading for money by the act of tap dancing. Somebody else could walk by and say, he didn't utter a single word. He's just tap dancing. There just happens to be a bucket there. You know, courts look at that and say, boy, you know, I don't like that, because you get to pick and choose who is, you know, soliciting and who isn't.

I have a card in my hand, we actually had the circuit look at this and say, we don't like this written solicitation stuff, 'cause you have to read it to determine whether or not it's solicitation. They don't like the fact that somebody has to make a judgment call on that. How the heck else do you know, unless you read it? The courts don't like that, and I respect that. I don't have to agree with it, but I respect it, and we'll follow it.

When you talk about some of these areas, you're really getting into those kinds of discussions. That's why one could stand here in front of you and say, this is all protected speech, 'cause solicitation is protected. Expressive speech is protected. It doesn't have to be words. It could be conduct. And, so, that it is protected. And, so, you can have now, depending on what you're talking about, my answer is only as good as the very specific example you give me. Wayne Newton going out in the middle of the Mall selling show tickets for, you know, whatever he would do on the Strip, I think I'd have a pretty good argument that's purely commercial and you're probably (inaudible). Somebody else gets out there and starts tap dancing with a bucket in front of it (sic) with a dollar sign and doesn't utter a word, they may have a better argument that I'm soliciting as opposed to entertaining. It's just my method of driving you to my bucket.

Or, I put a religious shirt on now, or a, I'm a devil worshiper and I want money from those folks, or I'm part of the Arian Brotherhood, whatever you are, you're wearing a message and putting a bucket in front of you, whether or not uttering a word.

COUNCILMAN BARLOW

Mr. Victor –

BRAD JERBIC

You know, again, people start to move all over the scale when you talk about this conduct.

COUNCILMAN BARLOW

I'm with you. I understand, Brad.

Mr. Victor, are there any of your vendors hired by a Fremont Street Experience or any of the properties that exist under the canopy that solicits or distribute any type of literature, leaflets?

JEFF VICTOR

Some of the entertainers that – we hire that will also accept tips; yes, that's true. Do they distribute flyers or paraphernalia? I think some of the casinos will have timeshare operators in their doorways that may or may not distribute papers and stuff. I, I'm not coming up with a concrete example of any of our vendors on Fremont Street to name doing that.

COUNCILMAN BARLOW

Okay. What about the other properties? Do the – other properties, the casinos, or the like, distribute flyers or go out and solicit beyond just the timeshares?

JEFF VICTOR

Oh, I think all the businesses up and down Fremont Street will be happy to do that, if that's allowed.

COUNCILMAN BARLOW

But, to your knowledge, do you know whether or not they do it today?

JEFF VICTOR

Oh, sure. In the last year, the flood gates have opened. And, remember, not all of the businesses up and down Fremont Street are limited properties, and, even within those limited properties, there are third party entities. Our ability to control those kinds of activities has been quite confused and diminished over the last year.

COUNCILMAN BARLOW

Okay. I have no further questions at this time. Thank you, Mr. Victor. Thank you, Mr. Jerbic.

BRAD JERBIC

(Inaudible)

COUNCILMAN BARLOW

If there is anyone here wishing to speak on this item, we would ask that you please come forward, state your name for the record.

MAGGIE McLETCHIE

Where would you like me to sit?

Thank you for letting me speak. My name's Maggie McLetchie. I'm the staff attorney of the ACLU of Nevada. A few preliminary things: I'd like to be sure that the copies of the things that were put into the record are made available to the public.

BRAD JERBIC

Absolutely, as is, by the way, the PowerPoint, so you're welcome to the entire PowerPoint and the videos as well.

MAGGIE McLETCHIE

Thank you very much, Mr. Jerbic.

Another concern I had, which touches on the Open Meeting Law issue, is the fact that the version of the ordinance that you have in front of you today, it was made available to the public beforehand before it was slightly changed, and I'd also, and I'm not sure that necessarily you can act on something that hasn't been made available. That's a preliminary concern.

More importantly, I was concerned, when Mr. Jerbic was speaking, that, he said that some of the issues about the full meaning of solicitation and how that's gonna be applied when it isn't solicitation, may be worked out later. Under law, the – due process requirements that (inaudible)

may be ambiguous requires that members of the public, people who may be penalized under the law, are able to understand it. And if Mr. Jerbic and Mr. Victor, today, were not hearing the meaning of the law, certain, and –, yourself, Councilman, I'd actually put forth that it might not be possible for members of the public, to when the law, might be an ordinance might be enacted, for them to understand it. So, those are just some preliminary concerns, about the materials before us today.

I also wanted to point out a few things on the testimony. A lot of it was based on hearsay. I realize Mr. Victor later corrected himself, but it's also not possible to testify to a negative, say something never happens. And I can actually tell you, it's also, again, hearsay, of course, but I can tell you that I'm aware of people going down to Fremont Street, including the ACLU, engaging in activity that is by no means commercial, and that is unquestionably protected by the First Amendment.

I'm just gonna get into what the history of the litigation, and the history of Fremont Street, that Mr. Jerbic set forth. I don't really contest very much, but there are a few things that I would set forth. At the beginning, a few myths that I think may be (inaudible) by some of the things we've heard today.

First of all, I disagree with the underlying idea that you can't comply with the constitution and make money. There are many places in the United States where we have vibrant commercial areas, vibrant downtown areas, where first, where they don't have these kinds of laws that prohibit First Amendment activity and businesses flourish. And it's part of the fact of living in a vibrant area. In my opinion, a lot of the reasons that people like coming to Fremont Street and like coming to this area of town, as opposed to other areas of town, we see growing off the Fremont Street Experience area, we see growing businesses like a new coffee shop, a new arts

center. And I think a lot of the types of people that like coming to Fremont Street like coming here, because it is more like an urban area, which include a traditionally urban area, which includes having free speech activities that are common right now.

In any case, arguing that speech is undesirable and interferes with commercial interests, does not justify unconstitutional restrictions. I'm gonna walk through, a little bit later, about why I think the restrictions are unconstitutional, but, in any case, I just wanna make clear that just because, even if it were true it interferes with commercial interests, that does not justify unconstitutional restrictions.

Another point is that Mr. Jerbic and the Council and the law and Fremont Street Experience, Limited Liability Corporation (sic), security guards can't decide is and isn't legitimate First Amendment protected activity. You – both had some interesting important questions, I thought, about things like, well, if you have a jar of tips, is that commercial? If you're dressed up and you're trying to get people to give money to take a picture, is that First Amendment or is that or isn't that protected? And, actually, the Ninth Circuit, I think, is, obviously, providing authority on this point, and they have made clear that that kind of activity is protected. And it's actually irrelevant, they said, whether it's, it's both protected to go after tips, to ask for tips and to passively seek them.

And, we've – heard a lot of things about, well, there's the balloon artist, things like that, who, I'm sorry, hula hoops and things like that, those are – clearly not protected. Someone dressing up in silver and portraying a statue, that's not protected. That's not true. The Ninth Circuit in striking down and actually much more permissive and protective. Street performers scheme in the City of Seattle, the lead plaintiff was a balloon artist. So a lot of the kinds of activities that I think, today, we may be assuming are on the gray area, are not in the gray area. When the Ninth

Circuit says that an activity is protected under the constitution, it is protected under the constitution.

Along with the, related to – my last point, that just because we may not like what's going on down there, we may not like all the kind of speech that we see, we may disagree with it, that we have to figure out how to regulate it, how we're gonna solve the problem. The Ninth Circuit in the Berger decision that I – mentioned said the following: First Amendment protections are robust, yet at the same time fragile and precious. Often, government restrictions on speech seem perfectly reasonable at first glance and the encroachment on expression forgivable in pursuit of convenience or good manners, but 70 years of law, beginning with Hague vs. CIO has laid the basic principle that there a few government-owned areas of which public parks are the pre-eminent example in which values underline the First Amendment, favor communication among citizens over merely reasonable speech restrictions. And require and said that any regulation of speech be targeted at real problems and carefully calibrated to solve those problems. In other words, while some among them, the dissenters in this case might prefer a Truman Show version of pristine placidity in our public parks, our First Amendment jurisprudence rests on a very different vision.

COUNCILMAN BARLOW

May I just stop you there?

MAGGIE McLETCHIE

Sure.

COUNCILMAN BARLOW

Well, number one, it seems like you're – trying to rush through it. You don't have to rush –

MAGGIE McLETCHIE

Okay.

COUNCILMAN BARLOW

You can take your time.

MAGGIE McLETCHIE

We –, we've just been here so long.

COUNCILMAN BARLOW

I know.

MAGGIE McLETCHIE

I'm just sitting around waiting to go eat lunch. But thank you for that.

COUNCILMAN BARLOW

But we wanna make sure that you get everything that you need on the record, as well.

MAGGIE McLETCHIE

Thank you very much. I also appreciate that also.

COUNCILMAN BARLOW

So you don't have to, you know, feel as though you're being pressured, you're not. So you can take your time.

MAGGIE McLETCHIE

I'm also from the East Coast, so I talk really fast.

COUNCILMAN BARLOW

Okay. All right. I just wanted to let you know that. And, secondly, wanted to stop you for a moment just to ask a question in regards to the case study you just read in regards to public parks, and I know that Mr. Jerbic defined whether or not the Fremont Street Experience was a public park, was it a recreational venue, facility, so I – wanna ask a question in regards to the relevancy of –, one, Mr. Jerbic, is in fact Fremont Street Experience, according to case law, a public park, a recreational facility or entertainment venue. And, in relation to, McLutchie?

MAGGIE McLETCHIE

McLetchie.

COUNCILMAN BARLOW

Mcletchie. Ms. Mcletchie case study stating that she's referencing public park, so I wanna be able to see, if in fact, are they one in the same? Or, if in fact, they're separate?

BRAD JERBIC

It's actually none of the above. It's a traditional public forum, according to the courts. The case law is that all streets and sidewalks are traditional public forum. And the argument that was advanced by the ACLU in the first round of litigation was that you did not successfully take this area that was a street and sidewalk and convert it into a private non-public forum.

COUNCILMAN BARLOW

Okay. But give me – the short version. Is –

BRAD JERBIC

Right. Now parts of public forums –

COUNCILMAN BARLOW

– what is Fremont Street Experience considered?

BRAD JERBIC

It's – considered a public forum for purposes of what kinds of First Amendment activity are allowed and what kinds of restrictions and what test will be applied to those restrictions. That's what's considered by the courts. The word park, street, sidewalk, is irrelevant when it comes to the – big term. The big term is traditional public forum, which kicks in motion a test that says you have to have a substantial governmental interest in any regulation. It says that you have to leave alternative means of communication open if you do those regulations. And those regulations are limited to reasonable time and place and manner restrictions.

COUNCILMAN BARLOW

Okay. And you're not –

MAGGIE McLETCHIE

If –

COUNCILMAN BARLOW

I – just want to hear –

BRAD JERBIC

I think we're probably on the same page (inaudible)

COUNCILMAN BARLOW

– Ms. McLetchie, respond to that.

MAGGIE McLETCHIE

We're on the same page (inaudible) public forum and –

COUNCILMAN BARLOW

Okay.

MAGGIE McLETCHIE

– while this talks about public parks, the point is that they're both public forums.

COUNCILMAN BARLOW

Okay.

MAGGIE McLETCHIE

So they, the legal analysis for Berger is exactly, directly applicable here.

COUNCILMAN BARLOW

Okay.

MAGGIE McLETCHIE

When you're talking about places like public parks and places like Fremont Street, when the Ninth Circuit declared that Fremont was indeed a public forum, as we had urged, what they said is it's – the kind of area that is at the – heart of the kind of public area where the public exchange of information is protected at the highest level of degree of protection by the courts. The –

COUNCILMAN BARLOW

Okay.

MAGGIE McLETCHIE

It is a public forum, just like what was at issue in Berger.

COUNCILMAN BARLOW

Thank you.

MAGGIE McLETCHIE

So let me go on again. I don't think we disagree on the basic parameters of whether it's a public forum or what the law is, but I do want to reiterate, we heard a lot about the history of the – Fremont Street Experience and the Liability Company, the history of the development of the Fremont Street area, and a lot about the case law. And it is a very unique area. I don't want to be dismissive of the fact that it is, this is a different and unique area.

However, the fact that it's unique, doesn't change the constitutional analysis. As – Mr. Jerbic and I have agreed, it is in fact a public forum. We also agree obviously that – the government can enact reasonable time, place and manner restrictions, despite the fact that it is a public forum. However, there are certain limitations on that.

First of all, it has to be content neutral. And where you are allowing certain kinds of speech, Fremont Street Experience Limited Liability Company endorsed performances, and then regulating other kinds of performances to a very small area, our view, believe this is not content neutral. When something is not content neutral, it is – presumed unconstitutional and a very high test applies.

In addition to being content neutral, there are other requirements. It also has to be narrowly tailored to serve significant government interests and it may not burden more speech than necessary. This is almost a total ban. The actual area that's – left, that's carved out, is so small that it almost operates like a total ban. And so it is not narrowly tailored to serve a significant governmental interest.

In addition, we've heard a lot today about certain kinds of speech that we're concerned about. But this would reach a whole slock (sic) of activity. The total ban, for example, on solicitation

would stop me from handing out my membership materials on Fremont Street, unless I was in this very small area.

In addition, the third requirement is that when you're enacting time, place and manner restrictions, they have to leave open ample alternative channels and you have to be able to reach your audience. This just doesn't pass the muster. I read to you a quote from the Berger case, the Berger case I will provide, I can send this to you, Mr. Jerbic and to yourselves, after – today along with a – memo detailing some of the issues that have come up today –

COUNCILMAN BARLOW

And – as you mentioned these cases –

MAGGIE McLETCHIE

Mm-hmm.

COUNCILMAN BARLOW

– will you be submitting those to the Clerk, or are you just mentioning them on the record?

MAGGIE McLETCHIE

I'm just mentioning them. I can certainly – well, this has got my notes on it. I'm just mentioning them today. I will submit them. I will write, I will send you guys copies of these later, so that –

COUNCILMAN BARLOW

Okay. Please make sure you – send them to the –

MAGGIE McLETCHIE

To the Clerk as well. Sure.

COUNCILMAN BARLOW

– Clerk as well, so we can have that on the record.

MAGGIE McLETCHIE

I'm happy to do that.

COUNCILMAN BARLOW

Okay.

MAGGIE McLETCHIE

Thank you very much. In any case, the restrictions that Berger, they both required permits and they also relegated – street performers. It was about street performers, which I don't think is a big, one of the big concerns here. They relegated them to certain kinds of area and tried to control who would perform, where, when, to try to control some of the concerns. And it was struck down as unconstitutional. It didn't pass constitutional muster and it is far, it was far more permissive than what we're looking at today. I – heard, I listened with – interest to the argument, that this would be permissible because there are kiosks there, and you ban the

solicitation in certain areas of the kiosks. I don't think that's correct. I don't think that by putting up kiosks all over the public forum can you in essence justify a near total ban on speech. Another – myth that I should have pointed out, I wanted to discuss earlier, is that these laws are necessarily needed, to solve some of the problems. A lot of the problems we saw today on the – videos are things that we wouldn't necessarily object to people addressing in a constitutional manner, and there may actually be laws on the books.

For example, if that big huge, I forget which – group it was that was using it, but the big – structure that was there? If you're actually obstructing traffic, under County code, it's totally illegal. It's, that is not something we object to. If you're actually obstructing traffic, that is something that is not permissible. We don't need to pass a huge ban on activities on the Fremont Street Experience area just to prevent that kind of problem.

We've heard examples from Mr. Jerbic about assault. Again, there's (sic) obviously assault laws on the books that we can go after if someone is truly being, is – truly assaulting somebody. In terms of aggressive solicitations, we've never sued about aggressive solicitation. And we don't – object to aggressive solicitation laws. And so, if somebody won't let you pass, if someone's engaging in that kind of activity, we certainly do, at the ACLU, do not object to those laws being enforced and those kinds of activities. While the speech can't – be banned and can't be, and it's very difficult to regulate the speech under the law, you certainly can go after someone for aggressively soliciting.

I – mentioned, I also mentioned the obstruction of traffic. We've dealt with this issue on the Strip. You can't, for example, you asked me some questions about signs and we litigated a case and eventually settled it, regarding street creatures on the – Las Vegas Strip. And they tr – they did have a law on the books that said signs couldn't be a certain size, and you couldn't be in

certain areas. And in the end, we came to an agreement where we just figured out a way to ban actual obstructing. So there wasn't, there was, there's not a sign limit per se, but you cannot obstruct traffic on the Strip. And the same would be possible on Fremont Street.

A few – follow up points. I wasn't here last time. Mr. Lichtenstein was here and he would have been here today but he's at the – County dealing with a work card issue. But the Santa Monica ordinance I understand that this law, that these proposed ordinances were based in part on the Santa Monica ordinances. Those ordinances are nothing like what we have before us today. Like the Berger case, they're much more – permissive. For example, they limit street performers to be within certain, within – a certain distance of bus – stops, but the – vast majority of the area of the Promenade and the – Pier area are actually open to free expression. In addition, the permitting scheme and the other restrictions at issue in Santa Monica, they haven't been reviewed by the courts. What has been reviewed by the courts, what is binding law and a – binding interpretation of the constitution that the City of Las Vegas needs to consider is the Berger case. Because that's what the, when the, that's, I think the most direct case on point, save the Fremont Street cases that we've litigated, it's the most direct case on point.

Last time, we, they discussed I think some examples about airports where brought up. There were a few other examples today, I think, about maybe a state – fair. Those areas are not public forum. So the kinds of – deference to speech that courts give are not given in those kind of context. Airports are not a public forum, so it's – much easier to regulate speech there obviously.

The final point I want to bring up is attorneys' fees. I'm here before you today, obviously Mr. Jerbic and I have some disagreements about how the constitutionality of this law and I understand that he's your attorney. But we've been before the City Council before, on all of

these issues. And we always try to come and testify and talk about issues before you litigate them. In the past we've said that – ordinances were unconstitutional, they've been passed anyway. Then we've gone to court and then we've won. And then you've, new ordinances have been proposed. We said, hey, guys, we think they're unconstitutional, we're willing to work with you, but we don't think they're going to – withstand constitutional scrutiny. The City Council passes them anyway, we go to court, eventually we win and here we are again.

This case, in some iteration, has been litigated for a decade and a half. Over $250,000 of attorneys' fees have (sic) been paid out to the ACLU. I understand that there's an argument that, hey, Fremont Street Experience Limited Liability Company is paying those, the ACLU isn't paying those, so it doesn't really matter. It does matter. Because if we can afford to just throw away money on – legal costs and attorney fees, then you should be charging them more on the lease.

But more importantly, it's a waste of judicial resources and, of course, the City Council shouldn't be doing things that violate the constitution. The, I – believe you've taken an oath to uphold the Constitution of the United States and when something's unconstitutional, it shouldn't go onto the books just for us to litigate it, go to court, win, get attorneys' fees and then come back here. I mean, we, we've been around this block so many times that I really, really urge you to hold off on recommending this for action – I think that we, you know, we're always willing to sit down with Mr. Jerbic and talk and try to figure out if there's other ways we can – come to an agreement with all these concerns. In addition, we are, and we are actually in settlement negotiations right now with a United State Magistrate Judge, who just contacted the parties, I think yesterday or the day before, to try to figure out when we can meet again. And we're negotiating in good faith there. We were actually pretty blindsided that this even came up,

because Fremont Street Experience Limited Liability Company, the ACLU and the City are all party to those negotiations. I actually can't discuss the contours of what we're talking about there, because it's protected, but those are ongoing. And a – judge's already expended significant time in trying to work – this out between the parties and so I'm, I just don't think that this is the right time for the City Council to just go and do its own thing over constitutional objections by the ACLU. Again, $250,000 of attorneys' fees, you know, I – enjoy coming here today and testifying in front of you, and I also enjoy litigating. The only people who's interested in, is in actually passing these unconstitutional laws, on some level, is the ACLU, because we can go to court, win and get attorneys' fees. But rather than talk about this for another 15 years or another – 30 years or another hundred years, I think the best thing for us to do is to actually come together and try to resolve people's concerns in a way that comports with the Constitution. I understand that Fremont Street, the Fremont Street Experience area is a unique area. I understand that there are concerns about some things that go on – down there. But the First Amendment applies and we need to figure out a way to comply with the Constitution when we're – trying to take care of things down there.

Unless you have any questions, that's all I have.

COUNCILMAN BARLOW

Councilman?

COUNCILMAN ANTHONY

I have a question.

MAGGIE McLETCHIE

Sure.

COUNCILMAN ANTHONY

So – from your standpoint, it would be constitutional for, let's say four people to go down to Fremont Street Experience, set up a drum – set, guitars and start playing and have a bucket and people throw money in it? That would be, as far as you're concerned, that's a First Amendment right for somebody to do that?

MAGGIE McLETCHIE

As far as I'm concerned, and more importantly, as far as the Ninth – Circuit is concerned.

COUNCILMAN ANTHONY

So you're – saying the Ninth Circuit Court of Appeals has ruled that that is permissible activity?

MAGGIE McLETCHIE

They have ruled that street performers are protected under the First Amendment and that both passive and active requests for tips are also protected. They – and I'm happy to share this – I'll be sure to send this around, but yes, that is my position, that is the position of the Ninth Circuit. So, street performers are protected.

COUNCILMAN ANTHONY

But there's – also the – stipulation that there's time, place and manner restrictions that could be put into place; correct?

MAGGIE McLETCHIE

That is correct.

COUNCILMAN ANTHONY

That is correct. So – putting them in a free speech zone –

MAGGIE McLETCHIE

Mm-hum.

COUNCILMAN ANTHONY

– as a, that – would be a place – restriction, could be constitutional?

MAGGIE McLETCHIE

It could be.

COUNCILMAN ANTHONY

Could be.

MAGGIE McLETCHIE

If it were content neutral, which it isn't, because some performers are allowed to go perform on a stage. And whenever you're picking between kinds of speech, it's necessarily not content neutral. And so because you're allowing some – people to perform there and not others, arguably it's not even content neutral. So, it's unconstitutional out of the gate.

Second of all, you have to look at whether or not it's narrowly tailored and whether or not it leaves ample alternatives to, for people to express themselves. And I – my argument is that that area is so small, it, with respect to the Fremont Street area at large, that it wouldn't pass muster. In the – law at issue in – Seattle, in the Berger case that I keep talking about, there were kind of areas all throughout, on the actual (inaudible). They weren't off to one – relegated small area off to the side. And even that didn't pass constitutional muster. And so, yeah, (inaudible) I do not believe that that passes muster because I think it's too small an area and I don't think it passes the constitutional test.

COUNCILMAN ANTHONY

Thank you.

COUNCILMAN BARLOW

So, just to piggy back off of the Councilman just shared, if the area were larger, then would it, what do you think the Ninth Circuit position would be if the area were larger?

MAGGIE McLETCHIE

Well, if the area were larger, arguably then the alternative channels to communication problem may be, that – part of the test may be easier to pass. However, arguably it'd still be, it wouldn't be constitutional. It'd be subject to strict scrutiny, because it's not content neutral, because you're allowing to, you're allowing some speech and disallowing other speech. And so where you're going to have this reasonable time, place and manner restriction always have to be content neutral. If they're not content neutral, they're not okay. No matter how big or small the area is.

COUNCILMAN BARLOW

Okay. Well, thank you, –

MAGGIE McLETCHIE

Thank you.

COUNCILMAN BARLOW

Ms. Mcletchie.

MAGGIE McLETCHIE

Thank you very much. Very good that time.

COUNCILMAN BARLOW

All right. Is there anyone else here, willing to speak, on this item? If so, please come forward and state your name for the record? Mr. Jerbic?

BRAD JERBIC

(Inaudible), I'd just like to, for want of a better word, have a final word. I – don't want to say that I disagree with a lot of things that were represented by the ACLU (inaudible) regarding the Mall entertainment. You know, you gotta read these cases, you gotta read the circumstances where the conduct occurred, you gotta read the type of conduct that occurred. There may very well be a lot of conduct, as I said earlier, that because there's a cross over in solicitations or some kind of expressive activity that's given protection. When I look at Robot man up here, he jumps off his pedestal and chases tourists away, for taking his video. When you look at the Kiss guys, Tasering somebody who disagrees with him over a $20 tip. I think we're gonna have some serious disagreement over what's protected there and what isn't.

But I think that doesn't really matter. It doesn't really matter if we don't have the (inaudible). That's the beauty of this ordinance. We don't have the (inaudible), where you cross the line between protected entertainment and unprotected entertainment. Where you cross the line between protected solicitation and arguably, you know, solicitation that might be limited in some (inaudible) zone. It's all lumped into one category. We're just going to presume for a moment, just presume for a moment, that there may be is some protection associated with some or all of the Mall entertainment. We're treating it all like, putting it all in the First, all in the free expression zone. Whether it has a solicitation component or not. The solicitation – goes in the free expression zone.

As far as the size of the zone, there's no evidence that they're too small. If anything I think they may be bigger than necessary. But the fact of it is, I put it on the record, this is a little bit fluid. If it turns out that these zones aren't big enough, for whatever reason, don't provide an alternate

means of – reaching, or (inaudible) communication, you know, we'll look at them and they'll be expanded. You know, we're gonna monitor this and we're gonna watch it.

But I also want to say one thing about the First Amendment and the Constitution. You know I went to law school a long time ago. And what the law said the First Amendment to the Constitution was then is different what the law says, and First Amendment says now. It's the same First Amendment. Hasn't changed one bit in 230 years. Of course, interpretation of it has changed. You know, for the first 200 years of this country, you had more (inaudible) for purposes of solicitation prohibited around the country. Solicitation and begging or panhandling (inaudible), it was pretty amazing. (Inaudible) changed our mind, or looked at in a different way and the field of law began to evolve. And it's not really evolved at the Supreme Court level; it's evolved at the Circuit level. You find some circuits, you, an ordinance like this completely different than maybe the Second Circuit or the Seventh Circuit or another Circuit.

And I don't think there's anybody who can wrap themselves in the American flag and say this is the First Amendment, it's carved in stone and this is what it means. Because most of this is developed as a result of these kinds of ordinances and this kind of litigation. And I don't think of all those people who have been upheld, that the ACLU was insecure when they lost. And I think of all those cities that lost, I don't think they were insecure when they thought they were taking their best shot at reading the law and what it said at that moment in time. That's just the reality of this kind of litigation. And when you talk about winning some and losing some, the taxpayers haven't paid a dime for the attorneys' fees. The ACLU is correct; the Fremont Street has picked it up. The taxpayers have picked up the cost of my salary for this presentation, Mr. Steed's salary for drafting these ordinances and the like. But that's been the cost to us and that's gonna continue to be the relationship as we get into probably the next round of litigation.

But when you talk about where to draw the line? You know, we could say, hey, we won at the District Court level, ACLU, in 1997. You throw in the towel. They say, oh no, we're gonna appeal. We won, now you throw in the towel. They go back to District Court, we win, you throw in the towel. We go back up there and you throw in – where does this end? That's a silly argument. It's a silly argument for why you shouldn't litigate or not. Why you shouldn't promulgate an ordinance or not.

You know, you have the responsibility that organizations that challenge ordinances don't have. You have a responsibility to govern. You have the responsibility to look at the big picture. And there's tension between these things and there always will be. It's just the nature of our country and the laws. But what I'm asking you today is to look at this ordinance from that perspective and ask yourself is your responsibility as the governing body of the City of Las Vegas, is this, is there a problem? If you don't think there is, toss this out now and tell me. If you think there is a problem, then ask yourself is this the right measured solution to that problem. And if you think it is, I ask that you pass it out with a do pass with the following amendments.

One, Mr. Steed slipped me a note, because he's a clever fellow who reads when I don't, Line 18, Page 5 also has a reference to leafleting that needs to be stricken. Line 24, Page 5 says leafleting and, needs to be stricken and the word and needs to be added to Line 23. That will make it clear that leafleting is not restricted to these free expression zones. And, finally, –

COUNCILMAN ANTHONY

(Inaudible)

COUNCILMAN BARLOW

Eighteen and 24.

BRAD JERBIC

I'm sorry. Line 18, Page 5 –

COUNCILMAN ANTHONY

Absolutely. Thank you.

BRAD JERBIC

– that word leafleting, just cross that word out and then on 24, take out that whole Line 24 and add that word and after Line 23. The, Mr. Steed has also suggested and, with your permission, I don't have the exact language, we would like to include some language in the ordinance that makes it clear that leafleting is permitted in the Pedestrian Mall. Not just remove the prohibition, but add an express permissive section. And with that proposed First Amendment, I'd ask you to consider it as pass or do pass at this point.

COUNCILMAN BARLOW

Okay. Is there anyone else here wishing to speak on this item? Seeing none. Councilman, open for discussion.

COUNCILMAN ANTHONY

Good presentation. Lot more informed now. Thanks for coming down to give your –

MAGGIE McLETCHIE

Thank you.

COUNCILMAN ANTHONY

– side. I – did have, when I was walking in here, I did have a problem with the leafleting portion, because that, to me that is, I mean, it – is a public forum down there. So, for somebody to have the ability to exercise their First Amendment right, to go down to Fremont Street to pass out a save the whale leaflet, I think that's – appropriate under the First Amendment. They should be doing that. So I'm glad you're – taking that out. I'm also glad to hear that you're actually going to put it in there as permissive activity. I'd – still like you to just make sure that the – definition of leafleting is – very clear to anybody who reads it.

BRAD JERBIC

Again, Councilman, another alternative is we can just take out that definition altogether, since it's somewhat irrelevant now. I mean, there's two ways to go. Just take out the definition of leafleting and don't define the conduct and, as a matter of law, it's permissive. Or define it and take it out of the exceptions right now and put a little sentence in saying this is leafleting, here's how it's defined and this is perfectly allowable. Either way.

COUNCILMAN ANTHONY

It seems to me – it should be defined. Because I, I mean, how are the police gonna know somebody's leafleting or not. You know, 'cause ultimately somebody's, it's gonna have to be

enforced. So, I think that needs to be really defined so that when the cop or security shows up, that person's leafleting, that's okay, leave them alone. Does that make sense?

BRAD JERBIC

Yeah.

COUNCILMAN ANTHONY

Okay. So, I'm glad to hear that, but what's – different is the – soliciting and mall entertainment, to me, is not so much speech as it's – commercial activity. I mean, that's really what, what's happening down there. People are going down to Fremont Street and they're soliciting, and entertaining to make a buck. I mean, that's – what's happening. And if you don't regulate that, there's gonna be mass chaos down there. I mean, anybody's gonna be able to do it and I think the Fremont Street Experience and the City of Las Vegas has a responsibility to decide who's gonna set up a commercial enterprise down there and who doesn't set up a commercial enterprise. So, –

BRAD JERBIC

Let me – stop you there, Councilman. Because we need to make the record real clear on this. I respect what you're saying and I think that there is a certain, certainly a case to be made that, you know, any, a lot of people who solicit aren't doing it always for charity or something. It doesn't matter, under the Constitution whether it's for charity –

COUNCILMAN ANTHONY

Okay.

BRAD JERBIC

– or themselves.

COUNCILMAN ANTHONY

That's a good point.

BRAD JERBIC

It's just protected. And so I would urge you rather than make a record that we're looking at commercial speech that we just think needs to be regulated, we need to look at the – conduct itself and its affect on the Mall. And take it from that point of view. Does it interfere with pedestrian traffic? Does it interfere with the commercial/economic nature? Does it interfere with the aesthetics? Does it interfere with all those things the Circuit said we can? And if you feel it does that, in spite of its being constitutionally protected, then I think we need to look at whether or not this is reasonable time, place and manner.

COUNCILMAN ANTHONY

Okay. Well, I do think it – causes problems down on Fremont Street Experience and I – think this is a, it seems to me this is a good compromise. You're not completely banning that activity. You're allowing it to go into one particular area and if somebody on Fremont Street wants to go over there and listen to them and participate in their entertaining and their soliciting, they're very

free to do that. But I – think if you don't – regulate that activity, you're, I mean, you can't have chaos down on – people go down to Fremont Street for a particular experience and you can't have mass chaos down there and I think this helps.

BRAD JERBIC

And I want to say that – I think we need to define the term chaos too. It's chaos in the terms of literally shooing people away from businesses and the commercial opportunity, if it's chaos in the sense that they block pedestrian traffic, they detract from the aesthetics of the Mall; if that's, if all that is what you intend by the definition of the word chaos, then I – think that's appropriate. And it's just a matter of we don't like it or we find it distasteful. That's not something governments get to consider.

COUNCILMAN ANTHONY

That's correct.

COUNCILMAN BARLOW

Councilman, do you have a motion?

COUNCILMAN ANTHONY

My **motion will be to forward this to the entire City Council** –

COUNCILMAN BARLOW

As amended?

COUNCILMAN ANTHONY

As amended.

COUNCILMAN BARLOW

Okay. All in favor.

COUNCILMAN ANTHONY

Aye.

COUNCILMAN BARLOW

Aye. **(Motion carried unanimously.)**

VAL STEED

That's with a – do pass recommendation?

COUNCILMAN ANTHONY

Yes.

VAL STEED

Okay.

COUNCILMAN BARLOW

That is **with a do pass recommendation**.

VAL STEED

Thank you.

BRAD JERBIC

And thank you for the extraordinary amount of time you allowed us to build the record.

COUNCILMAN BARLOW

Okay. Thank you.

END OF DISCUSSION)

/gpb/vs;ac

FIRST AMENDMENT

BILL NO. 2010-31

ORDINANCE NO. _____

AN ORDINANCE TO UPDATE THE REGULATIONS GOVERNING CERTAIN COMMERCIAL, ENTERTAINMENT AND SOLICITATION ACTIVITIES WITHIN THE PEDESTRIAN MALL, AND TO PROVIDE FOR OTHER RELATED MATTERS.

Proposed by:
Bradford R. Jerbic, City Attorney
Councilman Gary Reese

Summary: Updates the regulations governing certain commercial, entertainment and solicitation activities within the Pedestrian Mall.

THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Title 10, Chapter 44, Section 10, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

10.44.010: For purposes of this Chapter:

(A) "Solicitation" means the act of solicitation, including asking, begging, soliciting or pleading, for the purpose of [immediately] obtaining money, charity, business or patronage, or gifts of items of value for oneself or another person or organization.

(B) "Coercion" means to wilfully and knowingly:

(1) Approach or speak to a person in such a manner as would cause a reasonable person to believe that the person is being threatened with:

(a) Imminent bodily injury, or

(b) The commission of a criminal act upon the person or another person, or upon property in the person's immediate possession;

(2) Persist in a solicitation after the person solicited has given a negative response;

(3) Block, either individually or as part of a group of persons, the passage of a solicited person[;] , including by means of the use of physical objects; or

(4) Engage in conduct that would reasonably be construed as intended to compel or force a solicited person to accede to demands.

SECTION 2: Title 11, Chapter 68, Section 20, of the Municipal Code of the City of

Submitted after final agenda
Date 5/13/2010 Item 69

Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

11.68.020: As used in this Chapter:

[(A)] "Celestial vault lightshow" is the display of computer-generated electronic images on the ceiling of the celestial vault constructed above Fremont Street and the various light and sound effect accompanying such images.

[(B)] "Display vehicles" are those vehicles brought into the Pedestrian Mall for purposes of display to the public, and not for the primary purpose of transporting persons or property.

[(C)] "Emergency vehicles" are those motorized devices in, upon or by which any person or property is or may be transported or drawn upon a street or sidewalk, including, without limitation, automobiles, motorcycles and mopeds.

[(D)] "Exterior building improvements" means the building facades, marquees, overhangs, recessed entries, adjoining mall area paving materials, signage and graphics, adjoining landscaping, building illumination and audible effects or devices.

"Free expression zones" means those areas within the Pedestrian Mall that have been specifically designated by the City of Las Vegas to be used for solicitation and mall entertainment in accordance with LVMC 11.68.103. The boundaries of the free expression zones shall be as set forth in Exhibit A of this Ordinance (Ordinance No. ____), which ordinance is codified in this Chapter and Exhibit A of which is adopted herein by this reference.

[(E)] "Motorized vehicles" are those motorized devices in, upon or by which any person or property is or may be transported or drawn upon a street or sidewalk, including, without limitation, automobiles, motorcycles and mopeds.

[(F)] "Maintenance vehicles" are those vehicles owned or operated by the City of Las Vegas, as well as vehicles owned and operated by utilities and other vehicles requiring access onto the Pedestrian Mall for the purpose of the repair and maintenance of the Pedestrian Mall or facilities and structures contained therein.

"Mall advertising" includes all advertising within or in connection with the Pedestrian Mall including, without limitation, any means of marketing or promoting the Pedestrian Mall, special events, or any other commercial activity, and the display of consumer goods, products, or services to

the users of the Pedestrian Mall for the purpose of encouraging the sale and purchase thereof, including, without limitation, signs, pictures, or other displays.

"Mall entertainment" is the conduct on the part of any person intended to provide entertainment, recreation, relaxation or enjoyment to the users of the Pedestrian Mall.

"Mall vending" is the distribution, display or sale, or any combination thereof, of consumer goods or services (including food, drink or merchandise) from a pushcart, concession stand, kiosk or other similar structure designed for such purpose.

[(G)] "Management agreement" means that agreement executed between The Fremont Street Experience Limited Liability Company and the City of Las Vegas for the purpose of acquisition, construction, operation, management or maintenance of the Pedestrian Mall.

[(H)] "Parade" is a group of persons with or without animals or vehicles in a public procession or march and does not include a procession or march in connection with a special event or mall entertainment.

[(I)] "Pedestrian Mall Act" refers to NRS 268.810 through 268.823.

[(J)] "Special events" include festivals, sporting events, exhibitions, entertainment and similar activities which are not offered on a continuous basis, whether or not members of the public pay an admission or entrance fee to be spectators or participants.

[(K)] "Special permit vehicles" are those vehicles authorized by The Fremont Street Limited Experience Liability Company in accordance with Section 11.68.080 to enter upon the Pedestrian Mall.

[(L) "Mall advertising" includes all advertising within or in connection with the Pedestrian Mall including, without limitation, any means of marketing or promoting the Pedestrian Mall, special events, or any other commercial activity, and the display of consumer goods, products, or services to the users of the Pedestrian Mall for the purpose of encouraging the sale and purchase thereof, including, without limitation, signs, pictures, or other displays.

(M) "Mall entertainment" is the conduct on the part of any person intended to provide entertainment, recreation, relaxation and enjoyment to the users of the Pedestrian Mall.

(N) "Mall vending" is the distribution, display or sale, or any combination thereof, of

consumer goods or services (including food, drink or merchandise) from a pushcart, concession stand, kiosk or other similar structure designed for such purpose.]

SECTION 3: Title 11, Chapter 68, Section 100, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

11.68.100: The following are prohibited within the Pedestrian Mall:

(A) Animals unless used in connection with a mall activity authorized by The Fremont Street Experience Limited Liability Company or used for the purpose of assisting the visually or aurally impaired;

(B) Mall vending, mall advertising, [mall entertainment] special events or other commercial activities unless such activities are conducted or authorized by The Fremont Street Experience Limited Liability Company[;] or consist of expressive conduct taking place in a free expression zone pursuant to LVMC 11.68.103;

(C) Parades;

(D) Unicycles, bicycles and other types of cycles, skateboards, roller skates, in-line skates and shopping carts except as authorized by The Fremont Street Experience Limited Liability Company in connection with special events and mall entertainment;

(E) Sleeping or camping;

(F) Littering;

(G) Sexually oriented businesses as described in Section 19.04.040[, of the Las Vegas Municipal Code;]

(H) Notwithstanding LVMC 11.68.103, [The] the placement of any table, rack, chair, box, cloth, stand, booth, container, structure or other object within the Pedestrian Mall, [for purposes of solicitation,] except:

(1) As [as] necessary for emergency purposes, or the maintenance or repair of the Pedestrian Mall; [, or as authorized]

(2) As authorized by The Fremont Street Experience Limited Liability Company for special events, mall advertising, mall entertainment or mall vending or other commercial and entertainment activities; or

(3) In connection with expressive conduct described in LVMC 11.68.103.

(I) Glass and metal beverage containers including, but not limited to, bottles, jugs, drinking glasses, aluminum cans and steel cans, during the hours of ten a.m. to 11:59 p.m. on December 31st, and the hours of twelve a.m. to eight a.m. on January 1st of each year;

(J) Feeding birds; [and]

(K) Amplified sound which originates from within the Pedestrian Mall or from properties or businesses abutting the boundaries of the Pedestrian Mall, except where expressly approved by The Fremont Street Experience Limited Liability Company in conjunction with special events, mall entertainment or venue rental;

(L) The launching or throwing of projectiles or other objects into or through the air, except in connection with special events and mall entertainment conducted or authorized by The Fremont Street Experience Limited Liability Company;

(M) The twirling of hoops (such as hula hoops) around the human body or portions thereof, or the use of such hoops for recreation or entertainment, except in connection with special events and mall entertainment conducted or authorized by The Fremont Street Experience Limited Liability Company; and

[(K)] (N) Except as otherwise permitted by LVMC 11.68.103, [Solicitation, as defined in LVMC 10.44.010.] solicitation (as defined in LVMC 10.44.010) and mall entertainment.

SECTION 4: Title 11, Chapter 68, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended by adding thereto a new section, designated as Section 103, reading as follows:

11.68.103: (A) Within the Pedestrian Mall, the following expressive conduct is permitted only in a free expression zone:

(1) Solicitation, as defined in LVMC 10.44.010; and

(2) Mall entertainment.

(B) If any person or organization wishes to use a table in conjunction with activity described in Subsection (A), such table must be provided by The Fremont Street Experience Limited Liability Company. Tables will be provided on a first-come-first-serve basis and subject to available

space within the free expression zones.

SECTION 5: Title 11, Chapter 68, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended by adding thereto a new section, designated as Section 140, reading as follows:

11.68.140: By virtue of its standing and authority under LVMC 11.68.060 and 11.68.070, The Fremont Street Limited Liability Company may commence a civil action to enforce any of the provisions contained in LVMC 11.68.100. This remedy shall supplement, and exist in addition to, those contained in LVMC 11.68.130.

SECTION 6: If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the City of Las Vegas hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

SECTION 7: Whenever in this ordinance any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or whenever in this ordinance the doing of any act is required or the failure to do any act is made or declared to be unlawful or an offense or a misdemeanor, the doing of such prohibited act or the failure to do any such required act shall constitute a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than $1,000.00 or by imprisonment for a term of not more than six months, or by any combination of such fine and imprisonment. Any day of any violation of this ordinance shall constitute a separate offense.

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SECTION 8: All ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2010.

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM:

Val Steed 8-5-10
Date

The above and foregoing ordinance was first proposed and read by title to the City Council on the _____ day of _____, 2010, and referred to the following committee composed of _____ and _____ for recommendation; thereafter the said committee reported favorably on said ordinance on the _____ day of _____, 2010, which was a _____ meeting of said Council; that at said _____ meeting, the proposed ordinance was read by title to the City Council as amended and adopted by the following vote:

VOTING "AYE": _____

VOTING "NAY": _____

ABSENT: _____

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

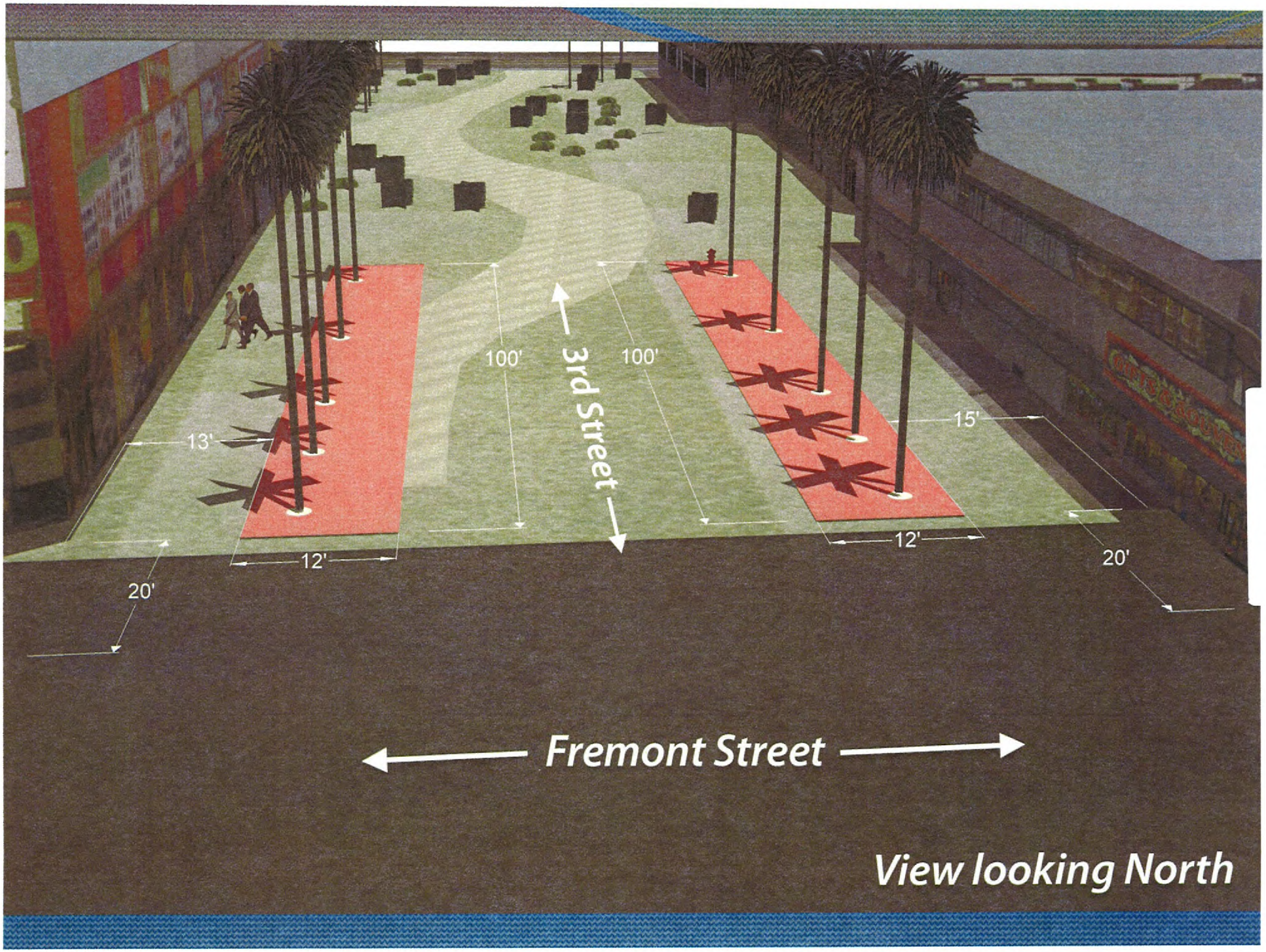
100'
3rd Street
100'
13'
15'
12'
12'
20'
20'
Fremont Street
View looking North

Exhibit A

City of Las Vegas Agenda Item No.: **65.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: CITY ATTORNEY
DIRECTOR: BRADFORD R. JERBIC ☐ **Consent** ☒ **Discussion**

SUBJECT:
RECOMMENDING COMMITTEE: BILL ELIGIBLE FOR ADOPTION AT THIS MEETING:

Bill No. 2010-34 – Revises the provisions regarding the on-site parking, storage and repair of vehicles in residential districts. (TXT-36330) Sponsored by: Councilman Steven D. Ross

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
This bill will revise provisions regarding the on-site parking, storage and repair of vehicles in residential districts. The majority of the revisions are clarifying in nature, designed to make compliance and enforcement easier. The bill does propose to allow decomposed granite as an alternative parking surface under certain conditions. It also includes stricter limitations on the storage and repair of inoperable vehicles.

RECOMMENDATION:
ADOPTION at 9/1/2010 City Council meeting pursuant to the 8/17/2010 Recommending Committee.

First Reading – 8/4/2010; First Publication – 8/20/2010

BACKUP DOCUMENTATION:
Bill No. 2010-34

BILL NO. 2010-34

ORDINANCE NO. _____

AN ORDINANCE TO UPDATE THE PROVISIONS REGARDING THE ON-SITE PARKING, STORAGE AND REPAIR OF VEHICLES IN RESIDENTIAL DISTRICTS, AND TO PROVIDE FOR OTHER RELATED MATTERS.

Sponsored by: Councilman Steven D. Ross

Summary: Revises the provisions regarding the on-site parking, storage and repair of vehicles in residential districts.

THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Table 2 of the Land Use Tables adopted in Title 19, Chapter 4, Section 10, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended by amending the Conditional Use Regulations for the use "Vehicle Parking, Storage or Repair in Residential Zoning Districts," as found in the "Auto and Marine Related" element of Table 2, to read as follows:

Conditional Use Regulations:

1. Except as otherwise provided in Regulations 2 to [13,] 14, inclusive, motor vehicles, including passenger cars, trucks and motorcycles which are not designed or used for racing or for purposes other than transportation, may be parked, stored or repaired on any property in a residential district, provided the same is accessory and incidental to the use of the property for residential purposes and does not constitute a nuisance, health or fire hazard offense under the provisions of this Code and do not have a detrimental effect on the neighborhood. Unless stored or parked within a completely enclosed building, [The] the motor vehicles shall be stored[:] or parked:

   [a. Within a completely enclosed structure;

   b. In the front yard, either on an approved driveway, or on a surface of concrete or asphaltic paving that is adjacent and parallel to an approved driveway and that extends the full length and width of the vehicle; or

   c. In the side yard, either obscured by a 6 foot[-]high fence to adequately screen the vehicles from view, stored on an approved driveway, or stored on a surface of concrete

or asphaltic paving that is adjacent and parallel to an approved driveway and that extends the full length of the vehicle; provided, however, that the vehicle storage complies with the other provisions set out in Regulations 1 to 13, inclusive.]

a. In the front yard, either:

i. On an approved driveway;

ii. On a surface of pavers or other blocks of uniform appearance that are at least two inches in thickness;

iii. On a surface of decomposed granite no less than two inches thick, defined with borders; or

iv. On concrete or asphaltic paving that extends the full length and width of the vehicle; or

b. In the side yard, either:

i. Obscured by a 6 foot high fence to permanently screen the vehicles from view;

ii. On an approved driveway;

iii. On a surface of pavers or other blocks of uniform appearance that are at least two inches in thickness;

iv. On a surface of decomposed granite no less than two inches thick, defined with borders; or

v. On concrete or asphaltic paving that extends the full length and width of the vehicle;

provided, however, that the vehicle storage or parking complies with the other provisions set out in Regulations 1 to 14, inclusive.

2. Except as otherwise provided in Regulation 10 below, on a single family residential lot:

a. No more than 3 operable vehicles may be stored, or one vehicle per 1250 square feet of lot area, whichever allows the greater number of vehicles;

b. No more than 50 percent of the front yard area may be used for the storage or parking of vehicles; and

c. No more than [6 vehicles, whether operable or inoperable] one inoperable vehicle may

be stored at one time.

d. No stored vehicles may be utilized for storing items of personal property, and the area under each vehicle must be kept free of debris and vegetation.

3. [In any residential district,] Unless stored or parked within a completely enclosed building, a recreational vehicle or trailer, or combination thereof, may be stored or parked only as follows:

[a. Within an enclosed structure;

b. In a rear yard, if stored on a surface of concrete or asphaltic paving, gravel or chat which extends the full length and width of the stored item;

c. In a front yard, provided that:

i. The side and rear yards are not reasonably accessible for storage purposes. A corner lot shall be deemed to have reasonable access, and the existence of a fence or block wall, by itself, shall not be deemed to prevent reasonable access to the side or rear yards; or

ii. The recreational vehicle or trailer, or combination thereof, is stored entirely in the yard area with no portion of the unit located closer than one foot from an adjacent public street or sidewalk; and

iii. The recreational vehicle or trailer, or combination thereof, is stored on a surface of concrete or asphaltic paving that is adjacent and parallel to an approved driveway and that extends the full length and width of the stored item.

d. In a side yard, if the recreational vehicle or trailer, or combination thereof, does not extend closer to the street than the front of the main building on the property, and if it is stored on a surface of concrete or asphaltic paving that is adjacent and parallel to an approved driveway and that extends the full length of the stored item.]

a. In a rear yard, either:

i. On a surface of pavers or other blocks of uniform appearance that are at least two inches in thickness;

iii. On a surface of decomposed granite no less than two inches thick, defined with

borders; or

iv. On concrete or asphaltic paving, gravel or chat that extends the full length and width of the vehicle, trailer or combination;

b. In a side yard, either:

i. Permanently screened from view from the public street by a 6 foot wall, with a 5 foot gate;

ii. On a surface of pavers or other blocks of uniform appearance that are at least two inches in thickness;

iii. On a surface of decomposed granite no less than two inches thick, defined with borders; or

iv. On concrete or asphaltic paving that extends the full length and width of the vehicle;

c. If it is not connected to any electrical or sewer service for more than 24 consecutive hours;

d. If it is not used for dwelling purposes;

e. If it is not used for the storage of goods, materials or equipment, other than those items considered to be part of the recreational vehicle and are related to the immediate use and enjoyment thereof; and

f. Its use is in full compliance with applicable provisions of the Fire Code and other technical codes.

[4. Any vehicle being repaired, stored or parked for more than 4 hours on property in a residential district shall have a manufacturers rated carrying capacity not to exceed one ton, and any vehicle being repaired must be owned by a permanent resident at the location where the repair takes place, except as provided in Regulation 9 below.]

4. Except as provided in Regulation 9 below:

a. No vehicle may be repaired, stored or parked for more than 4 consecutive hours if its manufacturer's rated carrying capacity exceeds one ton.

b. No vehicle may be repaired unless it is owned by a permanent resident at the location

where the repair takes place.

c. On a parcel within a single-family residential district, not more than one passenger vehicle with commercial advertising displayed thereon may be stored or parked.

5. Except as otherwise provided in Regulation 10 below:

a. Any vehicle that is [located in a residential district and is] in mechanically inoperable condition shall be stored or repaired in a garage, shed or other enclosure; in a driveway; or in a rear yard that is enclosed by a 6 foot[-]high fence to [adequately] permanently screen the vehicle from view; provided, however, that if the abutting property is undeveloped, the fencing shall not be required until the adjacent property is developed.

b. [In a residential district, no] No repair outside of an enclosure may occur later than 9:00 p.m. or earlier than 7:00 a.m.

6. Except as otherwise provided in Regulation 10 below:

a. [In a residential district, no] No more than one vehicle that is in a mechanically inoperable condition shall be stored or repaired at any time outside of a fully enclosed building on the premises, and there shall be no repair of vehicles or storage of mechanically inoperable vehicles in the side yards.

b. A vehicle shall not be stored in a mechanically inoperable condition [in a residential district] for more than [90] 60 days.

c. No repair may be performed on any motor vehicle, including a recreational vehicle, within the front yard, including any driveway area, unless the repair is a "normal, reasonable and customary repair" as defined in Regulation 14 below.

d. No more than four vehicles may be repaired on the same parcel within any 12-month period.

7. There shall be no storage of junked vehicles, or parts thereof. [, in any residential district.] Only serviceable parts for owned vehicles may be stored on the premises. Such storage shall not be permitted in the front or side yards but shall be permitted in the rear yard only if such storage is either fully enclosed by a 6 foot[-]high fence to [adequately] permanently screen the

parts from view, or in a fully enclosed building; provided, however, that if the abutting property is undeveloped, the fence or enclosed building shall not be required until the adjacent property is developed. No more than 200 square feet of space shall be used for the storage of serviceable parts.

8. [On any lot within a residential district, the] The following are prohibited, except in connection with an approved construction yard or except as necessary to perform grading or construction work on the premises pursuant to a development permit:

   a. The repair or storage of any vehicle whose primary function is other than the transportation of passengers, including but not limited to forklifts, backhoes, tractors, tow trucks and similar types of machinery, construction or industrial equipment; or

   b. Unless for the sole purpose of loading or unloading passengers or goods, [The parking, for more than 4 hours,] the parking or standing of any vehicle whose primary function is other than the transportation of passengers, including but not limited to forklifts, backhoes, tractors, tow trucks and similar types of machinery, construction or industrial equipment.

9. Nothing in Regulations 1 to [13,] 14, inclusive, shall be construed to permit the operation of a business as defined in Title 6. There shall be no repair, restoration or modification of non-owned vehicles for money or barter. [on residential property.] However, nothing in Regulations 1 to [13,] 14, inclusive, prohibits the temporary emergency repair of owned or non-owned vehicles which have become mechanically inoperable while on the property or in the street.

10. On any [residential] lot owned by a member of a duly-recognized organization of automobile collectors or restorers, the owner may exceed the limitations on vehicle storage and repair set forth in Regulations 2, 5(a) and 6 above with respect to the restoration, refurbishing or rebuilding of his or her own classic or antique vehicle if any such vehicle is covered with a fitted full-vehicle pullover cover when it is not being worked on[.], the vehicle's tires are inflated, and the area under the vehicle is kept free of debris and vegetation.

11. In order to facilitate vehicle inspection and enforcement under Regulations 1 to [13,] 14,

inclusive, any person responsible for or engaged in the parking, storage, repair, restoration or modification of any vehicle shall, upon request, provide to any authorized enforcement officer:

a. Evidence regarding the operability of the vehicle, as well as the ownership of the vehicle, such as current registration, title, bill of sale or other documentation[;] from an authority responsible for motor vehicle regulation;

b. As applicable to the exception set forth in Regulation 10, evidence [sufficient to indicate] regarding the person's membership in a duly-recognized organization of automobile collectors or restorers; and

c. As applicable to the exception set forth in Regulation 10, evidence [sufficient to indicate that] regarding the extent to which the vehicle or vehicles in question are actually and currently in the process of being restored, refurbished or rebuilt.

12. No vehicle may be parked or stored in a driveway unless:

a. All tires or wheels that support the vehicle are in contact with the driveway; or

b. Where any such tire or wheel is not in contact with the driveway, the vehicle at that location is resting on a jack stand or wheel ramp that is designed and manufactured for the purpose of temporarily supporting a vehicle.

[12.] 13. The provisions of Regulations 1 to [13,] 14, inclusive, shall apply to any person in control or lawful possession of any real property, [within a residential district,] including an owner, tenant, occupant, lessee or otherwise.

[13.] 14. For purposes of [Regulations 1 and 3, an "approved driveway"] these Regulations:

a. "Approved driveway" means a driveway that complies with all applicable curb cut requirements that have been established by the City.

b. "Mechanically inoperable," with respect to a motor vehicle, means that the vehicle is inoperative, cannot be moved under its own power, or cannot be operated lawfully on a public street or highway because one or more component parts necessary for such movement or lawful operation are lacking or have been damaged or deteriorated so as to become inoperative. Such component parts include without limitation the engine, transmission, wheels, tires, doors, windshield and windows.

c. "Normal, reasonable and customary repairs," with respect to a motor vehicle, means incidental repairs or service, including changing flat tires; repairing or servicing the electrical or ignition system; replacing hoses; cleaning or replacing filters; installing minor accessories; and adding or replacing lubricants, coolants, refrigerants, or hydraulics system fluids.

SECTION 2: For purposes of Section 2.100(3) of the City Charter, LVMC 19.04.010 is deemed to be a subchapter rather than a section.

SECTION 3: If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the City of Las Vegas hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

SECTION 4: Whenever in this ordinance any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or whenever in this ordinance the doing of any act is required or the failure to do any act is made or declared to be unlawful or an offense or a misdemeanor, the doing of such prohibited act or the failure to do any such required act shall constitute a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than $1,000.00 or by imprisonment for a term of not more than six months, or by any combination of such fine and imprisonment. Any day of any violation of this ordinance shall constitute a separate offense.

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SECTION 5: All ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2010.

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM:

Val Steed 7-21-10
_____
Date

The above and foregoing ordinance was first proposed and read by title to the City Council on the _____ day of _____, 2010, and referred to the following committee composed of _____ and _____ for recommendation; thereafter the said committee reported favorably on said ordinance on the _____ day of _____, 2010, which was a _____ meeting of said Council; that at said _____ meeting, the proposed ordinance was read by title to the City Council as first introduced and adopted by the following vote:

VOTING "AYE": _____

VOTING "NAY": _____

ABSENT: _____

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

City of Las Vegas Agenda Item No.: **66.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: CITY ATTORNEY
DIRECTOR: BRADFORD R. JERBIC ☐ **Consent** ☒ **Discussion**

SUBJECT:
RECOMMENDING COMMITTEE: BILL ELIGIBLE FOR ADOPTION AT THIS MEETING:

Bill No. 2010-38 – Establishes time limits within which a member of the City Council may request reconsideration of Council action to deny a zoning-related application. (TXT-35753)
Sponsored by: Councilman Steven D. Ross

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
This bill will establish time limits within which a member of the City Council may request reconsideration of Council action to deny a zoning-related application. The Planning and Development Department desires to have such time limits established by ordinance rather than having potential reconsiderations decided on a case-by-case basis. Under this bill, a Council request to reconsider must be made at the same meeting at which the denial occurs or within 14 days thereafter.

RECOMMENDATION:
ADOPTION at 9/15/2010 City Council meeting pursuant to the 8/31/2010 Recommending Committee.

First Reading – 8/18/2010; First Publication – 9/3/2010

BACKUP DOCUMENTATION:
Bill No. 2010-38

BILL NO. 2010-38

ORDINANCE NO. _____

AN ORDINANCE TO ESTABLISH TIME LIMITS WITHIN WHICH A MEMBER OF THE CITY COUNCIL MAY REQUEST RECONSIDERATION OF COUNCIL ACTION TO DENY A ZONING-RELATED APPLICATION, AND TO PROVIDE FOR OTHER RELATED MATTERS.

Sponsored by: Councilman Steven D. Ross

Summary: Establishes time limits within which a member of the City Council may request reconsideration of Council action to deny a zoning-related application.

THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Title 19, Chapter 18, Section 10, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended by adding thereto a new subsection, designated as Subsection (I), reading as follows:

(I) Reconsideration of Council Action to Deny an Application

(1) Action by the City Council to deny an application, where such action is "final action" under the provisions of this Chapter, shall be deemed final action for purposes of judicial review, subject to the provisions of Paragraph (2) below. However, for purposes other than judicial review, City Council action taken pursuant to this Paragraph (1) or Paragraph (2) below shall be subject to the provisions of Paragraphs (3) through (5) below.

(2) Any member of the City Council who voted with the majority regarding an application referred to in Paragraph (1) above may, at the same meeting at which the action was taken, request that the item be reconsidered at that meeting.

(3) During the period of fourteen calendar days following action taken pursuant to Paragraphs (1) or (2) above to deny an application, any member of the City Council who voted with the majority regarding the application may file with the City Clerk a written request for the item to be rescinded and reconsidered. If such a request is made (and subject to the provisions of Paragraph (4) below), an appropriate item to rescind the previous vote shall be put on the next available Council agenda, and a follow-up item to reconsider the vote may be put on that same agenda or the next available agenda.

(4) No agenda item to rescind or to reconsider an item under this Subsection (I) shall be considered unless:

(a) Consideration of the item is in compliance with the requirements of NRS Chapter 241; and

(b) Notice of consideration of the item has been provided to property owners (and published) to the same extent as when the item was heard previously.

(5) The provisions of this Subsection (I) shall apply notwithstanding any other provision of this Chapter, and notwithstanding any custom or procedural rule that governs or has governed action by the City Council.

SECTION 2: For purposes of Section 2.100(3) of the City Charter, LVMC 19.18.010 is deemed to be a subchapter rather than a section.

SECTION 3: If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the City of Las Vegas hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

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SECTION 4: All ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2010.

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM:

Val Steed 8-4-10
Date

The above and foregoing ordinance was first proposed and read by title to the City Council on the _____ day of _____, 2010, and referred to the following committee composed of _____ and _____ for recommendation; thereafter the said committee reported favorably on said ordinance on the _____ day of _____, 2010, which was a _____ meeting of said Council; that at said _____ meeting, the proposed ordinance was read by title to the City Council as first introduced and adopted by the following vote:

VOTING "AYE": _____

VOTING "NAY": _____

ABSENT: _____

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

City of Las Vegas Agenda Item No.: **67.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: CITY ATTORNEY
DIRECTOR: BRADFORD R. JERBIC ☐ **Consent** ☒ **Discussion**

SUBJECT:
RECOMMENDING COMMITTEE: BILL ELIGIBLE FOR ADOPTION AT THIS MEETING:

Bill No. 2010-39 – Amends the permit requirements pertaining to group use of City parks, establishes limitations on certain law enforcement activities in City parks, provides that a portion of James Gay Park (currently a children's park) will be made available for general use, and deletes obsolete provisions relating to park use. Proposed by: Bradford R. Jerbic, City Attorney

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
This bill is proposed as a means of implementing a settlement agreement in the case currently pending before the Ninth Circuit Court of Appeals, entitled Sacco v. City of Las Vegas (Case No 07-17394). In accordance with the terms of the settlement, the bill will amend the permit requirements pertaining to group use of City parks, establish limitations on certain law enforcement activities in City parks, and provide that a portion of James Gay Park (currently a children's park) will be made available for general use. In addition, the bill will delete obsolete provisions regarding feeding activities in City parks.

RECOMMENDATION:
ADOPTION at 9/15/2010 City Council meeting as a First Amendment pursuant to the 8/31/2010 Recommending
Committee.

First Reading – 8/18/2010; First Publication – 9/3/2010

BACKUP DOCUMENTATION:
1. Bill No. 2010-39
2. Business Impact Statement
3. First Amendment – Bill No. 2010-39

BILL NO. 2010-39

ORDINANCE NO. _____

AN ORDINANCE RELATING TO CITY PARKS; AMENDING THE PERMIT REQUIREMENTS PERTAINING TO GROUP USE; ESTABLISHING LIMITATIONS ON CERTAIN LAW ENFORCEMENT ACTIVITIES IN CITY PARKS; PROVIDING THAT A PORTION OF JAMES GAY PARK (CURRENTLY A CHILDREN'S PARK) WILL BE MADE AVAILABLE FOR GENERAL USE; DELETING OBSOLETE PROVISIONS; AND PROVIDING FOR OTHER RELATED MATTERS.

Proposed by: Bradford R. Jerbic, City Attorney

Summary: Amends the permit requirements pertaining to group use of City parks, establishes limitations on certain law enforcement activities in City parks, provides that a portion of James Gay Park (currently a children's park) will be made available for general use, and deletes obsolete provisions.

THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Title 13, Chapter 36, Section 10, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

13.36.010: The Director of the Department of [Parks and Leisure Activities] Leisure Services shall exercise such powers and perform such duties as may be specified by the City Council or the City Manager. As used in this Chapter, the term "Department" refers to the Department of Leisure Services, and the term "Director" refers to the Director of that Department or the Director's designee.

SECTION 2: Title 13, Chapter 36, Section 80, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

13.36.080: (A) Any person who desires to use any park or recreational facility of the City for [a group of twenty-five individuals or more, or any person who desires to conduct some event in which it could reasonably be assumed that twenty-five or more persons might gather at a park or recreational facility of the City to participate in or witness such event,] any demonstration, festival, fair, concert or any other organized assemblage of seventy-five or more participants shall first apply and obtain a permit from the Director. For purposes of this Subsection (A), "participant" means any individual who, along with others, is gathered for a common purpose under the direction, control or invitation of a person or group of people.

(B) This Section does not apply to any event which is sponsored by the Department.

SECTION 3: Title 13, Chapter 36, Section 90, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

13.36.090: The Director may deny or condition the issuance of any permit which is applied for pursuant to Section 13.36.090 in order to:

(A) Protect the use and enjoyment of the park or facility for other members of the public;

(B) Protect the health and safety of all persons who visit the park or facility;

(C) Ensure that there is adequate parking and sanitary facilities to accommodate all persons who use the park or facility;

(D) Protect the grounds, equipment, vegetation, buildings, fences and other amenities of the park or facility from damage, overuse or destruction;

(E) Provide that the park or facility and the surrounding area is kept clean and free from debris;

(F) Ensure that the group use does not disturb [or annoy] persons who occupy land which is nearby such park or facility.

SECTION 4: (A) The deputy marshals of the City may not, without due process of law, remove a person from, or require a person to leave, a public park under the authority of any statute or ordinance relating to trespassing.

(B) The City, including its deputy marshals, may ban a person from a public park only when there is evidence of unlawful activity, and may do so only pursuant to:

(1) A lawful arrest or criminal citation and subsequent court order; or

(2) An ordinance providing for an administrative appeal hearing and the availability of subsequent judicial review.

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SECTION 5: (A) The following portion of James Gay Park, generally located at the southeast corner of "B" Street and Harrison Avenue, shall be set aside for use by adults, whether or not they are accompanying children:

That portion of James Gay Park located south of Harrison Avenue and north of the easterly extension of the centerline of West Van Buren Avenue.

(B) The City shall erect a fence between the portion of James Gay Park described in Subsection (A) of this Section and the remaining portion of the park, which will continue to operate under LVMC Chapter 13.36 as a children's park. The City shall also install an entry gate in the fence along Harrison Avenue to provide access to the portion described in Subsection (A).

SECTION 6: Title 13, Chapter 36, Section 55, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

13.36.055: (A) The following are prohibited within any City park:

(1) Fireworks, firearms or weapons of any kind;

(2) Fires, except in barbecue facilities;

(3) The hitting of golf balls;

(4) The use of metal detectors, except for surface finds; and

(5) The unauthorized sale of goods or services. [; and

(6) The providing of food or meals to the indigent for free or for a nominal fee. For purposes of this Paragraph, an indigent person is a person whom a reasonable ordinary person would believe to be entitled to apply for or receive assistance under NRS Chapter 428.]

(B) Pursuant to Subsection (B) of Section 13.36.050, a copy or summary of the regulations listed in Subsection (A) of this Section shall be posted at each City park.

SECTION 7: If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the City of Las Vegas hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections,

subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

SECTION 8: All ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2010.

APPROVED:

By _____
OS CAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM:

Val Steed 8-4-10
Date

The above and foregoing ordinance was first proposed and read by title to the City Council on the _____ day of _____, 2010, and referred to the following committee composed of _____ and _____ for recommendation; thereafter the said committee reported favorably on said ordinance on the _____ day of _____, 2010, which was a _____ meeting of said Council; that at said _____ meeting, the proposed ordinance was read by title to the City Council as first introduced and adopted by the following vote:

VOTING "AYE": _____

VOTING "NAY": _____

ABSENT: _____

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

BUSINESS IMPACT STATEMENT
BILL NO. 2010-39
(Amends the permit requirements pertaining to group use of City parks, establishes limitations on certain law enforcement activities in City parks, provides that a portion of James Gay Park (currently a children's park) will be made available for general use, and deletes obsolete park-related provisions)

This business impact statement was prepared pursuant to NRS 237.090 to address the impact of a proposed ordinance, Bill No. 2010-39, that would amend the permit requirements pertaining to group use of City parks, establish limitations on certain law enforcement activities in City parks, provide that a portion of James Gay Park (currently a children's park) will be made available for general use, and delete obsolete provisions.

1. The following constitutes a description of the number of the manner in which comment was solicited from affected businesses, a summary of their responses and an explanation of the manner in which other interested persons may obtain a copy of the summary.

Not applicable

2. The estimated economic effect of the proposed rule on businesses, including, without limitation, both adverse and beneficial effects, and both direct and indirect effects:

Adverse effects:

None identified

Beneficial effects:

None identified

Direct effects:

None identified

Indirect effects:

None identified

3. The following constitutes a description of the methods the local government considered to reduce the impact of the proposed rule on businesses and a statement regarding whether any, and if so which, of these methods were used:

Not applicable

4. The governing body estimates the annual cost to the local government for enforcement of the proposed rule is:

No additional cost

5. If the proposed rule provides for a new fee or increases an existing fee, the total annual amount expected to be collected is:

Not applicable

6. If the proposed rule provides for a new fee or increases an existing fee, the money generated by the new fee or increase in existing fee will be used by the local government to:

Not applicable

7. If the proposed rule includes provisions that duplicate or are more stringent that federal, state or local standards regulating the same activity, the following explains when such duplicative or more stringent provisions are necessary:

Not applicable

Date: August 4, 2010

FIRST AMENDMENT

BILL NO. 2010-39

ORDINANCE NO. _____

AN ORDINANCE RELATING TO CITY PARKS; AMENDING THE PERMIT REQUIREMENTS PERTAINING TO GROUP USE; ESTABLISHING LIMITATIONS ON CERTAIN LAW ENFORCEMENT ACTIVITIES IN CITY PARKS; PROVIDING THAT A PORTION OF JAMES GAY PARK (CURRENTLY A CHILDREN'S PARK) WILL BE MADE AVAILABLE FOR GENERAL USE; DELETING OBSOLETE PROVISIONS; AND PROVIDING FOR OTHER RELATED MATTERS.

Proposed by: Bradford R. Jerbic, City Attorney

Summary: Amends the permit requirements pertaining to group use of City parks, establishes limitations on certain law enforcement activities in City parks, provides that a portion of James Gay Park (currently a children's park) will be made available for general use, and deletes obsolete provisions.

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(B) This Section does not apply to any event which is sponsored by the Department.

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(B) Protect the health and safety of all persons who visit the park or facility;

(C) Ensure that there is adequate parking and sanitary facilities to accommodate all persons who use the park or facility;

(D) Protect the grounds, equipment, vegetation, buildings, fences and other amenities of the park or facility from damage, overuse or destruction;

(E) Provide that the park or facility and the surrounding area is kept clean and free from debris;

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(B) The City, including its deputy marshals, may ban a person from a public park only when there is evidence of unlawful activity, and may do so only pursuant to:

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(2) An ordinance providing for an administrative appeal hearing and the availability of subsequent judicial review.

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(1) Fireworks, firearms or weapons of any kind;

(2) Fires, except in barbecue facilities;

(3) The hitting of golf balls;

(4) The use of metal detectors, except for surface finds; and

(5) The unauthorized sale of goods or services. [; and

(6) The providing of food or meals to the indigent for free or for a nominal fee. For purposes of this Paragraph, an indigent person is a person whom a reasonable ordinary person would believe to be entitled to apply for or receive assistance under NRS Chapter 428.]

(B) Pursuant to Subsection (B) of Section 13.36.050, a copy or summary of the regulations listed in Subsection (A) of this Section shall be posted at each City park.

SECTION 7: If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the City of Las Vegas hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections,

subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

SECTION 8: All ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2010.

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM:

Val Steed 9-1-2010
_____
Date

The above and foregoing ordinance was first proposed and read by title to the City Council on the _____ day of _____, 2010, and referred to the following committee composed of _____ and _____ for recommendation; thereafter the said committee reported favorably on said ordinance on the _____ day of _____, 2010, which was a _____ meeting of said Council; that at said _____ meeting, the proposed ordinance was read by title to the City Council as amended and adopted by the following vote:

VOTING "AYE": _____

VOTING "NAY": _____

ABSENT: _____

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

City of Las Vegas Agenda Item No.: **68.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: CITY ATTORNEY
DIRECTOR: BRADFORD R. JERBIC ☐ **Consent** ☒ **Discussion**

SUBJECT:
RECOMMENDING COMMITTEE: BILL ELIGIBLE FOR ADOPTION AT A LATER MEETING:

Bill No. 2010-40 – Authorizes under certain circumstances an extension of time regarding the expiration of certain nonconforming uses. (TXT-38702) Sponsored by: Councilman Steven D. Ross

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
This bill will authorize under certain circumstances an extension of time regarding the expiration of certain nonconforming uses. The bill addresses nonconforming uses of conforming buildings by 1) establishing a presumption of abandonment of such uses when discontinued, and 2) allowing a process for obtaining an extension of time in order to extend the "grandfather" protection of such uses before they are lost by abandonment. The process will be available only in cases of economic hardship, including market factors.

RECOMMENDATION:
This bill should be submitted to a Recommending Committee for review, hearing and recommendation to the City Council for final action.

BACKUP DOCUMENTATION:
Bill No. 2010-40

BILL NO. 2010-40

ORDINANCE NO. _____

AN ORDINANCE TO AUTHORIZE UNDER CERTAIN CIRCUMSTANCES AN EXTENSION OF TIME REGARDING THE EXPIRATION OF CERTAIN NONCONFORMING USES, AND TO PROVIDE FOR OTHER RELATED MATTERS.

Sponsored by: Councilman Steven D. Ross

Summary: Authorizes under certain circumstances an extension of time regarding the expiration of certain nonconforming uses.

THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Title 19, Chapter 16, Section 30, Subsection (A), of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

(A) Nonconforming Use of a Conforming Building.

(1) General Provisions. A nonconforming use of a conforming building shall not be [continued following redevelopment of the property,] reestablished in a new building, extended or expanded into any other portion of the conforming building, or relocated on the same parcel or within the same commercial subdivision; provided, however, that an existing use which was made nonconforming by one or more of the following may be [continued following redevelopment,] expanded[,] or relocated on the same parcel or within the same commercial subdivision in accordance with [Subsection] Paragraph (2) of this Subsection (A):

(a) The adoption of a Special Use Permit requirement for that type of use;

(b) The adoption of a [four hundred foot or one thousand five hundred foot] separation requirement between that type of use and a protected use;

(c) The adoption of a [one thousand five hundred foot] separation requirement between two uses of that type;

(d) The establishment of a protected use that, by virtue of a [four hundred foot or one thousand five hundred foot] separation requirement, would otherwise prohibit the existing use from expanding; [or from continuing following redevelopment;] or

(e) The adoption of a different method of measuring distance for purposes of a separation requirement.

(2) Conditions of Allowable Continuation, Expansion, or Relocation of Use. If the proposed expansion [or continuation] of a nonconforming use [following redevelopment,] or relocation of the use on the same parcel or within the same commercial subdivision[,] qualifies under [Subsection] Paragraph (1) of this Subsection (A), [and no Variance from (or Waiver of) a separation requirement has previously been granted for the property,] the nonconforming use may be expanded [or continued following redevelopment,] or relocated on the same parcel or within the same commercial subdivision[,] if the proposed expansion[, continuation] or relocation:

(a) Will not increase the size or extent of the use by more than fifty percent; and

(b) Will not require a Variance or Waiver regarding any other provision of Title 19, including those that pertain to parking, landscaping and residential adjacency requirements.

(3) Discontinuation and Abandonment of Use. If a nonconforming use of a conforming building is discontinued by ceasing to physically occupy or operate within the building, there shall be a rebuttable presumption that the nonconforming use has been abandoned as of the date the use was discontinued and, for purposes of this Paragraph (3), the Department may deem the use abandoned as of that date. The owner of the property or operator of the use may rebut the presumption of abandonment by demonstrating that the use has continued or existed beyond that date. The owner or operator shall have the burden of establishing the continuation or existence of the use beyond that date, as well as the burden of establishing the existence or continued operation of the use at any particular time.

(a) If a nonconforming use of a conforming building is [discontinued] abandoned for a period of one year, [or two years in the case of a conforming building that has been damaged or partially destroyed by fire, flood, wind, another calamity or an act of God,] the future use of such building shall be only in conformance with the provisions of this Title.

(b) If a conforming building housing a nonconforming use is damaged or partially destroyed by fire, flood, wind, another calamity or an act of God, and the use is abandoned for a period of two years, the future use of such building shall be only in conformance with the provisions of this Title.

(c) If it appears, by reason of economic hardship, that a nonconforming use

described in Subparagraph (a) or (b) above will be deemed abandoned for a period of time greater than the applicable abandonment period described in those subparagraphs, the owner of the property or operator of the use may request that the abandonment period be extended by the City Council. Such request shall be made by means of an application for an Extension of Time. The application shall include or be accompanied by a letter of justification explaining the economic hardship, which must be based upon market conditions or other circumstances beyond the applicant's control, and shall be accompanied by the applicable fees, if any, that are set forth in the fee schedule. The application shall be heard at a public hearing of the City Council. An Extension of Time may be granted by the City Council only upon clear and convincing evidence of qualifying hardship and a determination that the public health, safety and welfare will not be jeopardized. An Extension of Time may not exceed the duration of the applicable abandonment period set forth in Subparagraph (a) or (b) above.

(4) Notice to Discontinue Use. [In addition, nonconforming uses] Independent of any other provision of this Chapter, a nonconforming use of a conforming building shall be discontinued upon written notice from the City to the owner to discontinue the use. The use shall be discontinued no later than the date described in the notice, which in no event shall be later than five years from the date notice is given. Notice shall be provided by mailing to the owner of the property as shown by the County Assessor's records and recording a copy of the notice in the office of the County Recorder. Such notice shall contain the legal description of the property, a description of the use required to be discontinued, the date that the use is to cease and desist and the Section of this Title which declares the use to be nonconforming.

SECTION 2: Table 2 of the Land Use Tables adopted in Title 19, Chapter 4, Section 10, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended by amending the entry for the use "Sexually Oriented Business," as found in the "Recreational, Entertainment and Amusement" element of Table 2, so that Conditional Use Regulation 5 applicable to the use reads as follows:

5. The provisions of Regulations 3 and 4 above and the provisions of Chapter 19.16 shall apply to sexually oriented businesses; provided, however, that any existing sexually oriented business located in the M Zoning District that was made nonconforming as to a separation

requirement by either of the following circumstances shall be deemed a conforming use for purposes of expansion, enlargement or alteration:

a. The adoption of a different method of measuring distance; or

b. The intervening establishment within the required separation area of either a protected use or another sexually oriented business.

Any such business shall continue to be subject to the provisions regarding discontinuation and removal that are set forth in Sections [19.16.030(A)(3)] 19.16.030(A)(4) and 19.16.040, respectively.

SECTION 3: For purposes of Section 2.100(3) of the City Charter, LVMC 19.04.010 and 19.16.030 are deemed to be subchapters rather than sections.

SECTION 4: If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the City of Las Vegas hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

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SECTION 5: All ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2010.

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM:

_____ 8-17-10
Date

The above and foregoing ordinance was first proposed and read by title to the City Council on the _____ day of _____, 2010, and referred to the following committee composed of _____ and _____ for recommendation; thereafter the said committee reported favorably on said ordinance on the _____ day of _____, 2010, which was a _____ meeting of said Council; that at said _____ meeting, the proposed ordinance was read by title to the City Council as first introduced and adopted by the following vote:

VOTING "AYE": _____

VOTING "NAY": _____

ABSENT: _____

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

City of Las Vegas Agenda Item No.: **69.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: CITY ATTORNEY
DIRECTOR: BRADFORD R. JERBIC ☐ **Consent** ☒ **Discussion**

SUBJECT:
RECOMMENDING COMMITTEE: BILL ELIGIBLE FOR ADOPTION AT A LATER MEETING:

Bill No. 2010-41 – Updates the City's licensing regulations governing ice cream trucks, including revised provisions concerning hours of operation and signage. Sponsored by: Councilwoman Lois Tarkanian

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
This bill will updates the City's licensing regulations governing ice cream trucks. Most of the changes are clarifying in nature. The bill includes minor fee increases and revised provisions concerning hours of operation. It also adjusts the signage requirements for ice cream trucks.

RECOMMENDATION:
This bill should be submitted to a Recommending Committee for review, hearing and recommendation to the City Council for final action.

BACKUP DOCUMENTATION:
1. Bill No. 2010-41
2. Business Impact Statement

BILL NO. 2010-41

ORDINANCE NO. _____

AN ORDINANCE TO UPDATE THE CITY'S LICENSING REGULATIONS GOVERNING ICE CREAM TRUCKS, INCLUDING REVISED PROVISIONS CONCERNING HOURS OF OPERATION AND SIGNAGE, AND TO PROVIDE FOR OTHER RELATED MATTERS.

Sponsored by: Councilwoman Lois Tarkanian

Summary: Updates the City's licensing regulations governing ice cream trucks, including revised provisions concerning hours of operation and signage.

THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Title 6, Chapter 47, Section 10, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

6.47.010: As used in this Chapter, the following terms shall be defined as set forth in this Section:

[(A) "Employee" means a person who works for or under the direction of, on behalf of, or as an agent of a licensee.

(B) "Health District" means the Clark County Health District.]

"Authorized vending period" means as follows:

(1) Within a City park, or upon or adjacent to public school grounds where organized athletic events take place:

(a) From nine a.m. to nine p.m., between June 1 and August 31; and

(b) From nine a.m. to eight p.m., otherwise;

(2) In any residential neighborhood where the provisions of Paragraph (1) above do not apply:

(a) From ten a.m. to eight p.m., between June 1 and August 31; and

(b) From ten a.m. to seven p.m., otherwise;

(3) At any other location, at any time of the day or night;

"Defined food product" means any of the following:

(1) Prepackaged candies or desserts;

(2) Prepackaged frozen dairy products or frozen water-based food products;

(3) Soft serve or hand-dipped frozen dairy products or frozen water-based food products, or

(4) Prepackaged beverages, including water, soft drinks, fruit drinks and hydration/sports drinks.

[(C)] "Ice cream truck" means any [motor] motorized vehicle which is required to be registered by the Nevada Department of Motor Vehicles and which is used to vend any [of the following products, whether or not the truck carries other prepackaged food products:

(1) Prepackaged frozen dairy or water-based food products; or

(2) Soft-serve or hand-dipped frozen dairy or water-based products.] defined food product.

[(D)] "Ice cream truck business" means a business that operates [one or more ice cream trucks that travel] an ice cream truck that travels from place to place on the streets for the purpose of vending[.] defined food products.

[(E)] "Licensee" means the holder of an ice cream truck business license issued by the Department.

[(F) "Metro" means the Las Vegas Metropolitan Police Department.]

[(G)] "Vend" means to sell or offer to sell products from an ice cream truck.

SECTION 2: Title 6, Chapter 47, Section 20, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

6.47.020: It is unlawful for a person to:

(A) [Operate] Conduct, engage in, carry on, advertise, or market an ice cream truck business within the City without a license issued pursuant to this Chapter[;] for each truck operated in the business;

(B) [Maintain, manage, conduct, control or own] Conduct, engage in, carry on, advertise, or market an ice cream truck business that operates within the City unless the business is maintained and operated in compliance with this Title; or

(C) Vend from an ice cream truck or [operate] drive an ice cream truck for the purpose of vending therefrom without a valid work card issued pursuant to LVMC Chapter 6.86.

SECTION 3: Title 6, Chapter 47, Section 30, of the Municipal Code of the City of

Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

6.47.030: (A) On forms approved by the Department, [An] an application for an ice cream truck business license shall be filed with the Director. [and shall contain all of the information required by the Department.] Each principal of an ice cream truck business must [also] apply for and obtain approval for suitability in accordance with LVMC Chapter 6.06, subject to the payment of [an investigative fee of fifty dollars. The issuance of a license is contingent upon compliance with the work card and certification requirements of this Chapter.] applicable investigative fees. Upon completion of a required investigation, Metro will forward the application to the Department for appropriate action.

(B) Ice cream truck business licenses issued under this Chapter:

(1) Are issued on a per-vehicle basis;

(2) Are issued annually, whether on an initial or renewal basis, for the period for the period of April 1 through March 31 of the following year; and

(3) Are non-transferable.

SECTION 4: Title 6, Chapter 47, Section 40, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

6.47.040: (A) [In addition to and independent of any licensing or] Independent of any certification requirement of the Health District, an ice cream truck must first be inspected [and certified by the Department] by Department personnel and found to be in compliance with LVMC 6.47.100 before a business license may be issued or renewed for the operation of that truck. The applicant or licensee shall pay an inspection fee of fifty dollars for the first inspection. If an ice cream truck does not pass the first inspection, the applicant or licensee shall pay a reinspection fee of [twenty-five] fifty dollars for each [subsequent inspection] reinspection until the truck [is certified.] complies with LVMC 6.47.100.

(B) In connection with the initial licensing of an ice cream truck business, the applicant must demonstrate compliance with LVMC 6.47.050 and 6.47.110 before the issuance of the initial license. Following the issuance of an initial license, the licensee, on an ongoing basis and in connection with annual renewal, may certify compliance with those sections by means of an affidavit.

However, such certification by affidavit does not preclude the Department, at any time, from requiring actual proof of compliance with those sections.

SECTION 5: Title 6, Chapter 47, Section 50, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

6.47.050: No ice cream truck is eligible for a license, and no ice cream truck may be operated for the purpose of vending therefrom, unless the truck:

(A) [Has been certified by the Department and has displayed therein or thereon evidence of current certification.] Has been registered with the Nevada Department of Motor Vehicles and is properly displaying current registration plates; and

(B) Complies with any certification requirements of the Health District, and [has displayed therein or thereon] the applicant or operator, as the case may be, possesses evidence of current certification and compliance with Health District requirements.

SECTION 6: Title 6, Chapter 47, Section 60, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

6.47.060: (A) Each ice cream truck business license issued by the Department shall be subject to the requirements and limitations set forth in this Chapter and any other conditions specifically imposed upon the license. [A license is not transferable.] The annual license fee for [each person required to have] an ice cream truck business license shall be [one hundred dollars for each ice cream truck.] one hundred twenty-five dollars.

(B) For each license issued under this Chapter, the Department will issue a license decal. The decal shall be attached and displayed as set forth in LVMC 6.47.090.

(C) The Department may charge a decal replacement fee in the amount of twenty-five dollars, or in such other amount as the City Council may approve by resolution.

SECTION 7: Title 6, Chapter 47, Section 70, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

6.47.070: No person shall:

(A) Vend on any street at a location where the speed limit is greater than twenty-five miles per hour.

(B) Vend from an ice cream truck which is parked or stopped on a street within seventy-five feet of an intersection.

(C) Vend on a street except from the side of the truck away from moving traffic and as near as possible to the right-hand curb or edge of the street.

(D) Vend to a person standing in the roadway.

(E) Vend on a street unless there is a clear view of the ice cream truck for a distance of two hundred feet in each direction.

(F) Vend on a street unless the safety equipment described in Subsection (C) of Section 6.47.100 is activated a minimum of fifty feet before the ice cream truck stops to vend and for a minimum of fifty feet after operation of the ice cream truck resumes.

(G) Drive an ice cream truck on a street in reverse in order to vend.

(H) Stop on a street to vend within two hundred feet of any ice cream truck that has already stopped to vend on that street or another.

(I) Vend any item other than [the prepackaged food items described in Subsection (C) of Section 6.47.010 of this Chapter.] a defined food product.

(J) Vend or park an ice cream truck within one thousand feet of the outside perimeter of an elementary or middle school property until one hour after the end of the regular school day; provided, however, that the foregoing prohibition shall not apply on days when school is not in session nor on school property when vending has been approved in writing by the principal.

(K) Vend [earlier than ten a.m., nor later than seven p.m. or one-half hour after sunset, whichever occurs first.] at any time other than during an authorized vending period.

(L) Vend at [the same] a particular location more than once a day, or for longer than thirty minutes [at any one location, except as permitted under] continuously without moving the truck to another location at least one thousand feet away; provided, however, that the prohibitions contained in this Subsection (L) do not apply to vending locations and activities specifically authorized by a contractual arrangement with the City regarding a specific location.

(M) Consume alcoholic beverages or be intoxicated while vending.

(N) Vend within one thousand feet of a licensed concession stand located within

a City park when the concession stand is open for business, unless otherwise permitted under a contractual arrangement with the City regarding a specific location.

SECTION 8: Title 6, Chapter 47, Section 80, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

6.47.080: (A) No person shall use, play or employ any sound, outcry, amplifier, loudspeaker or any other instrument or device for the production of sound from an ice cream truck:

(1) When the ice cream truck is stationary;

(2) **[**Earlier than ten a.m., nor later than seven p.m. or one-half hour after sunset, whichever occurs first;**]** At any time other than during an authorized vending period; or

(3) In such a manner as to create a noise disturbance as defined in LVMC Chapter 9.16.

(B) In connection with the issuance of a license, the Director may impose reasonable restrictions on the type and use of any sound, outcry, amplifier, loudspeaker or any other instrument or device for the production of sound employed on an ice cream truck in order to limit noise or prevent a noise disturbance as defined in LVMC Chapter 9.16.

SECTION 9: Title 6, Chapter 47, Section 90, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

6.47.090: Each ice cream truck shall have prominently displayed, on the upper left corner of the back of the vehicle, **[**an identification number provided by the Director. The display shall be of such color, size and placement that the identification number can be easily read at a distance of ten feet.**]** the license decal provided by the Department pursuant to LVMC 6.47.060. Failure to attach the decal in the correct location or to maintain it in a readable condition shall be a violation of this Chapter.

SECTION 10: Title 6, Chapter 47, Section 100, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

6.47.100: (A) A licensee shall maintain each of the licensee's ice cream trucks in such a condition that:

(1) All doors, windows, hoods and trunks open and close securely;

(2) The exterior of the ice cream truck is clean and in good repair;

(3) Advertising decals and price lists are placed only on the vending side of the ice cream trucks and use a maximum area of twenty-four square feet; [and]

(4) All windows are clear of signs and other obstructions[.]; and

(5) The licensed business name and business telephone number are displayed on both sides of the truck in letters with a minimum of height of three inches, made discernible from other messages on the truck by means of a minimum six inches of blank space around the business name and business telephone number.

(B) A licensee shall ensure the installation of, and shall maintain in good operating condition, the following safety equipment on each of the licensee's ice cream trucks:

(1) Warning signs painted or mounted on the front and back of each truck, with the words "CHILDREN CROSSING" appearing on a display that is eight inches high by forty-eight inches wide. At least one additional sign shall be painted or mounted on the rear of each truck above the first sign and shall read "WARNING" in English and "PRECAUCIÓN" in Spanish. All lettering shall be black lettering, at least four inches high, on a yellow background with a black [one-inch border] border a minimum of one-half inch around each sign; and

(2) A convex mirror mounted on the front and rear of the vehicle so that the driver, in his normal sitting position, can see the area in front of the truck obscured by the hood and an area in the rear extending across the truck and four feet to the rear of the bumper.

(C) A licensee shall ensure the installation of, and shall maintain in good operating condition, the following additional safety equipment on each of the licensee's ice cream trucks:

(1) A flashing amber warning light on the roof as required by NRS 484.582;

(2) A signal arm that can be extended horizontally from the left side of the truck. [duplicating the design, size and specifications established by the Director.] This arm shall be yellow in color and contain on the rearward surface two alternately flashing amber lights three to five inches in diameter. [visible at three hundred feet to the rear in normal sunlight upon a straight level street.] The bottom of the signal arm shall be forty-two inches above the street;

(3) Standard vehicle warning flashers; and

(4) Any other safety equipment required by the Nevada Revised Statutes.

SECTION 11: Title 6, Chapter 47, Section 110, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

6.47.110: Each [ice cream truck] licensee must [file with the Department] obtain through a properly licensed insurance company, and thereafter maintain in full force at all times, public liability and property damage insurance which shall protect the public against any and all claims for damages for personal injuries, including death, and against claims for property damages which may arise out of or in connection with any operations or activities of an ice cream truck. Such insurance shall be in amounts of not less than one hundred thousand dollars for injuries, including death, to any one person; subject to the same limit for each person in an amount of not less than three hundred thousand dollars for injuries, including death, to more than one person on account of any one accident; and not less than twenty-five thousand dollars in property damage coverage for each accident. The policy or policies of insurance must name the City as an additional insured, and proof of the required coverage must be provided to the Department.

SECTION 12: Title 6, Chapter 47, Section 120, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

6.47.120: During any time that an ice cream truck is in operation for business, no one other than the driver and one additional person may occupy or ride in the vehicle. The driver and additional occupant, if any, must be either the licensee or an employee of the licensee.

SECTION 13: Title 6, Chapter 47, Section 130, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

6.47.130: [(A)] An ice cream truck business shall not be subject to the provisions of LVMC Chapter 6.62[.], but shall be subject to all applicable regulations and requirements of the Health District.

[(B) The Director may exempt from any requirement of this Chapter (other than the requirement to obtain a business license) any ice cream truck which is not used to vend to persons under the age of fourteen. However, nothing in this Section shall be deemed to affect the application of any independent regulation or requirement of the Health District.]

SECTION 14: The provisions of this Ordinance shall become effective the day

following its publication. However, licensees of ice cream truck businesses that are existing on the effective date of this Ordinance shall have 90 days following the effective date to comply with the provisions of Paragraph (5) of Subsection (A) of Section 6.47.100, as added by Section 10 of this Ordinance.

SECTION 15: If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the City of Las Vegas hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

SECTION 16: Whenever in this ordinance any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or whenever in this ordinance the doing of any act is required or the failure to do any act is made or declared to be unlawful or an offense or a misdemeanor, the doing of such prohibited act or the failure to do any such required act shall constitute a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than $1,000.00 or by imprisonment for a term of not more than six months, or by any combination of such fine and imprisonment. Any day of any violation of this ordinance shall constitute a separate offense.

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SECTION 17: All ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2010.

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM:

Valstead 8-17-10
Date

The above and foregoing ordinance was first proposed and read by title to the City Council on the _____ day of _____, 2010, and referred to the following committee composed of _____ and _____ for recommendation; thereafter the said committee reported favorably on said ordinance on the _____ day of _____, 2010, which was a _____ meeting of said Council; that at said _____ meeting, the proposed ordinance was read by title to the City Council as first introduced and adopted by the following vote:

VOTING "AYE": _____

VOTING "NAY": _____

ABSENT: _____

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

BUSINESS IMPACT STATEMENT
BILL NO. 2010-41
(Updates the City's licensing regulations governing ice cream trucks, including revised provisions regarding hours of operation and signage)

This business impact statement was prepared pursuant to NRS 237.090 to address the impact of a proposed ordinance, Bill No. 2010-41, that will update the City's licensing regulations governing ice cream trucks, including revised provisions regarding hours of operation and signage.

1. The following constitutes a description of the manner in which comment was solicited from affected businesses, a summary of their responses and an explanation of the manner in which other interested persons may obtain a copy of the summary.

A copy of the proposed ordinance and an invitation to respond were provided to holders of ice cream truck licenses within the City. One written response was received, the summary of which is included below and is available to interested persons as part of this business impact statement. The response was a suggestion that the ordinance expand the list of items that can be sold from an ice cream truck to include certain beverages.

2. The estimated economic effect of the proposed rule on businesses, including, without limitation, both adverse and beneficial effects, and both direct and indirect effects:

Adverse effects:

–Nominal license fee, investigation fee and inspection fee increases, as well as a possible economic effect on new and existing licenses by requiring additional signage on trucks

Beneficial effects:

–Clarifications to existing provisions, as well as more flexibility in vending hours

Direct effects:

–See adverse and beneficial effects above

Indirect effects:

–None identified

3. The following constitutes a description of the methods the local government considered to reduce the impact of the proposed rule on businesses and a statement regarding whether any, and if so which, of these methods were used:

The suggestion for expanding the list of items that can be sold by ice cream trucks was incorporated into the ordinance.

4. The estimate of the annual cost to the local government for enforcement of the proposed rule is:

Minimal additional cost

5. If the proposed rule provides for a new fee or increases an existing fee, the total annual amount expected to be collected is:

Approximately $7,500

6. If the proposed rule provides for a new fee or increases an existing fee, the money generated by the new fee or increase in existing fee will be used by the local government to:

Help offset the costs of administration and enforcement

7. If the proposed rule includes provisions that duplicate or are more stringent than federal, state or local standards regulating the same activity, the following explains why such duplicative or more stringent provisions are necessary:

Not applicable

Date: August 17, 2010

City of Las Vegas Agenda Item No.: **70.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: CITY CLERK
DIRECTOR: BEVERLY K. BRIDGES ☐ **Consent** ☒ **Discussion**

SUBJECT:

Any items from the afternoon session that the Council, staff and /or the applicant wish to be stricken or held in abeyance to a future meeting may be brought forward and acted upon at this time

City of Las Vegas Agenda Item No.: **71.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: LAS VEGAS METROPOLITIAN POLICE DEPARTMENT
DIRECTOR: AREA COMMAND ☐ **Consent** ☒ **Discussion**

SUBJECT:
ABEYANCE ITEM - Hearing and possible action to consider the appeal of the Notice and Declaration of Chronic Nuisance for property located at 628 South Las Vegas Boulevard (Weedz Alternative). PROPERTY OWNER: GARCES VENTURE, LLC. BUSINESS OWNER: STEVEN J. VOGT - Ward 3 (Reese)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
The subject property was determined to be a chronic nuisance as defined in Nevada Revised Statue 244.3603 along with other violations under various sections of the Nevada Revised Statutes and Las Vegas Municipal Code as cited in the Notice served upon the property owner and business owner. The property at 628 South Las Vegas Boulevard, Las Vegas, Nevada 89101, has been and continues to be a constant problem in the downtown area which has led to an unsafe environment for the customers on property and the citizens of the community. This property continues to have violent calls for service/problems requiring police response. This is believed to have been in part to inaction on the part of the management and ownership in taking care of problems on the property.

RECOMMENDATION:
That the City Council deny the appeal and approve the Notice and Declaration of Chronic Nuisance

BACKUP DOCUMENTATION:
1. Agenda Memo
2. Notice and Declaration of Chronic Nuisance
3. Appeal Letter from Appellant
4. Notice of Appeal
5. Rescheduled Hearing Notification

City of Las Vegas

AGENDA MEMO

CITY COUNCIL MEETING DATE: September 15, 2010
DEPARTMENT: Neighborhood Services
ITEM DESCRIPTION: ABEYANCE ITEM - Hearing and possible action to consider the Appeal of the Notice and Declaration of Chronic Nuisance for property located at 628 South Las Vegas Boulevard (Weedz Alternative). PROPERTY OWNER: GARCES VENTURE, LLC. BUSINESS OWNER: STEVEN J. VOGT - Ward 3 (Reese)

The subject property was deemed to be a public nuisance as defined in Las Vegas Municipal Code, Title 9, dealing with public nuisance.

The subject property was determined to be a public nuisance as defined in Las Vegas Municipal Title 9, dealing with nuisances. The property at 628 South Las Vegas Boulevard, Las Vegas, Nevada 89101, has been and continues to be a constant problem in the downtown area which has led to an unsafe environment for the customers on property and the citizens of the community. This property continues to have a violent calls for service/problems requiring police response. This is believed to have been in part to inaction on the part of the management and ownership in taking care of problems on their property.

Today's hearing is to consider the Appeal to the Notice and Declaration of Chronic Nuisance filed by Steven J. Vogt, owner and responsible party.

NOTICE AND DECLARATION OF CHRONIC NUISANCE

Garces Venture LLC

1065 Kane Concourse #201

Bay Harbor Islands, FL 33154

PLEASE TAKE NOTICE, the following conduct occurred on the premises commonly known as Weedz Alternative, 628 S Las Vegas, NV 89101.

The property of 628 S Las Vegas, NV 89101, continues to have a violent calls for service/problems requiring police response. This is believed to have been in part to inaction on the part of the management and ownership in taking care of problems on their property. The following is a breakdown of significant calls for service and specific problems on the property within the 30 day period of 7/03/10 to 08/03/10.

July

Under Event#100703-4721;Two masked subjects entered the Weedz Alternatives armed with handguns. Subjects ordered Steven Vogt (owner) and Jessica Bell (cashier) to the back of the store where they were zip tied them both and gained access to the store safe. Approx. 8K was taken before subject fled through the rear door.

Under Event#100730-2679;Employee Dewey suffered from superficial injuries to his face after someone threw a rock through the businesses front window. Dewey reported to officers that he believes the rock was thrown by two customers that left prior to officers arrival.

Under Event#100803-4248;Officers responded to a loud noise complaint to the business. Once arrived, owner Steven Vogt and others inside refused to open the door to officers in order to investigate the complaint. Officers then noticed Vogts forearm was cut/bleeding and refused to answer any of the officers questions. Officers arrested Vogt for Obstructing a Police Officer and booked into city jail.

This property has been and continues to be a constant problem in the downtown area which has led to an unsafe environment for the customers on property and the citizens of the community. Improper management of this property has lead to a perpetual state of criminal chaos and can no longer be tolerated. The following actions are suggested.

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- **Background checks on all current/future employees.**
- **Quality and active Security on property.**
- **Enforcement of a No Trespassing policy.**
- **More active role of the manager(s) and property owner(s) in managing the property.**

This conduct constitutes a Chronic Nuisance as defined by Nevada Revised Statute 244.3603 which describes the Abatement of chronic nuisances: closure of property by court order; civil penalties, and is a misdemeanor offense.

Clark County can seek the following remedies when taking action against a Chronic Nuisance:

a) Seek the abatement of a chronic nuisance that is located or occurring within the unincorporated area of the county;

b) If applicable, seek the closure of the property where the chronic nuisance is located or occurring; and

c) If applicable, seek penalties against the owner of the property within the unincorporated area of the county and any other appropriate relief.

By Statute you as the owner of the property are afforded an opportunity for a hearing before a court of competent jurisdiction. During which the county will provide the manner in which the county will recover money expended to abate the condition on the property if the owner fails to abate the condition.

If the court finds that a chronic nuisance exists and action is necessary to avoid serious threat to the public welfare or the safety or health of the occupants of the property, the court may order the county to secure and close the property until the nuisance is abated and may:
a) Impose a civil penalty of not more than $500 per day for each day that the

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condition was not abated after the date specified in the notice by which the owner was required to abate the condition;

b) Order the owner to pay the county for the county for the cost incurred by the county in abating the condition; and

c) Order any other appropriate relief.

In addition to any other reasonable means authorized by the court for the recovery of money expended by the county to abate the chronic nuisance, the board may make the expense a special assessment against the property upon which the chronic nuisance is located or occurring.

"**Chronic nuisance**" means the existence of any of the following conditions:

- When three or more nuisance activities exist or have occurred during any thirty-day period on a property;
- When a person associated with the property has engaged in three or more nuisance activities during any thirty-day period on the property or within one hundred feet of the property;
- When the property has been the subject of a search warrant based on probable cause of continuous or repeated violations of NRS Chapter 459; or
- When a building or place is used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, using or giving away a controlled substance, immediate precursor as defined in NRS 453.086 or controlled substance analog as defined in NRS 453.043.

"**Criminal activity**" means any activity defined as a misdemeanor in the Las Vegas Municipal Code or as a misdemeanor, gross misdemeanor or felony in NRS Title 15.

"**Imminent hazard**" means any condition associated with real property that places a person's life, health or property in high risk of peril when such condition is immediate, impending, or on the point of happening or menacing.

"**Owner**" means any person having a legal or equitable interest in real property within the City. For purposes of providing notice under this Chapter to an owner of real property, the term also includes any agent or representative of the owner, or any person who acts as a manager or collects rents regarding that property.

"Person associated with the property" means a person who, on the occasion of a nuisance activity, has:

1. Entered, patronized or visited;

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2. Attempted to enter, patronize or visit; or

3. Waited to enter, patronize or visit, a property or a person present on the property.

"Public nuisance," "nuisance," or "nuisance activity" means any of the following conditions:

1. Any area, structure or object which by its nature, location, or character would tend to attract and endanger the safety of any minor person.

2. Any violation of Title 16, including violations of the codes pertaining to building, construction, housing, and fire safety adopted thereunder.

3. Any body of water which by its nature or location constitutes an unhealthy or unsafe condition, including any accumulation of stagnant water that has become or is likely to become a breeding area for insects.

4. Any refuse, waste, litter or other material, regardless of its market value, which, by reason of its location or character, is unsightly or interferes with the reasonable use and enjoyment of adjacent properties, has a detrimental effect upon adjacent property values, or would hamper or interfere with the containment of fire upon the premises. Examples include, without limitation, decaying or non-decaying solid and semi-solid wastes, whether or not combustible, such as old lumber, tin, wire, cans, barrels, cartons, boxes, rags, tires, inner tubes, brush, grass and hedge clippings, rocks, bricks, cinders, scrap iron, buckets, tubs, windows, screens, glass, bottles, wastepaper, bedsprings, mattresses, discarded furniture and appliances, bedding and material cleaned from animal or fowl pens, automobile parts, scrap paving material, and piles of earth mixed with other waste material which may harbor insect or rodent infestations or may become a fire hazard.

5. Any violation of Title 19 or Title 20 of this Code.

6. Operating a business without a current license as required by Title 6.

7. Any other act or condition, other than those permitted by NRS 40.140 and 202.450, which, by reason of its nature, character or location, interferes with the reasonable use and enjoyment of adjacent properties, or which has a detrimental effect upon adjacent property values. Such nuisances include without limitation the following:

I. Weeds, turf grass, or uncultivated plant growth exceeding eight inches in height, either on a vacant parcel or on a developed parcel at a location visible from public property;

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ii. Dead trees, plants and other vegetation that present a fire hazard or are otherwise a threat to property or to the health and safety of the public or a segment thereof;

iii. Graffiti, as defined in LVMC 10.48.060, that is allowed to remain for more than twenty-four hours;

iv. Unpainted or painted buildings, walls, fences or other structures whose condition has become so deteriorated as to create a hazardous condition; threaten collapse, displacement, or other breakdown of structural integrity; permit decay, excessive cracking, peeling, chalking, dry rot, warping or termite infestation; or create a condition of blight visible from public right-of-way;

v. Any vehicle that has been abandoned, or any vehicle in an obviously mechanically inoperable condition, that:

vi. Is parked within a multifamily residential parking lot, in a location that is visible from public property, including a street or alley;

vii. Has been parked in the same location for more than seven consecutive days;

viii. Criminal activity on any lot or premises within the City.

"**Responsible party**" means any tenant, occupant, lessor, lessee, manager, licensee or other person having control over a structure or parcel of land in the City.

(Ord. 6024 § 1, 2009: Ord. 5873 § 12 (part), 2006)

REQUEST FOR ABATEMENT

YOU ARE HEREBY requested to take any and all steps necessary to abate the above nuisance IMMEDIATELY. You have until 8-23-10 to correct and abate this nuisance. I can assist you with suggestions and alternatives that may help in abating this nuisance. Please contact me upon receipt of this notice so that the appropriate corrective actions can begin. Failure to abate this nuisance will result in the implementation of any and all remedial measures available to the City of Las Vegas under Title 9 of the Las Vegas Municipal Code, including civil fines and criminal prosecution. If you wish to appeal this notice, see Las Vegas Municipal Code 9.04.070, attached hereto.

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Officer A. Aguirre
cc Councilman Gary Reese
City Attorney

9.04.070 Appeal procedures.

Within ten days after service of the notice of violation, the owner or responsible party may appeal to the City Council. Such appeal shall be in writing and shall be filed with the City Clerk. Within fifteen days after the appeal has been filed, the appellant shall be given written notice of the procedure and time frame for the hearing of the appeal. The appeal shall be heard by the City Council or by the Council's designee, with a right of final appeal to the Council. The decision of the City Council or the Council's designee, in cases where a designee hears an appeal and no further appeal is taken, shall be final and conclusive. Any owner or responsible party failing to appeal as provided in this Section shall be deemed to have waived any and all objections to the existence of a public nuisance and the abatement of such nuisance.

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8-18-2010

I wish to appeal the notice & Declaration of Chronic Nuisance at the Property of 628 S. 7th St Las Vegas Nev 89101

Owner

Steven J. Vogt

702-489-7581

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2010 AUG 18 A 10 57

LAS VEGAS CITY COUNCIL

OSCAR B. GOODMAN
MAYOR

GARY REESE
MAYOR PRO TEM

STEVE WOLFSON
LOIS TARKANIAN
STEVEN D. ROSS
RICKI Y. BARLOW
STAVROS S. ANTHONY

ELIZABETH N. FRETWELL
CITY MANAGER

August 18, 2010 CERTIFIED & REGULAR MAIL

Steven J. Vogt
Weedz Alternative
628 South Las Vegas Boulevard
Las Vegas, NV 89101

Re: Appeal of the Notice and Declaration of Chronic Nuisance for property located at 628 South Las Vegas Boulevard (Weedz Alternative)

Dear Mr. Vogt:

You are hereby notified that a hearing has been scheduled before the Las Vegas City Council at 400 Stewart Avenue, Las Vegas, Nevada on the 1st day of September, 2010, at the hour of 1:00 p.m. This hearing is in response to the Appeal received by the Las Vegas City Clerk on August 18, 2010, requesting the same, concerning the Notice and Declaration of Chronic Nuisance for property located at 628 South Las Vegas Boulevard.

You may be present at the hearing. You may be, but need not be, represented by counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you.

If you have any questions or need further information please do not hesitate to contact Devin Smith, Manager, Neighborhood Response at 229-6615.

Sincerely,

Beverly K. Bridges, MMC
City Clerk

BKB/vs

cc: Stephen Harsin, Director, Neighborhood Services
Devin Smith, Manager, Neighborhood Response
Daniel Still, Deputy City Attorney
Susie Martinez, Ward 3 Council Liaison
Garces Venture, LLC, 1065 Kane Concourse #201, Bay Harbor Islands, FL 33154

CITY OF LAS VEGAS
400 STEWART AVENUE
LAS VEGAS, NEVADA 89101

VOICE 702.229.6011
TTY 702.386.9108
www.lasvegasnevada.gov

FM-0044-08-09

Printed with environmentally friendly soy ink

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

9/1/2010 628 LVBS

Mr. Steven J. Vogt
628 South Las Vegas Boulevard
Las Vegas, NV 89101

2. A
(

PS

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X

☐ Agent
☐ Addressee

B. Received by *(Printed Name)*

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

102595-02-M-1540

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

9/1/2010 628 LVBS

Garces Venture, LLC
1065 Kane Concourse #201
Bay Harbor Islands, FL 33154

2. Article Number
(Transfer from service label) 7007 3020 0003 1596 5114

PS Form 3811, February 2004 Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X

☐ Agent
☐ Addressee

B. Received by *(Printed Name)*

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

102595-02-M-1540

LAS VEGAS CITY COUNCIL

MAYOR
OSCAR B. GOODMAN

GARY REESE, WARD 3
(MAYOR PRO-TEM)
STEVE WOLFSON, WARD 2
LOIS TARKANIAN, WARD 1
STEVEN D. ROSS, WARD 6
RICKI Y. BARLOW, WARD 5
STAVROS S. ANTHONY, WARD 4

CITY MANAGER
ELIZABETH N. FRETWELL

NEIGHBORHOOD
SERVICES DEPARTMENT

DIRECTOR
STEPHEN K. HARSIN, AICP

CITY OF LAS VEGAS
400 STEWART AVENUE
LAS VEGAS, NEVADA 89101

VOICE 702.229.2330
FAX 702.598-3938
TTY 702 386.3045
www.lasvegasnevada.gov

September 1, 2010

Certified/Regular Mail
Return Receipt Requested

Steven J. Vogt
Weedz Alternative
628 South Las Vegas Boulevard
Las Vegas, NV 89101

RE: Notice of Abeyance – Appeal of the Notice and Declaration of Chronic Nuisance for property located at 628 South Las Vegas Boulevard (Weedz Alternative)

Dear Property Owner:

At the City Council meeting held on September 1 2010, Agenda Item #59 was held in abeyance and is now scheduled to be heard on September 15, 2010 at 1:00 p.m. This will be a hearing regarding your request for appeal.

If you have any questions or need further information, please feel free to contact me at (702) 229-6615.

Sincerely,



Devin S. Smith, Manager
Neighborhood Response Division
Department of Neighborhood Services

DS:ld

cc: Garces Venture, LLC, 1065 Kane Concourse, #201, Bay Harbor Islands, FL 33154

City of Las Vegas Agenda Item No.: **72.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: METROPOLITAN POLICE
DIRECTOR: AREA COMMAND ☐ **Consent** ☒ **Discussion**

SUBJECT:
Hearing and possible action to consider the appeal regarding the Notice and Declaration of Chronic Nuisance located at 1300 Fremont Street. PROPERTY OWNER: S P FREMONT LLC - Ward 3 (Reese)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
The subject property was determined to be a chronic nuisance as defined in Las Vegas Municipal Code, Title 9.04.010 and 9.040.020, dealing with nuisances. A Notice and Declaration of Chronic Nuisance was mailed to the property owners to correct the nuisance per Title 9.04.010 and 9.040.020. Today's hearing is to consider the Appeal to the Notice and Declaration of Chronic Nuisance filed by S P Fremont LLC, by and through his council of record, Artemus W. Ham, Esq. and the Law Offices of Mainor Eglet.

RECOMMENDATION:
That the City Council approve the Notice and Declaration of Chronic Nuisance.

BACKUP DOCUMENTATION:
1. Agenda Memo
2. Location Maps
3. Notice and Declaration of Chronic Nuisance
4. Appeal Letter from Appellant
5. Notice of Appeal

City of Las Vegas

AGENDA MEMO

CITY COUNCIL MEETING DATE: September 15, 2010
DEPARTMENT: Metropolitan Police
ITEM DESCRIPTION: Hearing and possible action to consider the appeal regarding the Notice and Declaration of Chronic Nuisance located at 1300 Fremont Street. PROPERTY OWNER: S P FREMONT LLC - Ward 3 (Reese)

The subject property was deemed to be a public nuisance as defined in Las Vegas Municipal Code, Title 9.04.010 and 9.040.020, dealing with nuisances. A Notice and Declaration of Chronic Nuisance was sent to the property owners requesting they correct the nuisance per Title 9.

The property at 1300 Fremont Street has been and continues to be a chronic nuisance. There have been 42 calls for service requiring police response from July 1, 2010 to July 31, 2010. As a result of these calls seven arrests were made, one citation issued, and four crime reports were taken. Property owner was requested to take any and all steps necessary to abate the chronic nuisance and have not made an effort.

Today's hearing is to consider the Appeal to the Notice and Declaration of Chronic Nuisance filed by S P Fremont LLC, by and through his counsel of record, Artemus W. Ham, Esq. and the Law Offices of Mainor Eglet

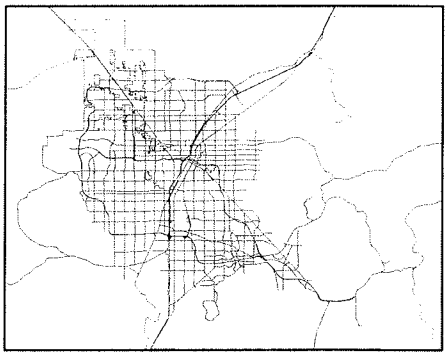
1300 FREMONT STREET
CROSS STREETS - LAS VEGAS//MARYLAND

City of Las Vegas Vicinity Map



N

0 170 340 680 Feet



GIS maps are normally produced only to meet the needs of the City. Due to continuous development activity this map is for reference only.
Geographic Information System
Planning & Development Dept.
702-229-6301

PLANNING & DEVELOPMENT

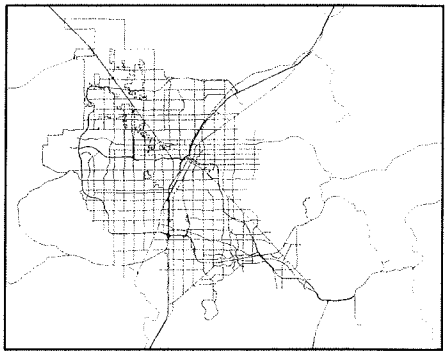
1300 FREMONT STREET
CROSS STREETS - LAS VEGAS//MARYLAND

City of Las Vegas Vicinity Map



N

0 70 140 280 Feet



GIS maps are normally produced only to meet the needs of the City. Due to continuous development activity this map is for reference only.
Geographic Information System
Planning & Development Dept.
702-229-6301

PLANNING & DEVELOPMENT

NOTICE AND DECLARATION OF CHRONIC NUISANCE

August 10th, 2010

S P Fremont LLC
Silver Point Capital LP
320 Decker Ct. #109
Irving, TX 75062-8162

PLEASE TAKE NOTICE, From July 1st, 2010 to July 31st, 2010 there were 42 calls for service / problems on the property of 1300 E. Fremont, Fremont Plaza Apartments. As a result of these calls 7 arrests were made, 1 citation was issued and 4 crime reports were taken.

This conduct constitutes a Chronic Nuisance as defined by Las Vegas Municipal Code 9.04.010. Pursuant to Las Vegas Municipal Code 9.040.020, every person **who causes or maintains a public nuisance or chronic nuisance, or who wilfully omits or refuses to perform any legal duty relating to the abatement of such a nuisance.**

(1) Shall be guilty of a misdemeanor; or

(2) Shall be liable civilly to the City and, upon such finding based upon substantial evidence, shall be responsible to pay civil penalties of not more than five hundred dollars per day for each day that any nuisance remained unabated after the date specified for abatement in the notice of violation.

(B) Each day that a violation of this Section continues, whether pursued criminally or civilly, constitutes a separate violation for purposes of criminal prosecution or civil proceedings.

400 Stewart Avenue • Las Vegas, Nevada 89101-2984 • (702) 795-3111
www.lvmpd.com • www.protectthecity.com

In prior letters we have outlined specific stipulations we requested you meet to abate the problems you are having on your property. Deadlines were given for each of the stipulations. By 7/22/10 you were to have security on property 24 hours a day 7 days a week. To our knowledge no change has been made to the current 4 hours a security officer spends on property each night. By 7/22/10 you were to have implemented a strict visitors policy and be enforcing it on the property. An acceptable visitors policy has been put into place, however, due to not having sufficient security on property we do not believe that it is being strictly enforced. By 7/15/10 you were to be conducting thorough background checks on all prospective tenants. We believe that the background checks you are doing do not meet the standard we have set. We advised you of this when we met on 7/8/10 and in subsequent meetings, however, you have not made an effort to change services.

The following are the stipulations we set. They have not changed nor have the deadlines.

- Implementation of LVMPD approved visitor policy (See attached policy). The policy will be explained to and signed by all new tenants moving on to the property. A copy of the policy will also be conspicuously posted outside the office and at all points of entry to the property. By 7/22/2010 the policy will be fully implemented by management.

- By 7/15/2010 management must be conducting thorough background checks on all prospective tenants. Management must also have specific parameters in place as to who they will rent to after the background check has been completed.

- By 7/22/2010 there must be security on property 24 hours a day, 7 days a week. Security will be active and will contact every person coming onto the property who is not a resident. Security will maintain an active resident list and adhere to the property's visitor policy. They will formally trespass every person in violation of the property's visitor policy. If a person who has been trespassed from the property returns, security will cite or arrest with no further warnings given. Security will maintain a log of who has been trespassed from the property. By 9/22/2010 all security officers on property will be trained on the Summons in Lieu of Arrest program. Security will contact the LVMPD with any problems that they are unable to handle themselves.

- Any onsite manager needs to be actively enforcing visitors policy during business hours and have the proper experience and be qualified to manage an apartment complex.

400 Stewart Avenue • Las Vegas, Nevada 89101-2984 • (702) 795-3111
www.lvmpd.com • www.protectthecity.com

REQUEST FOR ABATEMENT

YOU ARE HEREBY requested to take any and all steps necessary to abate the above nuisance IMMEDIATELY. You have until 09-22-10 to correct and abate this nuisance. I can assist you with suggestions and alternatives that may help in abating this nuisance. Please contact me upon receipt of this notice so that the appropriate corrective actions can begin. Failure to abate this nuisance will result in the implementation of any and all remedial measures available to the City of Las Vegas under Title 9 of the Las Vegas Municipal Code, including civil fines and criminal prosecution. If you wish to appeal this notice, see Las Vegas Municipal Code 9.04.070, attached hereto.

Officer Daniel Perry P#9031
DTAC COP / Chronic Nuisance
400 E. Stewart
Las Vegas, NV 89101
(702) 439-9213
d9031p@lvmpd.com

cc Councilman Ricki Barlow
City Attorney

9.04.070 Appeal procedures.

Within ten days after service of the notice of violation, the owner or responsible party may appeal to the City Council. Such appeal shall be in writing and shall be filed with the City Clerk. Within fifteen days after the appeal has been filed, the appellant shall be given written notice of the procedure and time frame for the hearing of the appeal. The appeal shall be heard by the City Council or by the Council's designee, with a right of final appeal to the Council. The decision of the City Council or the Council's designee, in cases where a designee hears an appeal and no further appeal is taken, shall be final and conclusive. Any owner or responsible party failing to appeal as provided in this Section shall be deemed to have waived any and all objections to the existence of a public nuisance and the abatement of such nuisance.

W. Randall Mainor
(1941-2007)

RECEIVED
CITY CLERK
2010 AUG 20 A 10:34

MAINOR EGLET
TRIAL ATTORNEYS

Robert T. Eglet
Tracy A. Eglet †
Robert M. Adams
Bradley S. Mainor
Bradley J. Myers ♦
Lesley B. Miller
Marni K. Rubin
Joseph J. Wirth
Brice J. Crafton

† Also admitted in Ohio
♦ Also admitted in Arizona

August 19, 2010

VIA HAND DELIVER

Las Vegas City Council
City Clerk's Office
400 Stewart Avenue
Las Vegas, Nevada 89101-2984

Re: SP Freemont's Appeal of August 10, 2010 Notice and Declaration of Chronic Nuisance Re: 1300 East Fremont Street; Freemont Plaza Apartments.

Dear City Clerk:

This letter will serve as SP Freemont, LLC's appeal of the August 10, 2010 Notice and Declaration of Chronic Nuisance received from the Las Vegas Metropolitan Police Department (hereinafter "Metro"). A copy of the August 10, 2010 Notice is attached hereto as Exhibit 1. SP Freemont, LLC (hereinafter "SP Freemont") appeals this notice on the grounds that: (1) SP Freemont became record owner of the subject property on July 12, 2010, and therefore most of the "chronic" activities and incidents cited in the Notice pre-date SP Freemont's ownership of the property; and (2) SP Freemont has already implemented the stipulations set forth in the Notice in order to adequately address the issues raised in the Notice. This appeal is brought pursuant to Las Vegas Municipal Code Section 9.04.070, and additional facts and argument in support of this appeal are set forth below. SP Freemont also hereby respectfully requests a hearing on this matter before the City Council or the Council's designee.

I. SUPPORTING FACTS AND ARGUMENT

(1) SP Freemont Should Not Be Held Liable for the Alleged Chronic Nuisance Because Incidents Referenced in the August 10, 2010 Notice Occurred Before SP Freemont Became Record Owner of the Property on July 12, 2010.

The property that is the subject of the Notice and Violation was previously owned by Mr. Sheng Du, an individual. On September 25, 2009, a receiver was appointed by the District Court to maintain the property pending completion of Mr. Du's bankruptcy proceedings. A copy of the Court's Order Appointing Receiver is attached hereto as Exhibit 2. A review of the Notice establishes that the activities supporting the violation began on July 1, 2010, prior to SP Freemont's acquisition of the property through foreclosure proceedings. See copy of the Deed of Trust vesting title in SP Freemont as of July 12, 2010 attached hereto as Exhibit 3. When SP

Freemont acquired the property in mid-July, the District Court had not yet discharged the receivership which resulted in confusion regarding SP Freemont's authority to direct the Court-Appointed manager regarding issues with the property, including some of the issues raised in the Notice. Accordingly, counsel for SP Freemont joined in a Motion to Discharge the receiver on August 4, 2010, and that motion was granted by the District Court on August 18, 2010 (as of the date of this letter, the final written order has not yet been entered). With the legal constraints of the Du bankruptcy, the foreclosure proceedings and the lingering receivership largely resolved, SP Freemont is now in the position to take full control over the property. SP Freemont is committed to addressing all of the issues raised in the Notice, and intends to work with Metro and the City to remediate any outstanding issues with this property. SP Freemont should not, however, be held liable for alleged "chronic nuisances" on the property which clearly began prior to its ownership of the property. SP Freemont deserves a fair opportunity to address any asserted problems and to otherwise bring the property in compliance with any and all reasonable standards set forth by Metro and the City. Nonetheless, as discussed below, SP Freemont has already implemented the specific actions suggested by Metro to comply with the abatement requirements and stipulations set forth in the August 10, 2010 Notice.

(2) SP Freemont Has Reasonably Complied/Continues to Reasonably Comply With the Stipulations Set Forth in the August 10, 2010 Notice.

In the August 10, 2010 letter, Metro sets forth certain "stipulations" to be satisfied by SP Freemont regarding four (4) specific areas which it asserts must be addressed to adequately abate the alleged chronic nuisance. As of the date of this letter, SP Freemont believes it has taken reasonable efforts to implement all of the changes required by Metro to bring the property, the property management and property security in compliance with each of the stipulations. SP Freemont has also taken steps above and beyond the Notice to improve the operation and safety of the property. SP Freemont's specific efforts to comply with the stipulations in each of the four (4) areas are as follows:

(a) Visitor Policy: management has implemented the LVMPD approved visitor policy. This policy is explained to all tenants, and all tenants (both new move-ins and current long-term tenants) have executed a copy of the property Rules and Regulations. A copy of the Rules and Regulations are attached hereto as Exhibit 4. As required by the August 10, 2010 Notice, a copy of the visitor policy has been posted conspicuously outside the office. See Exhibit 5 attached hereto. Additionally, management has begun to keep a running "visitor" log which is updated and maintained on the property.

(b) Tenant Background Checks: As of June 14, 2010, Management has been conducting background checks on prospective tenants via www.publicdata.com, a research service used by

similar apartments in Las Vegas and approved by Metro during recent meetings involving the property. Background checks are performed on each prospective and current tenant pursuant to the specific parameters set forth in the policy attached hereto as Exhibit 6.

(c) Property Security: As of August 16, 2010, the property has employed full time security between the key evening hours of 6 p.m. through 4 a.m. and such security has been trained and instructed to follow all of the policies and procedures set forth in the August 10, 2010 Notice. All security personnel on-site have been trained in the Summons in Lieu of Arrest program, or will be so trained by September 22, 2010 as required in the Notice. A copy of the security "Post Instructions" are also attached hereto as Exhibit 7. Although 24/7 manned security would impose an unreasonable and excessive financial burden on the property owner, management improved security by installing convex mirrors near the elevators on all three floors at locations as suggested by Metro. See Exhibit 8. Additional iron fencing and locking gates were also installed on the property at locations designed to enhance security on August 9, 2010. All keys issued for the gates have been made on "do not duplicate" key blanks to assist with key control for these gates.

(d) On-site Management: on-site management has been actively enforcing the visitor policy during business hours, and, as noted above in item (a), the on-site manager is maintaining a detailed visitor log. The on-site manager, Shayne Torres, has sufficient experience managing apartments, and is currently scheduled to participate in the next available Crime Free Mulit-Housing ("CFMH") program to be conducted by Metro on September 15, 2010. See Resume of Shayne Torres and e-mail confirmation of CFMH registration attached hereto as Exhibit 9. Additionally, the relief manager on the property has already completed the CFMH program in both Las Vegas and Henderson. See Las Vegas Certificate attached hereto as Exhibit 10. Management also keeps and maintains an active and updated eviction list for the property to record data on persons to whom re-rental should not be made.

Since acquiring the property a month ago, SP Freemont has met at length with property management, and has taken specific action to address the issues underlying the August 10, 2010 Notice. Indeed, a review of the "Calls for Service Trends" summary compiled by the property manager reflects that crime on the property has been significantly reduced since the beginning of the year. At the very least, this summary is evidence that the property is headed in a positive direction. See Summary attached hereto as Exhibit 11. Although there is clearly room for additional improvement, SP Freemont believes it has adequately implemented the plans and procedures proposed by Metro in the Notice. At the very least, SP Freemont should be allowed additional time to address these issues before itself being deemed liable for any chronic nuisance violations.

II. CONCLUSION

For the reasons stated above, SP Freemont should not be found guilty of permitting a chronic nuisance to exist on the subject property because this nuisance originated prior to SP Freemont's ownership of the property. Regardless, SP Freemont should be deemed in compliance with all of the requirements and stipulations set forth in the August 10, 2010 Notice. In the alternative, and at the very least, SP Freemont should be granted additional time by the City Council to address any outstanding issues raised in the August 10, 2010 Notice which the City Council believes have not been adequately met by SP Freemont as of the date of this letter and/or any public hearing thereon.

Thank you for your time and attention to this matter.

Very truly yours,

MAINOR EGLET, LLP

Artemus W. Ham

cc: Dan Still, Deputy City Attorney

EXHIBIT 1

NOTICE AND DECLARATION OF CHRONIC NUISANCE

August 10th, 2010

S P Fremont LLC
Silver Point Capital LP
320 Decker Ct. #109
Irving, TX 75062-8162

PLEASE TAKE NOTICE, From July 1st, 2010 to July 31st, 2010 there were 42 calls for service / problems on the property of 1300 E. Fremont, Fremont Plaza Apartments. As a result of these calls 7 arrests were made, 1 citation was issued and 4 crime reports were taken.

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(1) Shall be guilty of a misdemeanor; or

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400 Stewart Avenue • Las Vegas, Nevada 89101-2984 • (702) 795-3111
www.lvmpd.com • www.protectthecity.com

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www.lvmpd.com • www.protectthecity.com

REQUEST FOR ABATEMENT

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Officer Daniel Perry P#9031
DTAC COP / Chronic Nuisance
400 E. Stewart
Las Vegas, NV 89101
(702) 439-9213
d9031p@lvmpd.com

cc Councilman Ricki Barlow
City Attorney

9.04.070 Appeal procedures.

Within ten days after service of the notice of violation, the owner or responsible party may appeal to the City Council. Such appeal shall be in writing and shall be filed with the City Clerk. Within fifteen days after the appeal has been filed, the appellant shall be given written notice of the procedure and time frame for the hearing of the appeal. The appeal shall be heard by the City Council or by the Council's designee, with a right of final appeal to the Council. The decision of the City Council or the Council's designee, in cases where a designee hears an appeal and no further appeal is taken, shall be final and conclusive. Any owner or responsible party failing to appeal as provided in this Section shall be deemed to have waived any and all objections to the existence of a public nuisance and the abatement of such nuisance.

EXHIBIT 2

ORDR
Todd Touton, NV Bar No. 1744
ttouton@lionelsawyer.com
Robert Hernquist, NV Bar No. 10616
rhernquist@lionelsawyer.com
LIONEL SAWYER & COLLINS
1700 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101
Telephone: (702) 383-8888
Facsimile: (702) 383-8845

Attorneys for SP Freemont, LLC

FILED
SEP 25 2009
CLERK OF COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

UNION BANK, N.A., a national banking association, Plaintiff, vs. SHENG DU, an individual Defendant.	Case No. 09-A-588693 Dept. No. III ORDER APPOINTING RECEIVER

Plaintiff SP Freemont, LLC's ("SP Freemont") Motion To (1) Substitute Parties And (2) Ratify The Court's June 1, 2009 Minute Order Granting Application For Appointment Of Receiver Or, In The Alternative, Re-Notice Application For Appointment Of Receiver On Order Shortening Time came on for decision in chambers on September 14th, 2009.

Having reviewed the pleadings and papers on file herein, together with the evidence presented in support thereof, the Court finds as follows:

1. On April 27, 2009, Plaintiff's predecessor-in-interest, UBOC, filed its Complaint ("Complaint") against Defendant which, *inter alia*, sought to appoint a receiver to take possession of, and preserve and protect, all real and personal property (whether such personal property is tangible and/or intangible) of Defendant secured by the Loan Documents (as defined herein), consisting of, among other things, an individual Deed of Trust, Security Agreement, Assignment of Rents and Fixture Filing (individually, a "Deed of Trust" and collectively, the "Deeds of

09-16-09 P12:46 IN

TO CLIENT: AMG
BY: Mail 12/7/09

Trust"), each Deed of Trust being duly executed by Defendant in favor of UBOC, and each Deed of Trust securing each real property (and all personal property therein) located at 1300 Fremont Street, Las Vegas Nevada 89101 (the "Fremont Property"), 1500 Fremont Street, Las Vegas Nevada 89101 (the "Sunflower Property") and 1401 Fremont Street, Las Vegas Nevada 89101 (the "Fremont Plaza Property" and, together with the Fremont Property and Sunflower Property, collectively with any and all improvements, the "Properties," and together with any and all personal property (whether such personal property is tangible and/or intangible) located thereupon or therein, collectively, the "Collateral"). The Deeds of Trust evidence and secure certain obligations of Defendant owed to UBOC under three (3) promissory notes (collectively, the "Notes"), all as more specifically described in the Complaint. Defendant also executed in favor of and delivered to UBOC three (3) Assignments of Leases and Rents (collectively, the "Assignments of Leases and Rents") corresponding to the Properties. Defendant also executed UCC-1 Financing Statements (collectively, "UCC-1s") in favor of UBOC for each of the Properties, which were filed with the Secretary of State for the State of California. The Notes, Deeds of Trust, Assignments of Leases and Rents and UCC-1s, together with any and all other documentation executed by Defendant and delivered to UBOC in connection with the Notes, are sometimes collectively referred to herein as the "Loan Documents." The Loan Documents are attached to the Complaint as Exhibits 1-12 and are incorporated herein by reference.

2. On July 28, 2009, UBOC assigned and transferred to SP Freemont, all right, title and interest of UBOC in, to and under the Loan Documents, all as more particularly evidenced by the following documents: (i) Assignment of Deeds of Trust, (ii) Assignment of Assignment of Leases and Rents, and (iii) Assignment of Seller's Interest in Loan and Loan Documents.

3. SP Freemont now stands in the place and stead of UBOC, the original and plaintiff of record herein, and therefore SP Freemont has standing and the right to perform all functions relating to the Properties, including, without limitation, the continuation of the instant litigation, all as more specifically described in the Complaint.

4. As a result of it being an assignee of the Loan Documents, SP Freemont has substantial legal interest in the subject matter of this case and is now the real party in interest.

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ATTORNEYS AT LAW
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LAS VEGAS,
NEVADA 89101
(702) 383-8888

5. As stated in the Application for Appointment of Receiver, filed by UBOC on April 24, 2009 and the Supplement to Application for Appointment of Receiver, filed by UBOC on May 13, 2009, Defendant has materially defaulted under the terms of the Loan Documents.

6. Pursuant to the Loan Documents, upon a default by Defendant, Plaintiff "shall have the right to have a receiver appointed" and has the right "to collect the Rents . . . in person or by agent, employee or court-appointed receiver."

7. As stated in the Application for Appointment of Receiver, filed by UBOC on April 24, 2009 and the Supplement to Application for Appointment of Receiver, filed by UBOC on May 13, 2009, the appointment of a receiver is appropriate pursuant to the Loan Documents and/or NRS 107A.260 and/or NRS 107.100 and/or NRS 32.010.

8. The Court finds that the following entity is qualified and should be appointed as receiver for the Properties: Advanced Management Group, 2775 S. Rainbow Blvd. #101C, Las Vegas, Nevada 89146.

9. In light of the Stipulation and Order to Substitute Parties, filed on September 10, 2009, Plaintiff's request to substitute Plaintiff as the real party in interest in the place of UBOC pursuant to Nevada Rule of Civil Procedure 25(c) is now moot.

Based on these findings, the Court orders as follows:

APPOINTMENT OF RECEIVER

IT IS HEREBY ORDERED that Advanced Management Group ("AMG" or "Receiver") is appointed receiver of the Collateral and that AMG shall take immediate and exclusive possession and control of the Collateral and hold, manage and control the Collateral, preserving and protecting them from loss, removal, material injury, destruction, substantial waste, and loss of income therefrom, and that AMG is hereby vested with the exclusive right to manage the Properties, by and through agents as it may retain in its discretion from time to time; and

IT IS FURTHER ORDERED that the existing managers and/or operators of the Collateral shall immediately turn over to Receiver any and all books, records and receipts regarding the use, management, operation and occupancy of the Collateral; and

IT IS FURTHER ORDERED that the current managers and/or operators of the Collateral,

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together with their officers, employees and agents, are hereby immediately relieved of possession of, and any further management and administration of the Collateral, and all rents, royalties, profits, issues and income derived therefrom.

IT IS FURTHER ORDERED that, subject to the requirement that any obligation incurred by AMG as authorized by this Order shall be paid from the cash flow derived from the Collateral, proceeds from any sale or lease of all or any portion of the Collateral and/or advances made by SP Freemont, AMG, as Receiver, is authorized to do any and/or all of the following:

a. To cause all or any portion of the Collateral to be repaired and maintained or repair and maintain all or any portion of the Collateral; and

b. To manage, preserve, protect and oversee the Collateral on a day-to-day basis, all as determined by Receiver in its sole discretion, including, without limitation, to pay security, maintenance personnel, and other persons or entities, in accordance with this Order; and

c. To take such steps and do such things as in Receiver's judgment it believes necessary or desirable to preserve and protect the Collateral from waste, vandalism and destruction, including preventing the removal of all or any portion of the Collateral; and

d. To carry public liability and/or hazard insurance, fire and extended coverage insurance, and such other types of insurance coverage as determined by Receiver as may be necessary for the Collateral, where such policies obtained shall be in the name of Receiver for the benefit of Plaintiff as loss payee thereunder; and

e. To take such steps as Receiver believes necessary or desirable to cause all or any portion of the Collateral to comply with applicable local, county, state, and federal laws, ordinances and other requirements; and

f. To demand, collect and receive from tenants or other persons liable therefor, all the rents, royalties, issues, profits, revenue, income or other payments, whether overdue, due or to become due, and to apply the same in the following order of priority: (a) to payment of all necessary charges and expenses of collection; (b) to the payment of all other costs of operation and management of the Properties; and (c) to remit to Plaintiff the excess of income over such expenditures; and

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g. To take such steps as Receiver believes necessary or desirable to cause the Properties to be occupied by tenants;

h. To rent, let and/or lease all or any portion of the Properties on such terms and conditions, including modification of any existing leases and/or tenancies at the Properties, all in Receiver's sole and absolute discretion; and

i. To, at Receiver's option, institute, prosecute, defend, and compromise all legal proceedings and claims involving the Collateral as Receiver deems desirable or necessary, including without limitation the protection or proper care of the Collateral, the institution and prosecution of suits for the collection of rents or other payments of any description now due or hereafter to become due; and the employment of counsel therefor; and

j. To pay the taxes, assessments, sewer charges, rates and other utility fees thereon.

IT IS FURTHER ORDERED that nothing in this Order shall be construed to impair SP Freemont's rights to sell all or any portion of the Collateral during the pendency of this receivership or at a foreclosure sale; and

IT IS FURTHER ORDERED that the Receiver shall have the power to enter into any listing agreement(s) with a licensed real estate broker in an effort to sell all or any portion of the Collateral; and

IT IS FURTHER ORDERED that the Receiver shall have the power to enter into any and all contracts for sale and/or lease for all or any portion of the Collateral; and

IT IS FURTHER ORDERED that on or before the 15th day of each calendar month, Receiver shall prepare and file with the Court monthly reports, including but not limited to operating statements, balance sheets, rent rolls, income statements, month-end operations reports, general ledgers and copies of all invoices paid during said calendar month ("Monthly Report"); and furnish a copy of each Monthly Report to the undersigned counsel for SP Freemont; and

IT IS FURTHER ORDERED that Receiver shall be fully reimbursed for reasonable amounts expended by Receiver in the preservation and maintenance of the Collateral, and that Receiver shall be reasonably compensated for its services as an independent contractor, and not as an employee of the Plaintiff; and

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IT IS FURTHER ORDERED that in order to fulfill its duties, Receiver shall have unlimited access to the Properties, including access to all books and records kept by Defendant and Defendant's managers, employees, agents, affiliates and/or operators of the Properties, and Defendant shall immediately allow Receiver free access and the unlimited right to inspect and/or copy any and all parts of Defendant's business records relating to the Collateral, and Defendant shall relinquish to Receiver all keys needed for access to the Properties and to all parts or portions of the Collateral; and

IT IS FURTHER ORDERED that Defendant and Defendant's managers, employees, agents, affiliates and/or operators of the Properties shall immediately deliver to Receiver any and all rents, royalties, issues, profits, revenue or income derived from the Collateral which are currently held by Defendant and Defendant's managers, employees, agents, affiliates and/or operators of the Properties, including bank records for all accounts where such proceeds are on deposit; and

IT IS FURTHER ORDERED that this Order is entered into with the express consent of Defendant and Defendant's counsel, and the Defendant and his employees, representatives, partners, property managers, operators, agents, contractors, and all other persons acting in concert or participating with Defendant and Defendant's operators and/or managers of the Properties, are hereby ordered not to hinder, delay or interfere in any manner whatsoever with the possession, management, sale and/or leasing of all or any portion of the Collateral by Receiver in connection with the discharge of its duties pursuant to this Order; and

IT IS FURTHER ORDERED that Receiver shall be discharged of its duties, liabilities and responsibilities regarding the Collateral upon the occurrence of any of the following: (i) upon the successful completion of foreclosure sales for all of the Collateral and the successful subsequent closings related thereto; (ii) the sale and/or lease of all of the Collateral and the successful subsequent closings related thereto; or (iii) upon the direction of SP Freemont to Receiver, in writing; and

IT IS FURTHER ORDERED that Receiver, Defendant and Defendant's managers, employees, agents, affiliates and/or operators of the Properties shall use their best efforts to effect

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an expeditious transition from current management of the Properties to Receiver; and

IT IS FURTHER ORDERED that the Receiver may retain its own legal counsel upon the written consent of Plaintiff, such consent not to be unreasonably withheld; and

IT IS FURTHER ORDERED that Receiver shall not be required to give security or post bond for the payment of such costs and damages as may arise from the appointment of AMG as Receiver; and

IT IS FURTHER ORDERED that the Receiver may assign its duties hereunder to a successor receiver upon separate application and proposed order by Plaintiff and without the consent of Defendant.

Dated this 28 day of September, 2009.

DISTRICT COURT JUDGE

Respectfully submitted by:

LIONEL SAWYER & COLLINS

Todd Touton, Nevada Bar No. 1744
Robert Hernquist, Nevada Bar No. 10616

Attorneys for SP Freemont LLC

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EXHIBIT 3

(7)-1

Inst #: 201007120002543
Fees: $19.00 N/C Fee: $0.00
RPTT: $6630.00 Ex: #
07/12/2010 01:32:12 PM
Receipt #: 421707
Requestor:
CLARK RECORDING SERVICE
Recorded By: MSH Pgs: 7
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN#: 139-35-310-030

RECORDING REQUESTED BY:
FIRST AMERICAN NATIONAL DEFAULT TITLE
3 FIRST AMERICAN WAY
SANTA ANA, CA 92707

MAIL TAX STATEMENTS TO AND
WHEN RECORDED MAIL TO:

SP FREEMONT, LLC C/O
SILVER POINT CAPITAL, L.P.
320 DECKER COURT, STE 109
IRVING TX 75062

58

4070812- LS

The Undersigned Hereby Affirms That There Is No Social Security Number Contained In This Document.

TRUSTEE'S DEED UPON SALE

TITLE OF DOCUMENT

AP# 139-35-310-030
MAIL TAX STATEMENTS TO:

AND WHEN RECORDED MAIL TO:

SP FREEMONT, LLC
C/O SILVER POINT CAPITAL, L.P.
320 DECKER COURT, SUITE 109
IRVING TX 75062




SPACE ABOVE THIS LINE FOR RECORDER'S USE

The Undersigned Hereby Affirms That There Is No Social Security Number Contained In This Document.

407081-05

TRA: **203**

Trust No. **1206654-01**
Loan No. **XXX9114**

Document Transfer Tax $6,630.00
_X__ Grantee was the foreclosing beneficiary;
consideration $1,300,000.00
unpaid debt $2,380,907.16 non exempt amount
___ Computed on the consideration or value of real property conveyed
___ Computed on the consideration or value less liens or encumbrances remaining at time of sale.

RECORDING REQUESTED BY
FIRST AMERICAN TITLE COMPANY
AS AN ACCOMODATION ONLY

Wendy Perry Signature of Declarant or Agent

TRUSTEE'S DEED UPON SALE – UNIFIED SALE

CAL-WESTERN RECONVEYANCE CORPORATION, a corporation, (herein called Trustee) does hereby grant and convey, but without covenant or warranty, express or implied, to **SP FREEMONT, LLC.** (herein called Grantee) the real property in the City of **LAS VEGAS** County of **CLARK**, State of Nevada, described as follows:

LOTS ONE (1) AND TWO (2) IN BLOCK TEN (10) OF LADD'S ADDITION TO LAS VEGAS, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 2, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA. EXCEPTING THEREFROM THE NORTHEASTERLY FIVE (5) FEET AND A SPANDREL AREA IN THE NORTHWEST CORNER AS CONVEYED TO THE CITY OF LAS VEGAS BY DEED RECORDED MAY 25, 1978 AS DOCUMENT NO. 851773.

PERSONAL PROPERTY INCLUDED IN THE SALE, PURSUANT TO NRS SECTION 104.9604 OF THE NEVADA UNIFORM COMMERCIAL CODE COVERED BY THE DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING DATED SEPTEMBER 6, 2007, GIVEN BY THE TRUSTOR TO VENEFICIARY AS SECURED PARTY, ALL RIGHT, TITLE, INTEREST, CLAIM AND ESTATE OF SAID TRUSTOR IN AND TO EACH AND ALL OF THE PERSONAL PROPERTY DESCRIBED ON EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

TRUSTEE'S DEED UPON SALE

Trust No: 1206654-01
Loan No: XXX9114

This conveyance is made pursuant to the authority and powers vested in said Trustee, as Trustee, or Successor Trustee, or Substituted Trustee, under that certain Deed of Trust executed by **SHENG DU, A MARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY** as Trustor, recorded **September 28, 2007**, as Document No. **0002952** in Book **20070928** Page **XX**, of official records in the office of the Recorder of **CLARK** County, Nevada and pursuant to the Notice of Default recorded **April 01, 2009**, as Document No. **0004501** in Book **20090401**, Page **XX** of Official Records of said County, Trustee having complied with all applicable statutory requirements of the State of Nevada and performed all duties required by said Deed of Trust.

A Notice of Trustee's Sale was published once a week for three consecutive weeks in a legal newspaper, and at least twenty days before the date fixed therein for sale, a copy of said Notice of Trustee's Sale was posted by the Trustee or its authorized representative of said County in three public places.

At the time and place fixed in the Notice of Trustee's Sale, said Trustee did sell said property above described at public auction on **June 09, 2010** to said Grantee, being the highest bidder therefore, for **$1,300,000.00** cash, lawful money of the United States, in satisfaction pro tanto of the indebtedness then secured by said Deed of Trust.

Dated: **June 10, 2010**

IN WITNESS WHEREOF, **CAL-WESTERN RECONVEYANCE CORPORATION**, as Trustee, has this day, caused its corporate name and seal to be affixed hereto and this instrument to be executed by its authorized officer, thereunto duly authorized.

Dated: June 10, 2010

CAL-WESTERN RECONVEYANCE CORPORATION

Wendy V. Perry, Assistant Vice President

State of California)
County of San Diego)

On June 30, 2010 before me, Nicole M. Genet,
a Notary Public, personally appeared Wendy V. Perry, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal (Seal)

Signature Nicole M Genet

NICOLE M. GENET
Commission # 1783419
Notary Public - California
San Diego County
My Comm. Expires Dec 4, 2011

DESCRIPTION OF PERSONAL PROPERTY

All equipment, machinery, fixtures, goods, inventory, accounts, deposit accounts, money, general intangibles, contract rights, documents, documents of title, instruments and chattel paper, as those terms are defined in the Nevada Uniform Commercial Code as adopted in Nevada, and all other personal property of every kind and description, whether now existing or hereafter acquired, now or at any time hereafter attached to, erected upon, situated in or upon, forming a part of, appurtenant to, used in the construction or operation of or in connection with, or arising from the use or enjoyment of all or any portion of, or from any lease or agreement pertaining to the Property owned by Trustor (but excluding the personal property of any tenants of the Property, unless Trustor has acquired an interest therein) including, without limitation:

All income, rents, royalties, revenue, issues, profits, proceeds and other benefits from any and all of the Property;

All deposits made with or other security given to governmental entities or utility companies by Trustor with respect to the Property and the improvements thereon, and all advance payments of insurance premiums made by Trustor with respect thereto and all claims or demands relating to such deposits, other security and/or such insurance;

All fixtures now or hereafter affixed to the Property, including all buildings, structures and improvements of every kind and description now or hereafter erected or placed thereon and any and all machinery, motors, elevators, boilers, equipment (including, without limitation, all equipment for the generation or distribution of air, water, heat, electricity, light, fuel or refrigeration or for ventilating or air conditioning purposes or for sanitary or drainage purposes or for the removal of dust, refuse or garbage), partitions, appliances, furniture, furnishings, building service equipment, building materials, supplies, ranges, refrigerators, cabinets, laundry equipment, hotel, kitchen and restaurant equipment, computers and software, radios, televisions, awnings, window shades, venetian blinds, drapes and drapery rods and brackets, screens, carpeting and other floor coverings, lobby furnishings, games and recreational and swimming pool equipment, elevators, cleaning and sprinkler systems, fire extinguishing apparatus and equipment, incinerators and other property of every kind and description now or hereafter placed, attached, affixed or installed in such buildings, structures, or improvements (all of such fixtures being referred to hereinafter as the "Improvements");

All damages, royalties and revenue of every kind, nature and description whatsoever that Trustor may be entitled to receive, either before or after any default hereunder, from any person or entity owning or having or hereafter acquiring a right to the oil, gas or mineral rights and reservations of the Property;

All proceeds and claims arising on account of any damages to or taking of the Property or the Improvements thereon or any part thereof, and all causes of action and recoveries for any loss or diminution in the value of the Property or the Improvements;

All licenses (including, but not limited to, any operating licenses or similar licenses), contracts, management contracts or agreements, franchise agreements, permits, authorities or certificates required or used in connection with the ownership of, or the operation of maintenance of the Improvements or any Business;

All present and future accounts, general intangibles, chattel paper, contract rights, deposit accounts, instruments and documents as those terms are defined in the Uniform Commercial Code, now or hereafter relating or arising with respect to the Property and for the use thereof or any improvements thereto, including, without limitation: (i) all rights to the payment of money, including escrow proceeds arising out of the sale or other disposition of all or any portion of the Property; (ii) all plans, specifications and drawings relating to the development of the Property and/or any construction thereon; (iii) all use permits, occupancy permits,

development agreements, construction and building permits and all other permits and approvals required by any governmental or quasi-governmental authority in connection with the development, construction, use, occupancy or operation of the Property; (iv) any and all agreements relating to the development, construction, use, occupancy and for operation of the Property between Trustor and any contractor, subcontractor, project manager or supervisor, architect, engineer, laborer or supplier of materials; (v) all lease or rental agreements; (vi) all names under which the Property is now or hereafter known and all rights to carry on business under any such names or any variant thereof; (vii) all goodwill relating to the Property and for the development, construction, use, occupancy or operation thereof; (viii) all insurance proceeds and condemnation awards arising out of or incidental to the ownership, development, construction, use, occupancy or operation of the Property; (ix) all reserves, deferred payments, deposits, refunds, cost savings, bonds, insurance policies and payments of any kind relating to the Property; (x) all loan commitments issued to debtor in connection with any sale or financing of the Property; and (xi) all supplements, modifications and amendments to the foregoing.

All water rights appurtenant to the Property together with all pumping plants, pipes, flumes and ditches, all rights to the use of water as well as the rights in ditches for irrigation of the Property, all water stock relating to the Property, shares of stock or other evidence of ownership of any part of the Property that is owned by Trustor in common with others, and all documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Property;

All plans and specifications prepared for entitlement or development of the Property or construction of the Improvements and all studies, data and drawings relating thereto; and also all contracts and agreements of Trustor relating to the aforesaid plans and specifications or to the aforesaid studies, data and drawings, or to the entitlement or development of the Property or construction of the Improvements; and

All sales agreements, deposit receipts, escrow agreements and other ancillary documents and agreements entered into with respect to the sale to any purchasers of any part of the Property or of any buildings or structures on the Property, together with all deposits and other proceeds of the sale thereof.

All landscaping, trees and other plants and crops growing on the Property, all crops harvested and all net sale proceeds from crops harvested, packed and sold, all maintenance buildings and agricultural equipment located on the Property, and any and all other property now or hereafter located on or at the Property and used in connection with any farming operations conducted upon the Property.

To the extent not already included within the foregoing categories, all inventory, accounts receivable, furniture, fixtures, equipment and other personal property of or related to or used in the operation of any Business.

All replacements, repairs and substitutions of, and accessions and additions to, any of the foregoing.

All proceeds of any of the foregoing, including, without limitation, proceeds of any voluntary or involuntary disposition or claim respecting any thereof (pursuant to judgment, condemnation award or otherwise) and all goods, documents, instruments, general intangibles, chattel paper and accounts, wherever located, acquired with cash proceeds of any of the foregoing or proceeds thereof.

EXHIBIT A

STATE OF NEVADA
DECLARATION OF VALUE FORM

TS#1206654-01Title Order#:4070812

1. Assessor Parcel Number(s)
   a)139-35-310-030
   b)
   c)
   d)
2. Type of Property:
   a) ☐ Vacant Land b) ☒ Single Fam. Res.
   c) ☐ Condo/Twnhse d) ☐ 2-4 Plex
   e) ☐ Apt. Bldg f) ☐ Comm'l/Ind'l
   g) ☐ Agricultural h) ☐ Mobile Home
   ☐ Other

FOR RECORDER'S OPTIONAL USE ONLY
Book:_____ Page:_____
Date of Recording:_____
Notes:

3. Total Value/Sales Price of Property $1,300.000.00
   Deed in Lieu of Foreclosure Only (value of property) ( )
   Transfer Tax Value: $1,300,000.00
   Real Property Transfer Tax Due $. 6,630.00
4. **If Exemption Claimed:**
   a. Transfer Tax Exemption per NRS 375.090, Section
   b. Explain Reason for Exemption:
5. Partial Interest: Percentage being transferred: 100%

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature Wendy Perry Capacity As agent for Cal-Western Recon Corp.

Signature _____ Capacity _____

SELLER (GRANTOR) INFORMATION (REQUIRED)		BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name:	**Cal-Western Reconveyance Corp**	Print Name: SP Freemont, LLC
Address:	**525 East Main Street**	Address: 320 Decker Court, Suite 109
City:	**El Cajon**	City: Irving
State	**CA 92022**	State: TX Zip:75062

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

Print Name: ~~FIRST AMERICAN NATIONAL DEFAULT TITLE~~ Escrow #: 4070812
Address: ~~3 FIRST AMERICAN WAY~~
City: ~~SANTA ANA, CA 92707~~ State: _____ Zip: _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT 4

Fremont Plaza
1300 East Fremont
Las Vegas, NV 89101
Phone: (702) 385-2588

COMMUNITY RULES AND REGULATIONS

Occupancy:
Studio: 2 persons
1 Bedroom: 3 persons
Only registered tenants are authorized to occupy the units (NO SUB-LEASING IS ALLOWED)
A state issued ID card must be on file for every registered tenant 18yrs. or older.
All information obtained by this office will be provided to LVMPD, as part of their crime prevention program.
Background checks and eviction checks are processed as part of the check in procedures.
Any guest staying longer than 24 hours must be placed on the unit registration packet.

Rents:
Rent is due and payable BEFORE noon on the date it is due
After noon there is a $10.00 per day late charge.
There is a $30.00 cleaning fee (non-refundable)
There is a $10.00 Key deposit (refundable) – Your key is not to be given out to anyone. Refund will not occur unless ALL keys issued are returned.
Loss of key will result in a $35 fee.
Fremont Plaza is a pet free community - Pets must be approved by management and there is a $25 per month pet rent and a $75 non-refundable pet fee.
A minimum $150.00 pack –out/storage fee will be charged for all pack-outs.
Renters insurance is highly recommended.

Parking areas:
No automobile repair or detailing is permitted while on property
No excessive car stereo noise is permitted
Your vehicle must be in working order and have current registration.
Any violation of these policies can and will result in the vehicle being towed at the owners expense.
If you believe that your vehicle has been towed you must contact LVMPD and or the towing company.

Common Areas:
No loitering is allowed in any common area this includes stairways, parking lots, sidewalks, walkways, or in front of the units.
Non- registered guest must be escorted by a registered tenant at all times while in any common area. No exceptions. Visiting hours are between 7:00 a.m. to 10:00 p.m. Monday thru Sunday. (See visitor policy for further detail)
Any Non-registered guest not escorted by registered guest may be asked to leave the premises and when necessary, formally trespassed.
Please ensure the common area entry doors are closed at all times and close behind you as you enter the building.
Any violations of these rules can and will result in violations and possibly fines issued to your unit up to and including "no re-rent" status...
No foil is to be placed in windows at anytime.

Units:
Your unit must be kept clean, and in a condition that will not create a health hazard at all times.
No trash or personal items are permitted to be left in any hallways, walk ways, sidewalks, or stair wells. This includes but is not limited to bikes, BBQ's chairs etc.
All trash must be deposited immediately in the provided trash dumpsters/containers located at the rear of the buildings
Do not access your unit by any other method than through the doorway with your key
No permanent fixtures (i.e. nails, screws, shelf s etc.) are to be affixed to the outside of your unit.
No loud noise after 10pm, this includes but is not limited to Radio's, TV's, and or loud talking.
Domestic disturbances will not be tolerated on this property.
Participating in any illegal activities is strictly prohibited. Illegal activities include but are not limited to the use, sale, and or manufacturing of controlled substances, larceny, possession and or sale of stolen goods, assault, prostitution, vandalism, trespassing, and or destruction of private property.
In an effort to keep utility costs down, please keep your windows and doors closed
If you do not have a kitchen, you can not cook in your room. You can have a microwave.

No unwelcome guest in the units. An unwelcome person is an individual that has been trespassed, a person that has not been registered, or any person that is deemed by management to be not welcome on this property.

MANAGEMENT HAS THE RIGHT TO REFUSE SERVICE TO ANYONE FOR ANY REASON.

Office:
Shirts and shoes are required to receive service in the office
As a courtesy, management will take messages and mail delivery for the residents in the office. The resident is responsible for retrieving their mail/messages.

Violations issued by Management:
If you or your guests violate any rules or regulations while on property, you may receive a violation the violation can result in fines that a due before your rent is accepted.
1st violation = Warning
2nd Violation = $25.00 fine
3rd Violation = $50.00 fine
4th Violation = $100.00 or a possible no re-rent status

If your guest violates any rules or regulations while on property they can and will be trespassed from the property. Once an individual has been trespassed from the property, their subsequent return to the property will result in an immediate arrest for trespassing.

This property has a no tolerance policy for any illegal activities, and we **WILL PROSECUTE** any and all offenders of this policy. **ANY** other prosecutable offence is grounds for immediate termination of tenancy. Management reserves the right to terminate your tenancy if you are in participation of any illegal activity.

Visitor's Policy:

No visitors between the hours of 10 p.m. and 7 a.m. –Anyone who is not a tenant and is on the property during these hours, for any reason, will be considered trespassing and is subject to arrest.

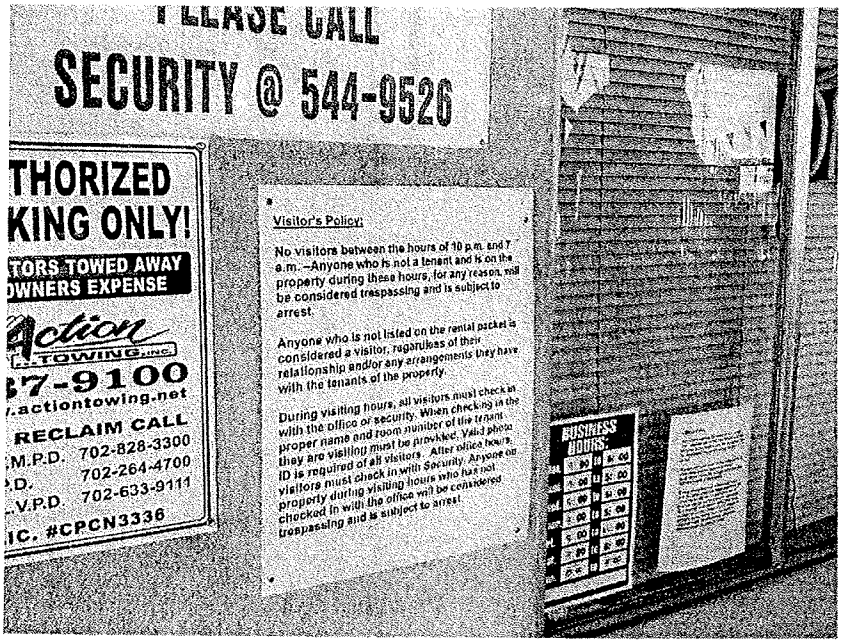
Anyone who is not listed on the rental packet is considered a visitor, regardless of their relationship and/or any arrangements they have with the tenants of the property.

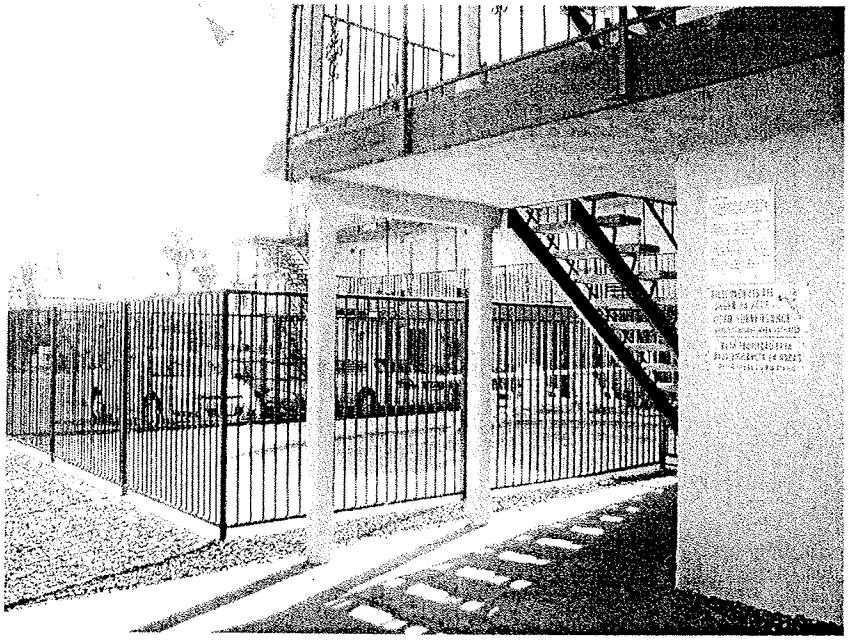
During visiting hours, all visitors must check in with the office or security. When checking in the proper name and room number of the tenant they are visiting must be provided. Valid photo ID is required of all visitors. After office hours, visitors must check in with Security. Anyone on property during visiting hours who has not checked in with the office will be considered trespassing and is subject to arrest.

LVMPD WILL BE NOTIFIED OF ANY AND ALL ILLEGAL ACTIVITIES.
I understand I may be asked to vacate immediately if I fail to comply with the above policies. Additionally, I agree to be responsible for any cost of collection that Fremont Plaza may incur as a result of my account being placed with an outside collection agency. I further agree to be responsible for any Attorney fees and court costs.

_____ _____
Resident Signature Date

EXHIBIT 5





Visitor Policy Posted

EXHIBIT 6

ADVANCED
MANAGEMENT GROUP

Weekly Resident Background Checks

Title Weekly resident Background Checks

Department(s) Property

Reports To Manager

System:

This System is designed to provide background checks for prospective residents or "add-on" residents to current apartments allowing for management to potentially divert undesirable residents.

- When the prospect inquires about an apartment home, they must complete a resident application and provide valid state or federally issued identification.
- The rules and regulations must be signed as these clearly notify prospect of management's intent to work closely with the authorities in enforcing the rules of the community.
- While the paperwork is being completed by the prospect, manager/CSR must make a copy of the identification for the file.
- The local court eviction web site must be checked for prior evictions during the prior year. If there are any nuisance evictions, the applicant is immediately declined. If they are found to have multiple rent related evictions, they are declined.
- Once the eviction inquiry has been completed, the criminal background check is completed through www.publicdata.com.
- If the prospect is found to have drug related charges, prostitution related charges or violent crimes in their background in the past 5 years, tenancy will be declined.
- If the prospect background check reflects no information found through background check, print a copy of this page and attach it to the new residents packet as verification that background check was completed.
- The same steps are followed for an "add on" to an existing residents room.

_____ _____

Signature Date

Job code	
Generic title	
Pay grade	
Management? (Yes/No)	
E/NE status	
Last revised	

EXHIBIT 7

TSI

TOTAL SAFETY INCORPORATED

Post Instructions

6/22/10

SITE NAME	SITE ADDRESS	CROSS STREETS
Fremont Apts	1300 E Fremont, 1400 E. Fremont, 1500 E. Fremont	E. Fremont & 14 Street <13th,14th & 15th>

Directions to Site : 95 to Las Vegas Blvd, Left on Fremont Street
Post Description: <3x Apartment> Fremont Plaza, Fremont Street Apts, Sunflower Apts
Overall Responsibility: To provide a safe environment; 8P to 4A Foot Patrol

Specific Tasks:

Note: There is a security office at the Sunflower with copy machine, bathroom & radio / charger

1. **Contact R-1** when going on duty and when going off duty by radio, make sure that the radio is working and you can be contacted by radio at all times during your shift.
2. **High visibility patrol:** Make contact with tenants when they are out side, "say Hi," let yourself be seen. Get to know whom the tenants are and know who should be and not be on property.
3. **Maintain accurate logs** of all activities, < > Note each time you are at each complex. For problems note what complex and what unit. . The white copy goes to TSI.
4. **Patrol entire property.** Be totally familiar with properties and tenants,
   A. ; High visibility patrol, 2nd building in back across the alley, problems in alley note all issues on log, check for noise, ask tenants to quiet down, note units on log, make sure you put a copy of log in rent drop box each night.
   B. ; High visibility patrol, check for noise, ask tenants to quiet down, note units on log, make sure you put a copy of log in rent drop box each night.
   C. ; Pick up a copy of the rent roll from the Manager every week. High visibility patrol, , check empty units <blinds will be open>, check for noise, ask tenants to quiet down, note units on log, make sure you put a copy of log in rent drop box each night.

   Note any issue with tenants on log so unit managers can deal with them
5. Check laundry room to make sure it's locked <check posted hrs>.
6. **No Loitering,** verify if they live on property and note on log, trespass repeat offenders as necessary and note on log.
7. Log any graffiti and (i.e. lights, sprinklers irrigation problems).
8. Any emergency – medical, fire, police or major problems go through Road Captain.
9. DO NOT keep any keys for tenants.

Know your Chain of Command:
On Duty Patrol Captain 501-2488
Ed Farrow/Director of Operations
Tyler Bayne/Vice President

Emergency Numbers:
Patrol Captain 501-2488 Metro or Fire 911 or 311
TSI Control 967-5730
Adam patrol 767-0731

Job Site Contact Person(s):
Sunflower : Robert <788-2805> Lives on site at #101
Fremont Plaza: Rhonda Percy <385-2588> Lives on site #210 874-8311 cell
Fremont Street Apts: Richard Raulston Lives on site next to office 527-9737 cell
Property Manager Julia Furrule <755-7478> (Call last)

Radio Call Signs: - Fremont and your DSN

Las Vegas Metropolitan Police Department
I.D.F. Codes (Amended 06-2000)
(When clearing from the following events, a disposition is required)

CODE	DESCRIPTION
401	ACCIDENT
401A	HIT AND RUN
401B	ACCIDENT WITH INJURY
401C	ACCIDENT (PRIVATE PROPERTY)
402	FIRE
403	PROWLER
404	UNKNOWN TROUBLE
404A	9-1-1 DISCONNECT
405	SUICIDE
406	BURGLARY
406A	BURGLARY ALARM
406V	AUTO BURGLARY
407	ROBBERY
407A	ROBBERY ALARM
407B	ROBBERY INVOLVING A B-PACK
408	DRUNK
409	DRUNK DRIVER
410	RECKLESS DRIVER
411	STOLEN MOTOR VEHICLE
411A	RECOVERED STOLEN VEHICLE
411B	STOLEN DEPT. BAIT CAR
413	PERSON WITH A GUN
413A	PERSON WITH A KNIFE
413B	PERSON WITH OTHER DEADLY WEAPON
414	GRAND LARCENY
414A	PETIT LARCENY
414C	LARCENY FROM A PERSON
415	ASSAULT/BATTERY
415A	ASSAULT/BATTERY WITH A GUN
415B	ASSAULT/BATTERY WITH OTHER DEADLY WEAPON
415C	ASSAULT/BATTERY NEGATIVE INJURY DRIVE BY SHOOTING
416	FIGHT
416A	JUVENILE DISTURBANCE
416B	OTHER DISTURBANCE
417	FAMILY DISTURBANCE
418	MISSING PERSON
418A	FOUND PERSON
418B	RUNAWAY
419	DEAD BODY
420	HOMICIDE

CODE	DESCRIPTION
421	SICK OR INJURED PERSON
421A	MENTALLY ILL PERSON
421C	SICK OR INJURED PERSON WITH COMMUNICABLE DISEASE
422	INJURED OFFICER
423	SEE PERSON FOR INFO
424	ABUSE/NEGLECT
425	SUSPICIOUS SITUATION
425A	SUSPICIOUS PERSON
425B	SUSPICIOUS VEHICLE
425H	HAZARDOUS MATERIAL
426	SEXUAL ASSAULT
427	KIDNAP
428	CHILD MOLEST
429	INDECENT EXPOSURE
430	ANIMAL COMPLAINT
431	MISSING/FOUND PROPERTY
432	FRAUD
433	STOLEN PROPERTY
434	ILLEGAL SHOOTING
437	KEEP THE PEACE
438	TRAFFIC PROBLEM
439	ASSIST CITIZEN
440	WANTED SUSPECT
441	MALICIOUS DESTRUCTION OF PROPERTY
442	AIRPLANE EMERGENCY
443	ASSIST AN OFFICER
444	OFFICER NEEDS HELP-EMERGENCY
444A	PANIC ALARM AT METRO FACILITIES
445	EXPLOSIVE DEVICE
446	NARCOTICS
447	CIVIL MATTER

NOTE: "Z" IS USED AFTER ANY OF THE ABOVE TO REPRESENT "ATTEMPT". "G" IS USED FOR GANG INVOLVEMENT, "D" IS USED FOR DOMESTIC VIOLENCE, OR "X" FOR DEPARTMENT EXERCISE.

OFFICER INITIATED CODES

461	NON-CRIMINAL DETAIL
462	DIRECTED PATROL ACTIVITY
463	INVESTIGATION/FOLLOW-UP
465	STAKE OUT
467	VEHICLE STOP
468	PERSON ON FOOT
469	BAR/PERIMETER CHECK

ADMINISTRATIVE CODES

480	MAINTENANCE
481	DETAIL
482	LUNCH
483	COFFEE
484	COURT
485	COMMUNITY CONTACT
486	RANGE
492	TRANSPORT
494	OUT OF VEHICLE
495	MISC. ADMIN. MATTER

PHONETIC ALPHABET

A	ADAM
B	BAKER
C	CHARLIE
D	DAVID
E	EASY
F	FRANK
G	GEORGE
H	HENRY
I	IDA
J	JOHN
K	KING
L	LINCOLN
M	MARY
N	NORA
O	OCEAN
P	PAUL
Q	QUEEN
R	ROBERT
S	SAM
T	TOM
U	UNION
V	VICTOR
W	WILLIAM
X	X-RAY
Y	YELLOW
Z	ZEBRA

A	ARRESTED
B	CITATION ISSUED
C	INCDT./CRIME REPORT (PRIMARY)
D	INCDT./CRIME REPORT (PRIMARY) ARREST MADE
E	INCDT./CRIME REPORT (PRIMARY) CITATION ISSUED
F	UNFOUNDED
G	DISPATCH CANCELLED
H	GONE ON ARRIVAL
I	UNABLE TO LOCATE
J	SETTLED AT SCENE
K	REPORT TAKEN-OTHER THAN INCDT./CRIME REPORT (DO NOT USE IF AN INCDT./CRIME REPORT WAS TAKEN)
L	HANDLED BY OTHER JURISDICTION
M	WARNING AND/OR SUBJECT ADVISE
O	FALSE ALARM
P	REFUSED TO SIGN COMPLAINT
Q	HANDLED BY UNIT OTHER THAN PATROL (INDICATE SPECIFIC UNIT)
R	RADIO BROADCAST ONLY
S	NON-CRIMINAL DETAIL COMPLETE
T	REPORT TAKEN UNDER PREVIOUS EVENT #
Z	INSURANCE REPORT (CAD Event only)

CODES

CODE 3	RESPOND WITH RED LIGHTS AND SIREN
CODE 4	TO BE UTILIZED WHEN THERE IS NO LONGER AN EXISTING EMERGENCY AND WHEN NECESSARY TO CLEAR THE CHANNEL
CODE 5	REQUEST FOR CAMERA IN JAIL TO BE ACTIVATED
CODE RED	EMERGENCY EXISTS - EMERGENCY TRAFFIC ONLY
CODE 30	DOES NOT CONFORM TO PROPER PROCEDURES

EXHIBIT 8

Fremont Plaza

Installation of Convex Mirrors Near Elevators

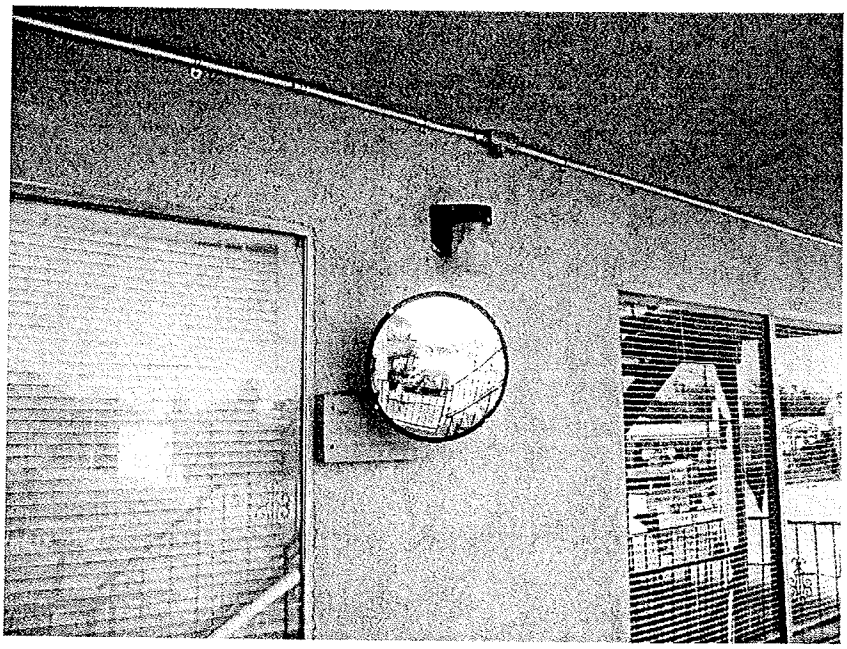


EXHIBIT 9

discussed $1300 first 3 mos
Y. ex, $1500
+ Apt / Utilities

Can start a.s.ap.

Shayne N. Torres

1733 Mexican Poppy St. Summerlin, NV 89128 (310)200-5446 storres_propertymgr@yahoo.com

EXPERIENCE

G.C. & Associates Newer project, dealt w/ HOA — **Van Nuys, CA** — Temp position
Property Manager — **10/09-02/10**

- On-site manager for a 160-unit condo property in Van Nuys, Los Angeles.
- Duties included advertising of property vacancies, showing units, screening applicants and preparing lease documents. Coordinating tenant move-ins and move-outs.
- Responsible for collection and deposit of monthly rents and annual rent increases. Knowledge of eviction process and posting 3-Day and 30/60-Day notices.
- Develope and maintain a marketing portfolio including a list of advertisements of the property.

Playa Vista Properties — **Los Angles, CA** — Owner had portfolio financial issues
Property Manager — Lived on site — **5/07-03/09**

$1500 mo + Apt paid own utilities

- On-site manager for a 130-unit apartment building in Downtown Los Angeles.
- Duties included advertising of property vacancies, showing units, screening applicants and preparing lease documents. Coordinating tenant move-ins and move-outs.
- Responsible for collection and deposit of monthly rents and annual rent increases. Knowledge of eviction process and posting 3-Day and 30/60-Day notices.
- Over see construction and maintenance projects and issues.

Sky Properties/M. Stein, LLC — **Ventura, CA** — Van Nuys → better opp
Property Manager — **10/02-5/07**

- On-site manager in Reseda, CA for a 60-unit apartment building.
- Duties included advertising of property vacancies, showing units, screening applicants and preparing lease documents. Coordinating tenant move-ins and move-outs.
- Responsible for collection and deposit of monthly rents and annual rent increases. Knowledge of eviction process and posting 3-Day and 30/60-Day notices.
- Weekly and end of month closing reports, billing, invoices, verification of work orders and accounting into Yardi Voyager.
- Keeping building and grounds clean, maintenance, repairs and responding to tenant's needs. Basic working knowledge of plumbing, electrical, appliance repair, drywall and painting, and carpentry.
- Also worked in the owner's office as a Property Supervisor/Administrative Assistant by managing other smaller residential and commercial buildings.
- Market surveying for rent comparisons in the surrounding area.
- Extensive experience working with multiple vendors and handling various maintenance requests for both residential and commercial buildings.
- Knowledge of Fair Housing Laws, Tenant/Landlord Laws and Section 8 Housing.
- Over see construction and maintenance projects and issues.

Smith Bros. Inc. — **Westlake Village, CA**
Home Improvement Specialist — **5/04-03/05**

- Customer service calls, crown molding installation, window and door installation and replacements, reading of plans, finish carpentry and high end quality finishes.

Marina Development — **Oxnard, CA**
Home Improvement Specialist — **1/04-7/04**

- Customer service calls, crown molding installation, window and door installation and replacements, reading of plans, custom closets, finish carpentry and high end quality finishes.

Westcoast Sash and Door — **Ventura, CA**
Installer Technician — **1/03-12/03**

- Customer service calls, crown molding installation, window and door installation and replacements, reading of plans, finish carpentry and high end quality finishes.

Shayne N. Torres

1839 S. Main St. # 322, Los Angeles, CA 90015 (818)618-0371 storres_propertymgr@yahoo.com

Bel Air Exteriors — Van Nuys, CA
Home Improvement Specialist — 3/00–3/02

- Interior design and remodeling. Work included customer service calls, project management, various home improvement tasks, crown molding, window and door replacements, framing, custom bay windows, siding, minor electrical, painting and staining of fine wood grain doors.

Interim Personnel — Las Vegas, NV
Administrative / General Office Assistant — 1/98-1/00

- Assisted in general office and administrative tasks such as data entry, filing, customer service, heavy copying, deliveries and faxing.

Select Personnel Services — Las Vegas, NV
Personnel coordinator / Technical Support — 7/97-1/98

- Human resources support for various companies by interviewing prospective applicants, job placement, reference checks, and employee performance follow-up calls.
- On-site manager for an accounting office using a computerized time and attendance system (JANTEK) to do payroll for approximately120 personnel.
- Responsible for workers compensation program.

Quality Iron, Inc. — Las Vegas, NV
Executive / Advertising Assistant — 3/97-7/97

- Responsible for accounting, billing and invoicing by Quick Books.
- Photographed company products and worked with a digital camera. In addition, used computer software to make brochures/catalogs and flyers for home shows and customers.
- Received training in wrought iron welding, fabrication and installation.

United States Navy — NAVSTA San Diego, CA
Administrative / Central Files Assistant — 3/93-3/97

- Worked for the Commanding Officer and Executive Officer of Naval Station Head Quarters.
- Customer service, data entry and preparation of Power Point presentations.
- In charge of setting the naval base plan of the day and scheduling daily, weekly, and monthly events and meetings. Set up conference room for weekly scheduled conferences.
- Responsible for mail sort and distribution to various departments.
- Held Security Clearance for retrieving and delivering secret and confidential information to the Commanding Officer.
- Worked with Sea Bees in various on-base commercial and government housing constructions and remodeling.

EDUCATION

Medical Technology Development Center — Ventura, CA — 2005
Physical Therapy Aide, Medical Office and Billing courses taken.

San Diego State University — San Diego, CA — 1994-1996
Business Administration and Computer Training courses taken.

Camarillo High School — Camarillo, CA — 1986-1990
High School Diploma

LANGUAGES

English and Spanish

REFERENCES

Available upon request.

Sky Properties M. Stein, L.L.C.
1062 Poli St.
Ventura, CA 93101

May 9, 2007

To Whom It May Concern:

I am writing this letter of reference on behalf of, Shayne Torres, our former employee. Mr. Torres was employed from October 2002 to May 2007 as an On-Site Apartment Manager with our company. He managed a 60-unit apartment building in Reseda. In addition, he took on additional responsibilities as a Property/Project Manager Assistant in the main office in Ventura from December 2004 to February 2007. Mr. Torres was a dedicated and professional employee. On many occasions, Shayne went above and beyond in his duties and responsibilities by taking extra measures and necessary steps to complete multiple tasks, projects and assignments. He also managed our properties and busy office on a day to day basis. Shayne interacted well with employees. He was reliable and showed good judgment. His efforts, hard work and dedication have been an asset to our company over the past four years.

Shayne has shown the kind of initiative which is necessary to be successful over the long-term in the property management and real estate industry. He has excellent customer service skills, yet remains focused on the overall needs of the client and company. I believe he will be a strong manager and has an excellent future in the property management field. He is a conscientious worker and has an excellent work ethic. We would gladly have continued to work with Shayne if he were open to working in the Ventura area.

I recommend Shayne to you without reservation. If you have any further questions with regard to his background or qualifications, please do not hesitate to call me.

Sincerely,

Mandy Stein
Property Owner

Subject: FW: Shayne Torres

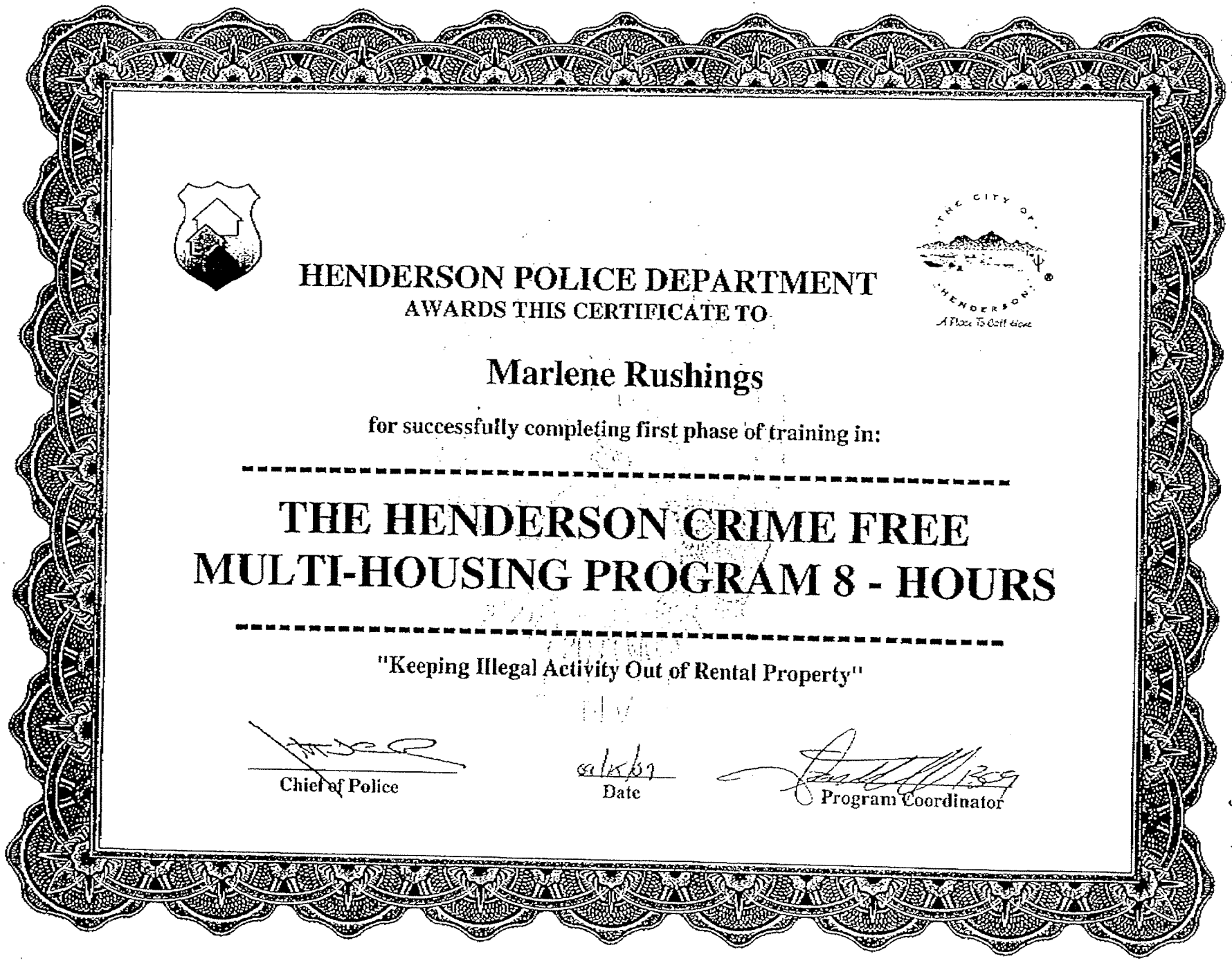
From: Pamela Terry [mailto:P7707T@LVMPD.COM]
Sent: Wednesday, August 11, 2010 2:26 PM
To: Julia Furrule
Subject: Shayne Torres

Julia,

He is registered for the September 15 class. I'll let you know if he doesn't show up!

Pam Terry
Crime Prevention Specialist
South Central Area Command
4860 Las Vegas Blvd., So.
Las Vegas, NV 89119
(702)828-8163
(702)828-1619 (fax)
E-Mail: p7707t@lvmpd.com

EXHIBIT 10



HENDERSON POLICE DEPARTMENT

AWARDS THIS CERTIFICATE TO

Marlene Rushings

for successfully completing first phase of training in:

THE HENDERSON CRIME FREE MULTI-HOUSING PROGRAM 8 - HOURS

"Keeping Illegal Activity Out of Rental Property"

Chief of Police

Date

Program Coordinator

07/26/2010 07:57 DELL1125 0000000000 #017 Page 02/03

EXHIBIT 11

Fremont Plaza
Calls for Service Trends

	January	February	March	April	May	June
Calls for Service	79	56	52	41	36	32
% Reduction in calls for service since Janaury		-29.11%	-34.18%	-48.10%	-54.43%	-59.49%
Arrests	14	8	2	2	8	2
% Reduction in arrests since Janaury		-42.86%	-85.71%	-85.71%	-42.86%	-85.71%
Citations	7	4	2	2	4	3
% Reduciton in citations since January		-42.86%	-71.43%	-71.43%	-42.86%	-57.14%
Crime Reports	1	0	4	2	0	2

Systems in place to help reduce problematic residents:
Internal "No Re-rent" list (see sample attached)
Utilization of Clark County Eviction Records
Participation in IDL program with the police department
Mandatory attendance of managers at Crime Free Multi Housing Class
Use of publicdata.com to screen prospects for criminal background
CPO presence increased to 60% of shared shift
Visitors to check in with office

Waiting on further information from Metro regarding the SILA program (Summons in Leau of Arrest)

LAS VEGAS CITY COUNCIL

OSCAR B. GOODMAN
MAYOR

GARY REESE
MAYOR PRO TEM

STEVE WOLFSON
LOIS TARKANIAN
STEVEN D. ROSS
RICKI Y. BARLOW
STAVROS S. ANTHONY

ELIZABETH N. FRETWELL
CITY MANAGER

August 23, 2010

CERTIFIED & REGULAR MAIL

Artemus W. Ham, Esq.
Mainor Eglet
City Centre Place, 6th Floor
400 South Fourth Street
Las Vegas, NV 89101

Re: Appeal of the Notice and Declaration of Chronic Nuisance for property located at 1300 East Fremont Street, Freemont Plaza Apartments

Dear Mr. Ham:

You are hereby notified that a hearing has been scheduled before the Las Vegas City Council at 400 Stewart Avenue, Las Vegas, Nevada on the 15th day of September, 2010, at the hour of 1:00 p.m. This hearing is in response to the Appeal received by the Las Vegas City Clerk on August 20, 2010, requesting the same, concerning the Notice and Declaration of Chronic Nuisance for property located at 1300 East Fremont Street for the Freemont Plaza Apartments.

Your client may be present at the hearing and may be, but need not be, represented by counsel. Any relevant evidence may be presented and a full opportunity will be given to cross-examine all witnesses testifying against your client.

If you have any questions or need further information please do not hesitate to contact Devin Smith, Manager, Neighborhood Response at 229-6615.

Sincerely,

Beverly K. Bridges, MMC
City Clerk

BKB/vs

cc: Stephen Harsin, Director, Neighborhood Services
Devin Smith, Manager, Neighborhood Response
Daniel Still, Deputy City Attorney
Susie Martinez, Ward 3 Council Liaison

CITY OF LAS VEGAS
400 STEWART AVENUE
LAS VEGAS, NEVADA 89101

VOICE 702.229.6011
TTY 702.386.9108
www.lasvegasnevada.gov

FM-0044-09-09

Printed with environmentally friendly soy ink

City of Las Vegas Agenda Item No.: **73.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: NEIGHBORHOOD SERVICES
DIRECTOR: STEPHEN K. HARSIN ☐ **Consent** ☒ **Discussion**

SUBJECT:
Public Hearing and possible action to consider a request for a waiver and/or reduction of fees and/or civil penalties for the property located at 4105 E. Ogden Avenue in the amount up to $76,000. PROPERTY OWNERS: JUAN LOPEZ AND BRENDA CORONA - Ward 3 (Reese)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division: Neighborhood Services/Neighborhood Response Division

PURPOSE/BACKGROUND:
Today's hearing is a request from Pam English, First American Title Company to consider a request for a waiver and/or reduction of fees imposed on the parcel at the City Council meeting on May 20, 2009. The case was generated on April 23, 2008. There was an abatement conducted on this property on December 2, 2008. The liens were recorded at Clark County recorder's office on June 12, 2009. Neighborhood Services received a Request for Waiver and/or Reduction of Civil Penalties Applications dated May 26, 2010 on behalf of the owners, Juan Abel Lopez and Brenda Karely Corona, requesting the civil penalties be waived.

RECOMMENDATION:
No Recommendation.

BACKUP DOCUMENTATION:
1. Agenda Memo
2. Request for Waiver and Reduction Application
3. Location Maps
4. Notice of Public Hearing

City of Las Vegas

AGENDA MEMO

CITY COUNCIL MEETING DATE: SEPTEMBER 15, 2010
DEPARTMENT: Neighborhood Services
ITEM DESCRIPTION: Public Hearing and possible action to consider a request for a waiver and/or reduction of fees and/or civil penalties for the property located at 4105 E. Ogden Avenue in the amount up to $76,000. PROPERTY OWNERS: JUAN LOPEZ AND BRENDA CORONA - Ward 3 (Reese)

Today's hearing is a request from Pam English, First American Title Company to consider a request for a waiver and/or reduction of fees imposed on the parcel at the City Council meeting on May 20, 2009. The case was generated on April 23, 2008. There was an abatement conducted on this property on December 2, 2008. The liens were recorded at Clark County recorder's office on June 12, 2009. Neighborhood Services received a Request for Waiver and/or Reduction of Civil Penalties Applications dated May 26, 2010 on behalf of the owners, Juan Abel Lopez and Brenda Karely Corona, requesting the civil penalties be waived.

Fees associated with the one abatement and inspections including interest total $1,552.50 (minus the $76,000 in daily civil penalties assessed). To date, a payment has been made in the amount of $1,552.50. Total owed on the case with civil penalties is $76,000.

Request for a Waiver and/or Reduction of Civil Penalties
Application

SUBMIT APPLICATION TO:
City of Las Vegas / Neighborhood Services Department
Attn: Stephen Harsin, Director
400 Stewart Avenue - 2nd Floor
Las Vegas, NV 89101-2986
Voice: 702-229-2317 -- Fax: 702-229-1033

Please type and/or print
Submit only one signed original

Date of Application: 5-26-10

Location and/or address of subject property:

Nearest major intersection: STEWART & SANDHILL

Street Address: 4105 E. OGDEN

Parcel Number: 140-31-711-008

Applicant's Address/Contact Information:
Name: FIRST AMERICAN TITLE CO. (BY PAM ENGLISH)
(please check the following the applies)
☐ Owner ☐ Purchaser ☐ Agent ☑ Other *(explain)* ESCROW AGENT
Street Address/PO Box: 7951 DEER SPRINGS # 190
City: LAS VEGAS State: NV Zip Code: 89131
Phone No: 702-677-3047 E-mail: penglish@firstam.com Fax No: 702-655-3728

Property Owner's Address/Contact Information: (if different from applicant):
Name: JUAN ABEL LOPEZ + BRENDA KARELY CORONA
Street Address/PO Box: 2008 BEECHGATE AVE.
City: LAS VEGAS State: NV Zip Code: 89110
Phone No: 702-437-3295 E-mail: Fax No:

Amount of City of Las Vegas Lien on the Property: $ 77,552.50

Amount requested to be considered for waiving and/or reduced? $ 76,082.50

Signature of Applicant: Pam English Date: 5-26-10

Signature of Owner: Juan A. Lopez Date: 5-27-10
Brenda Corona 5-27-10

For Office Use Only:
Council Ward: ; Case/File Number: ; Council Action date of Lien:

Describe why the applicant is requesting a waiver/reduction:
(You may attach additional sheets if needed.)

PLEASE SEE ATTACHED
"EXHIBIT A"

Describe the existing condition/situation of the subject property:
(You may attach additional sheets if needed.)

PROPERTY IS CURRENTLY RENTED
AND IN GOOD, HABITABLE CONDITION.

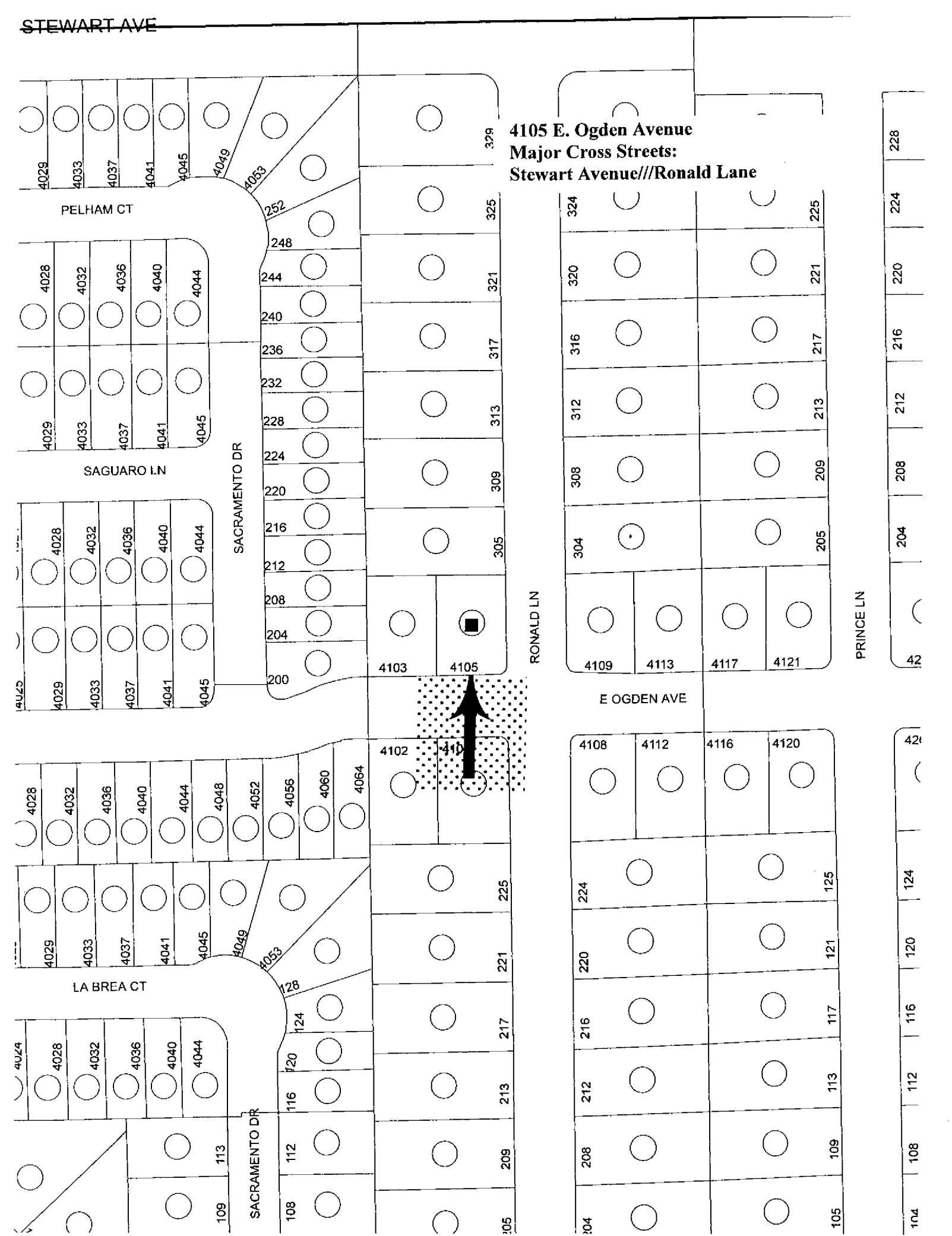
Describe the immediate plans for the property, including any planned improvements: *(You may attach additional sheets if needed.)*

TO CONTINUE RENTING THE
PROPERTY.

Exhibit "A"
Reason for Requesting a Waiver/Reduction:
Property Address: 4105 E. Ogden Avenue

The City caused the abatement of a nuisance condition on the subject property 12/2/08 so when the present owner entered into a purchase agreement with the prior owner on 3/14/09, a physical inspection of the property gave no indication of a past issue. (This house was a foreclosure and the Bank was also unaware of the abatement.) We closed escrow on 4/6/09 and the Notice and Claim of Lien of Assessment recorded subsequent to that date on 6/12/09.

We have since paid the abatement expense costs and fees in the amount of $1,552.50 and respectfully request a waiver or reduction of civil penalties in the amount of $76,082.50.


4105 E. Ogden Avenue
Major Cross Streets:
Stewart Avenue///Ronald Lane
STEWART AVE
PELHAM CT
SAGUARO LN
SACRAMENTO DR
LA BREA CT
RONALD LN
PRINCE LN
E OGDEN AVE
4103
4105
4102
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4117
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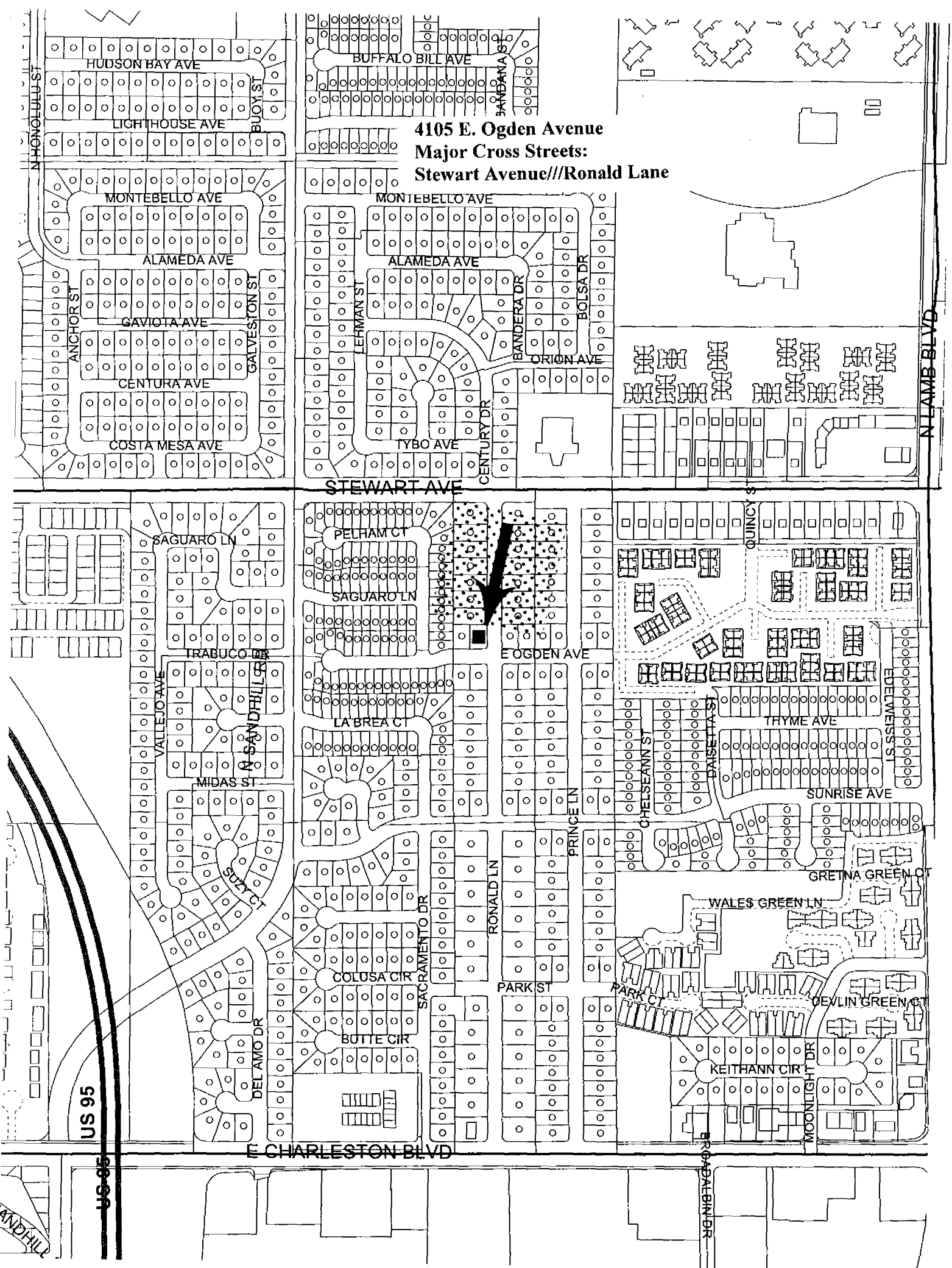
4112
4116
4120


4105 E. Ogden Avenue
Major Cross Streets:
Stewart Avenue///Ronald Lane
HUDSON BAY AVE
LIGHTHOUSE AVE
BUOY ST
N HONOLULU ST
BUFFALO BILL AVE
SANDANA ST
MONTEBELLO AVE
ALAMEDA AVE
GAVIOTA AVE
CENTURA AVE
COSTA MESA AVE
ANCHOR ST
GALVESTON ST
LEHMAN ST
BANDERA DR
BOLSA DR
ORION AVE
TYBO AVE
CENTURY DR
NLAMB BLVD
STEWART AVE
QUINCY ST
SAGUARO LN
PELHAM CT
TRABUCO DR
VALLEJO AVE
N SANDHILL DR
MIDAS ST
SUSSEX CT
LA BREA CT
E OGDEN AVE
PRINCE LN
RONALD LN
SACRAMENTO DR
COLUSA CIR
BUTTE CIR
DEL AMO DR
PARK ST
PARK CT
THYME AVE
SUNRISE AVE
CHELSEANN ST
DASETTA ST
DELEWISS ST
GRETNA GREEN CT
WALES GREEN LN
DEVLIN GREEN CT
KEITHANN CIR
MOONLIGHT DR
BROADALBIN DR
US 95
E CHARLESTON BLVD

LAS VEGAS CITY COUNCIL

OSCAR B. GOODMAN
MAYOR

GARY REESE
MAYOR PRO TEM

STEVE WOLFSON
LOIS TARKANIAN
STEVEN D. ROSS
RICKI Y. BARLOW
STAVROS S. ANTHONY

ELIZABETH N. FRETWELL
CITY MANAGER

NOTICE OF PUBLIC HEARING

SEPTEMBER 15, 2010

Pursuant to Las Vegas Municipal Code for the Abatement of Dangerous Buildings/Nuisance Code and/or Housing Code, NOTICE IS HEREBY GIVEN THAT ON **WEDNESDAY, SEPTEMBER 15, 2010,** at the hour of **1:00 P.M.** in the City Council Chambers, 400 Stewart Avenue, Las Vegas, Nevada, the City Council will consider the REPORT OF EXPENSES submitted by the Director of Neighborhood Services for:

> Waiver and/or reduction of abatement costs, daily civil penalties and accrued interest for the violations on the property located at 4105 East Ogden Avenue – Case #64931. The Director of Neighborhood Services certifies that abatement costs, daily civil penalties and accrued interest in the total sum of $76,000 were imposed. Owner of record: JUAN LOPEZ AND BRENDA CORONA – WARD 3 (REESE)

If the City Council is satisfied with the report, it may release the lien of assessment recorded against the property. Any person affected by the proposed charge may file a written protest with the City Clerk any time prior to the hearing. Each protest must contain a description of the property and the grounds for the protest.

BEVERLY K. BRIDGES
CITY CLERK

CITY OF LAS VEGAS
400 STEWART AVENUE
LAS VEGAS, NEVADA 89101

VOICE 702.229.6011
TTY 702.386.9108
www.lasvegasnevada.gov

Printed with environmentally friendly soy ink

City of Las Vegas Agenda Item No.: **74.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

DEPARTMENT: NEIGHBORHOOD SERVICES
DIRECTOR: STEPHEN K. HARSIN ☐ **Consent** ☒ **Discussion**

SUBJECT:
Hearing and possible action on a 45-day review for the vacant or abandoned buildings located at 4152 Silver Dollar Avenue Units 2, 4, 5, 7-8, 4168 Silver Dollar Avenue Units 1-4, 6-8, 4186 Silver Dollar Avenue Units 1-7. PROPERTY OWNERS: RFH LA PAZ LLC - Ward 1 (Tarkanian)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division: Neighborhood Services/Response

PURPOSE/BACKGROUND:
The subject properties were determined to be substandard, dangerous and declared a public nuisance as defined in Las Vegas Municipal Code (LVMC), Title 9.04.020 and Section 202 of the Uniform Housing Code. A Nuisance Housing Code Notice and Order to Comply was mailed to the property owners to correct the nuisance per 9.04 – Graffiti, Refuse and Waste, Weeds/Turf; LVMC 13.28 – Street Naming and Address Assignment; 16.20 – Housing Codes; and Title 19. Today's hearing is a review regarding the status of violations and civil penalties from the Public Hearing item on March 4, 2009 and April 15, 2009.

RECOMMENDATION:
Review status of violations listed in Nuisance Housing Code Notice and Order to Comply mailed on September 11, 2008 and the Notice and Order Regarding Vacant or Abandoned Building mailed on August 11, 2008 and recommends a one year review.

BACKUP DOCUMENTATION:
1. Agenda Memo
2. Location Maps
3. Nuisance Housing Code and Vacant or Abandoned Notice and Orders to Comply dated September 11, 2008 and August 11, 2008
4. Reinspection Report for October 15, 2009
5. Review Hearing Notification Letters

City of Las Vegas

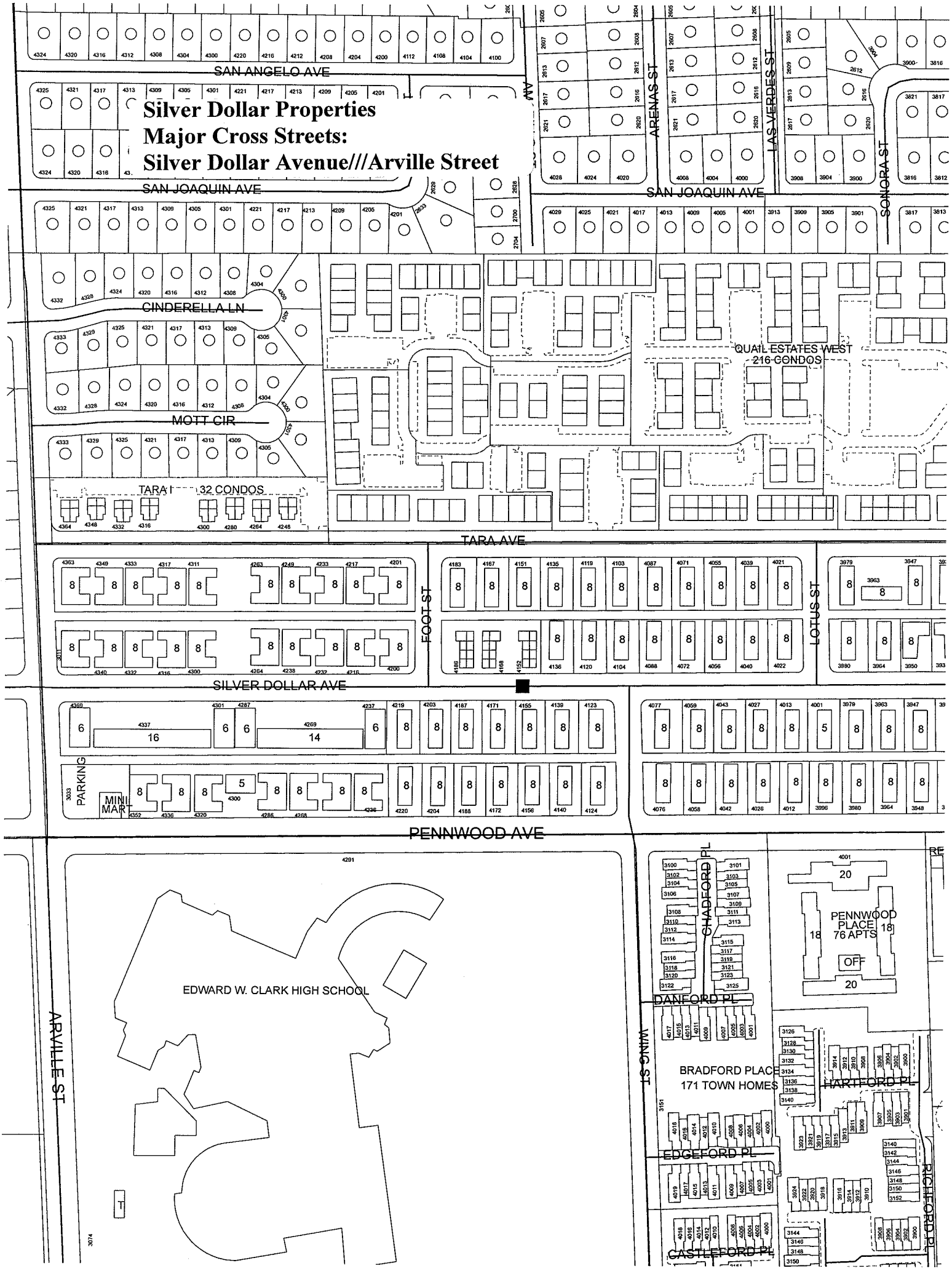
AGENDA MEMO

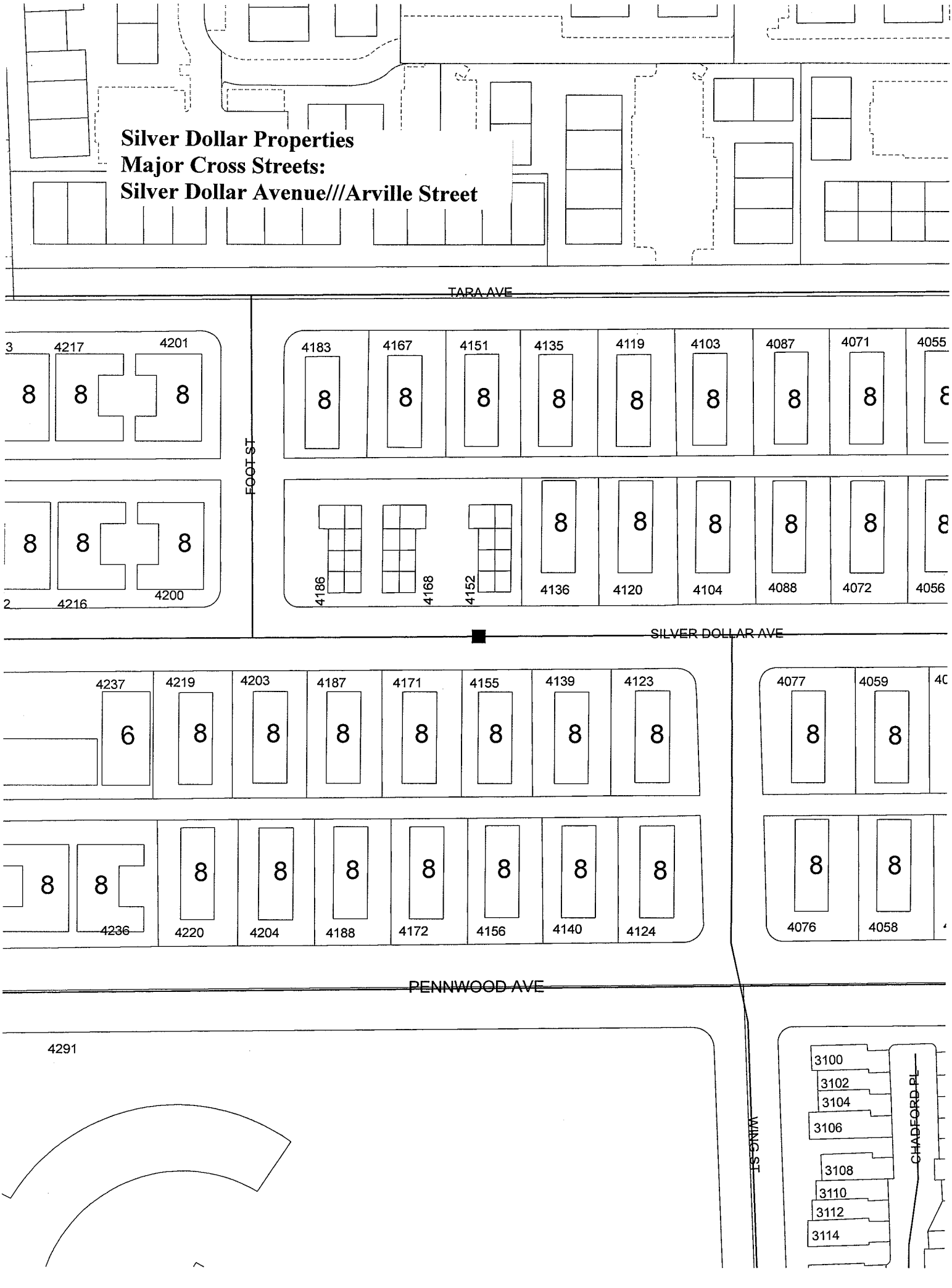
CITY COUNCIL MEETING DATE: SEPTEMBER 15, 2010
DEPARTMENT: Neighborhood Services
ITEM DESCRIPTION: Hearing and possible action on a 45-day review for the vacant or abandoned buildings located at 4152 Silver Dollar Avenue Unit 2, 4, 5, 7-8, 4168 Silver Dollar Avenue Units 1-4, 6-8, 4186 Silver Dollar Avenue Units 1-7.
PROPERTY OWNERS: RFH LA PAZ LLC - Ward 1 (Tarkanian)

The subject properties were determined to be substandard, dangerous and declared a public nuisance as defined in Las Vegas Municipal Code (LVMC), Title 9.04.020 and Section 202 of the Uniform Housing Code.

Nuisance Housing Code Notice and Order to Comply and a Notice and Order Regarding Vacant or Abandoned Building was mailed to the property owners by regular mail and certified mail requesting they correct the nuisance per 9.04 – Graffiti, Refuse and Waste, Weeds/Turf; LVMC 13.28 – Street Naming and Address Assignment; 16.20 – Housing Codes; and Title 19. A copy of the notice was also posted on the property.

Today's hearing is a review of the status of violations listed in Nuisance Housing Code Notice and Order to Comply mailed on September 11, 2008 and the Notice and Order Regarding Vacant or Abandoned Building mailed on August 11, 2008 and a review of civil penalties assessed. Neighborhood Response recommends a one year review.


Silver Dollar Properties
Major Cross Streets:
Silver Dollar Avenue///Arville Street
SAN ANGELO AVE
SAN JOAQUIN AVE
SAN JOAQUIN AVE
ARENAS ST
LAS VERDES ST
SONORA ST
CINDERELLA LN
MOTT CIR
TARA I 32 CONDOS
QUAIL ESTATES WEST
216 CONDOS
TARA AVE
FOOT ST
LOTUS ST
SILVER DOLLAR AVE
PARKING
MINI MART
PENNWOOD AVE
EDWARD W. CLARK HIGH SCHOOL
ARVILLE ST
CHADFORD PL
DANFORD PL
MINO ST
BRADFORD PLACE
171 TOWN HOMES
PENNWOOD PLACE
76 APTS
OFF
HARTFORD PL
EDGEFORD PL
CASTLEFORD PL
RICHFORD PL


Silver Dollar Properties
Major Cross Streets:
Silver Dollar Avenue///Arville Street
TARA AVE
FOOT ST
SILVER DOLLAR AVE
PENNWOOD AVE
WING ST
CHADFORD PL
4291
4236
4216
4200
4186
4168
4152
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3112
3114

Receipt/Conformed Copy
Requestor:
LAS VEGAS CITY
09/18/2008 12:14:22 T20080215079
Book/Instr: 20080918-0002777
Notice Page Count: 7
Fees: $20.00 N/C Fee: $0.00

Debbie Conway
Clark County Recorder

NEIGHBORHOOD SERVICES DEPARTMENT
DIRECTOR
STEPHEN HARSIN, AICP

NOTICE AND ORDER

APN: 162-07-622-018

September 11, 2008

Case #68190

Certified/Regular Mail
Return Receipt Requested

R F H La Paz, LLC
3910 Pecos-McLeod Rd. #B-100
Las Vegas, NV 89121-0000

REVISED
NOTICE AND ORDER REGARDING VACANT OR ABANDONED BUILDING

You are hereby notified as recorded owner(s) of the property located at **4152 Silver Dollar Ave.- #2, Las Vegas, NV, Parcel # 162-07-622-018,** as follows:

One or more vacant or abandoned buildings on the property, by reason of their condition or impact on surrounding property, have been identified as buildings that need to be boarded, demolished, rehabilitated, or any combination thereof, in accordance with Chapter 16.31 of the Las Vegas Municipal Code. The building or buildings are identified as a **residential condominium located at 4152 Silver Dollar Ave. - #2.**

Per 9.04 – Refuse & Waste: Remove any visible non-usable materials, goods, etc. from all yards and other areas, to comply with code. i.e., paper, plastic, wood, bottles, etc.

Per 9.04 – Weeds/Turf: Trim, cut, remove all weeds/turf grass exceeding eight (8) inches in height in all yards. Cut back all trees and bushes to allow unobstructed view from street, sidewalk, and/or alleyway.

Per 16.04 – Building Permits Required - Department of Building and Safety, 731 S. 4th Street, (702) 229-6251.

12. Infestation of insects, vermin or rodents as determined by the health officer.
Provide continuous extermination by licensed pest control.

1994 Uniform Housing Code 1001.6 Hazardous Plumbing.
16.28.010 Uniform Plumbing Code and supplement adopted.
(A) Uniform Plumbing Code, 2006 Edition, including its Standards and Appendices, except as otherwise indicated, designated as Part 1 of this Chapter; and
(B) A document entitled "Southern Nevada Amendments to the 2006 Uniform Plumbing Code," adding to, deleting from and amending the Uniform Plumbing Code, 2006 Edition, designated as Part 2 of this Chapter.
Chapter 5 Water Heaters
Install correct plumbing fittings and material for water heater by license contractor.
Chapter 6 Water Supply and Distribution
Section 601.3 Existing piping used for grounding
Restore and return the copper water piping as the grounding electrode.

1994 Uniform Housing Chapter 10 Section 1001.8 Faulty Weather Protection.
Any and all windows broken or in disrepair are to be made in good repair or replaced.

1994 Uniform Housing Code Section Chapter 7 Mechanical Requirements
1994 UHC 701.1 Heating
Dwelling units, guest rooms and congregate residences shall be provided with heating facilities capable of maintaining a room temperature of 70°F. (21.1°C.) at a point 3 feet (914 mm) above the floor in all habitable rooms. Such facilities shall be installed and maintained in a safe condition and in accordance with Section 3102 of the Building Code , the Mechanical Code, and all other applicable laws. Unvented fuel-burning heaters are not permitted. All heating devices or appliances shall be of an approved type.
1. Cooling Facilities and Cooking Equipment. If a dwelling unit or guest room has been provided with cooling facilities or cooking equipment, or both, such facilities and equipment shall be maintained in a safe working condition or replaced.

Provide safe working cooling facilities or replace.
Provide safe working cooking equipment or replace.

LVMC 16.32.270 Applicability.
The requirements set out in this Article shall apply to all residential-type buildings including those existing, those new and those to be constructed in order to provide the maximum possible security from criminal actions to the permanent and transient occupants thereof, and to their possessions.

16.32.280 Entrance doors direct to outside.
These requirements shall apply to all housing units, whether detached, attached to or within a building, having individual entrances immediately accessible from the outside without other intervening entrance doors:
(A) Entrance doors to housing units shall be capable of resisting forcible entry equal to a single-panel or hollow-core door one-and-three eighths inches thick.

proposed landscaping plan is denied, the owner or manager may appeal the denial to the Planning Commission.

(B) Upon approval of a landscaping plan, the owner and manager of the development shall be jointly and severally responsible for maintaining the approved landscaping in accordance with this Chapter.

Provide and maintain landscaping

The listed corrections must be completed in order to obtain compliance. Please note that any repairs requiring replacement of building components must include permits, inspections and must be performed by a licensed contractor.

Per 16.31 – Vacant Buildings: Submit Letter of Intent. Obtain Boarding Certificate. Provide Mitigation Plan. Provide Rehabilitation Plan.

Post: No trespassing (per NRS 207.200), contact Bolden Area Command, COP Office at 289-5593 to have building properly posted.

Upon correction of violation(s), the responsible party; being resident, tenant, owner, or manager, licensee or other person having control over a structure or parcel of land, must maintain property in compliance or face possible fees, fines, and any such enforcement as permitted by this code.

Responsible party must provide contact information to this department. Contact area code enforcement officer #16 at 229-4918 to supply your current phone number, email address, fax number, or additional mailing address.

In accordance with Chapter 16.31, you are required to:

- **Submit, within 60 days, a Mitigation and Rehabilitation Plan to address the vacant property. The Mitigation and Rehabilitation Plan must be filed with the Department of Neighborhood Services and must include:**

A statement indicating your intentions, as owner(s) of the property, for the future use of the property for the next 12 months, including, without limitation, plans to maintain, redevelop, or reestablish lawful occupancy of the property, or any combination of such activities;

A detailed plan of mitigation measures that you intend to take regarding the property, including, without limitation, measures to maintain the property; restore and maintain landscaping on the property; and provide and maintain adequate security for the property;

A detailed plan of rehabilitation measures that you intend to take regarding the property, including, without limitation, plans to restore buildings, and to maintain the property so as to remove the negative impact on surrounding properties;

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more than one thousand ($1000.00) per day, for each day that any nuisance remained unabated after the date specified for abatement in the notice of violation. The $500.00 or $1000 daily civil penalty will be determined at the discretion of the city council. Any and all unpaid fees are subject to collection and/or liens.

The City is authorized to record this Notice and Order until such time as compliance has been obtained. Should you have any questions or concerns please call me at (702) 229-6615.

Sincerely,

Devin S. Smith, Manager
Neighborhood Response Division
Neighborhood Services Department

Enclosures: City of Las Vegas Abatement Specifications
City of Las Vegas Vacant & Boarded Structures Mitigation/Rehabilitation Plan
City of Las Vegas Vacant & Boarded Structures Statement of Intent
City of Las Vegas Boarded Building Certificate Application

PER ORD 3744-PROVIDE CORRECT ADDRESS AS DEFINED BY COUNTY RECORDS.

PER 2006 IBC SECTION 501.2 AND ORD 3744: PROVIDE ADDRESS ON BUILDING AND INCLUDE IN DESIGN OF ADDRESS SIGN.

PER LVMC 19.10: PROVIDE LITTER FREE PARKING STALL MARKED AND PROVIDE WHEEL STOPS.

PER LVMC 19.12: SUBMIT LANDSCAPE PLAN TO CITY OF LAS VEGAS PLANNING AND DEVELOPMENT LOCATED AT 731 S 4TH ST AND INSTALL TO APPROVED SPECIFICATIONS. KEEP MAINTAINED AT ALL TIMES.

1994 UNIFORM HOUSING CODE SUPPLEMENT, SECTION 12 -OBTAIN PROPER PERMITS FOR THE REHABILITATION OF UNIT AND ACHIEVE A CERTIFICATE OF OCCUPANCY FOR CONDOMINIUM. REPAIRS MUST INCLUDE (BUT NOT LIMITED TO) THE FOLLOWING:

1994 UNIFORM HOUSING CODE, CHAPTER 10: PROVIDE DRAINAGE FREE FROM OBSTRUCTION INCLUDING THE JETTING OF COMMON DRAIN SYSTEM.

2006 INTERNATIONAL PLUMBING CODE, SECTION 601.3: RESTORE AND RETURN THE COPPER WATER PIPING AS THE GROUNDING ELECTRODE.

1994 UNIFORM HOUSING CODE, SECTION 1001.1: INTERIOR WALLS AND CEILINGS ARE TO HAVE ALL HOLES, PENETRATIONS, ANNULAR OPENINGS SEALED OR CAULKED.

1994 UNIFORM HOUSING CODE, CHAPTER 10: INTERIOR LAUNDRY ROOM TO BE IN GOOD REPAIR AND SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001.8: ANY/ALL WINDOWS BROKEN OR IN DISREPAIR ARE TO BE MADE IN GOOD REPAIR OR REPLACED.

2006 INTERNATIONAL PLUMBING CODE, CHAPTER 5: OBTAIN LICENSED PLUMBING CONTRACTOR TO INSTALL CORRECT PLUMING FITTINGS AND MATERIAL FOR WATER HEATER.

1994 UNIFORM HOUSING CODE, SUPPLEMENT, SECTIONS 9 AND 10: PROVIDE SAFE WORKING COOKING FACILITIES

1994 UNIFORM HOUSING CODE, SUPPLEMENT SECTION 10: PROVIDE SAFE WORKING COOLING FACILITIES.

1994 UNIFORM HOUSING CODE CHAPTER 10: FLOORING TO BE MADE SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001: BATHROOMS TO HAVE FIXTURES PROPERLY INSTALLED, GOOD DRAINAGE, LEAK FREE AND SANITARY.

LVMC TITLE 16.32: REPLACE AND PROPERLY INSTALL ENTRY DOOR WITH ALL REQUIRED HARDWARE

- **Obtain a building permit for one or more buildings on the property that have been boarded without obtaining a permit, the building(s) being identified as a single family dwelling located at 4152 Silver Dollar Ave., #2.**

In order to demolish one or more buildings, you are required to first obtain a demolition permit, and then to secure and maintain the remaining vacant property so as to remove the negative impact on surrounding properties.

If you fail to submit a Mitigation and Rehabilitation Plan or board a building within the timeframe(s) set forth above, the Director of Neighborhood Services is authorized to cause to be performed appropriate mitigation or rehabilitation work, or any combination thereof. As the property owner(s), you will be responsible for all costs incurred, including a fifteen percent (15%) administrative fee. You will be notified of a public hearing to be conducted by the City Council to review the costs, and the Council's decision shall be final and conclusive. Upon approval of the costs by the City Council, the City will be authorized to file a Lien of Assessment with the County Recorder's Office. Thereafter, certified copies of the lien will be given to the County Treasurer, and the amount of the Lien of Assessment shall then be collected at the same time and in the same manner as ordinary taxes. All laws applicable to the levy, collection, and enforcement of property taxes shall be applicable to such assessment.

Moreover, you are hereby given notice:

1. That within fifteen (15) days after service of this Notice and Order, you as the owner or responsible party may appeal to the City Council. Such appeal shall be in writing and shall be filed with the City Clerk. Within fifteen (15) days after the appeal has been filed, you will be given written notice of the procedure and time frame for the hearing of the appeal. The appeal will be heard by the City Council or by the Council's designee, with a right to final appeal to the Council. An owner or responsible party who fails to appeal shall be deemed to have waived any and all objections to the actions taken by the Director of Neighborhood Services to satisfy the requirements of this Notice and Order.
2. That this Notice and Order or a copy thereof must be presented to the Department of Building and Safety when requesting any permit(s).
3. That failure to appeal will constitute a waiver of all rights to an administrative hearing to determine this matter.

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more

14

20080918-0002768

Fee: $20.00
N/C Fee: $0.00
09/18/2008 12:14:22
T20080215079
Requestor:
LAS VEGAS CITY
Debbie Conway SCA
Clark County Recorder Pgs: 7

NEIGHBORHOOD SERVICES DEPARTMENT
DIRECTOR
STEPHEN HARSIN, AICP

NOTICE AND ORDER

(1)

APN: 162-07-622-020

September 11, 2008

Case #68189

Certified/Regular Mail
Return Receipt Requested

R F H La Paz, LLC
3910 Pecos-McLeod Rd. #B-100
Las Vegas, NV 89121-0000

REVISED
NOTICE AND ORDER REGARDING VACANT OR ABANDONED BUILDING

You are hereby notified as recorded owner(s) of the property located at **4152 Silver Dollar Ave.- #4, Las Vegas, NV, Parcel # 162-07-622-020,** as follows:

One or more vacant or abandoned buildings on the property, by reason of their condition or impact on surrounding property, have been identified as buildings that need to be boarded, demolished, rehabilitated, or any combination thereof, in accordance with Chapter 16.31 of the Las Vegas Municipal Code. The building or buildings are identified as a **residential condominium located at 4152 Silver Dollar Ave. - #4.**

Per 9.04 – Refuse & Waste: Remove any visible non-usable materials, goods, etc. from all yards and other areas, to comply with code. i.e., paper, plastic, wood, bottles, etc.

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Per 16.04 – Building Permits Required - Department of Building and Safety, 731 S. 4th Street, (702) 229-6251.

LAS VEGAS CITY COUNCIL
MAYOR OSCAR B. GOODMAN
MAYOR PRO TEM GARY REESE • LARRY BROWN • STEVE WOLFSON • LOIS TARKANIAN
STEVEN D. ROSS • RICKI Y. BARLOW
CITY MANAGER DOUGLAS A. SELBY

Return to: CITY OF LAS VEGAS • 400 STEWART AVENUE • LAS VEGAS, NEVADA 89101
VOICE 702.229.6615 • FAX 702.382.4341 • TTY 702.386.9108 • www.lasvegasnevada.gov

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Provide continuous extermination by licensed pest control.

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Per 16.31 – Vacant Buildings: Submit Letter of Intent. Obtain Boarding Certificate. Provide Mitigation Plan. Provide Rehabilitation Plan.

Post: No trespassing (per NRS 207.200), contact Bolden Area Command, COP Office at 289-5593 to have building properly posted.

Upon correction of violation(s), the responsible party; being resident, tenant, owner, or manager, licensee or other person having control over a structure or parcel of land, must maintain property in compliance or face possible fees, fines, and any such enforcement as permitted by this code.

Responsible party must provide contact information to this department. Contact area code enforcement officer #16 at 229-4918 to supply your current phone number, email address, fax number, or additional mailing address.

In accordance with Chapter 16.31, you are required to:

- **Submit, within 60 days, a Mitigation and Rehabilitation Plan to address the vacant property. The Mitigation and Rehabilitation Plan must be filed with the Department of Neighborhood Services and must include:**

A statement indicating your intentions, as owner(s) of the property, for the future use of the property for the next 12 months, including, without limitation, plans to maintain, redevelop, or reestablish lawful occupancy of the property, or any combination of such activities;

A detailed plan of mitigation measures that you intend to take regarding the property, including, without limitation, measures to maintain the property; restore and maintain landscaping on the property; and provide and maintain adequate security for the property;

A detailed plan of rehabilitation measures that you intend to take regarding the property, including, without limitation, plans to restore buildings, and to maintain the property so as to remove the negative impact on surrounding properties;

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more than one thousand ($1000.00) per day, for each day that any nuisance remained unabated after the date specified for abatement in the notice of violation. The $500.00 or $1000 daily civil penalty will be determined at the discretion of the city council. Any and all unpaid fees are subject to collection and/or liens.

The City is authorized to record this Notice and Order until such time as compliance has been obtained. Should you have any questions or concerns please call me at (702) 229-6615.

Sincerely,

Devin S. Smith, Manager
Neighborhood Response Division
Neighborhood Services Department

Enclosures: City of Las Vegas Abatement Specifications
City of Las Vegas Vacant & Boarded Structures Mitigation/Rehabilitation Plan
City of Las Vegas Vacant & Boarded Structures Statement of Intent
City of Las Vegas Boarded Building Certificate Application

PER ORD 3744-PROVIDE CORRECT ADDRESS AS DEFINED BY COUNTY RECORDS.

PER 2006 IBC SECTION 501.2 AND ORD 3744: PROVIDE ADDRESS ON BUILDING AND INCLUDE IN DESIGN OF ADDRESS SIGN.

PER LVMC 19.10: PROVIDE LITTER FREE PARKING STALL MARKED AND PROVIDE WHEEL STOPS.

PER LVMC 19.12: SUBMIT LANDSCAPE PLAN TO CITY OF LAS VEGAS PLANNING AND DEVELOPMENT LOCATED AT 731 S 4TH ST AND INSTALL TO APPROVED SPECIFICATIONS. KEEP MAINTAINED AT ALL TIMES.

1994 UNIFORM HOUSING CODE SUPPLEMENT, SECTION 12 -OBTAIN PROPER PERMITS FOR THE REHABILITATION OF UNIT AND ACHIEVE A CERTIFICATE OF OCCUPANCY FOR CONDOMINIUM. REPAIRS MUST INCLUDE (BUT NOT LIMITED TO) THE FOLLOWING:

1994 UNIFORM HOUSING CODE, CHAPTER 10: PROVIDE DRAINAGE FREE FROM OBSTRUCTION INCLUDING THE JETTING OF COMMON DRAIN SYSTEM.

2006 INTERNATIONAL PLUMBING CODE, SECTION 601.3: RESTORE AND RETURN THE COPPER WATER PIPING AS THE GROUNDING ELECTRODE.

1994 UNIFORM HOUSING CODE, SECTION 1001.1: INTERIOR WALLS AND CEILINGS ARE TO HAVE ALL HOLES, PENETRATIONS, ANNULAR OPENINGS SEALED OR CAULKED.

1994 UNIFORM HOUSING CODE, CHAPTER 10: INTERIOR LAUNDRY ROOM TO BE IN GOOD REPAIR AND SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001.8: ANY/ALL WINDOWS BROKEN OR IN DISREPAIR ARE TO BE MADE IN GOOD REPAIR OR REPLACED.

2006 INTERNATIONAL PLUMBING CODE, CHAPTER 5: OBTAIN LICENSED PLUMBING CONTRACTOR TO INSTALL CORRECT PLUMING FITTINGS AND MATERIAL FOR WATER HEATER.

1994 UNIFORM HOUSING CODE, SUPPLEMENT, SECTIONS 9 AND 10: PROVIDE SAFE WORKING COOKING FACILITIES

1994 UNIFORM HOUSING CODE, SUPPLEMENT SECTION 10: PROVIDE SAFE WORKING COOLING FACILITIES.

1994 UNIFORM HOUSING CODE CHAPTER 10: FLOORING TO BE MADE SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001: BATHROOMS TO HAVE FIXTURES PROPERLY INSTALLED, GOOD DRAINAGE, LEAK FREE AND SANITARY.

LVMC TITLE 16.32: REPLACE AND PROPERLY INSTALL ENTRY DOOR WITH ALL REQUIRED HARDWARE

- **Obtain a building permit for one or more buildings on the property that have been boarded without obtaining a permit, the building(s) being identified as a single family dwelling located at 4152 Silver Dollar Ave., #4.**

In order to demolish one or more buildings, you are required to first obtain a demolition permit, and then to secure and maintain the remaining vacant property so as to remove the negative impact on surrounding properties.

If you fail to submit a Mitigation and Rehabilitation Plan or board a building within the timeframe(s) set forth above, the Director of Neighborhood Services is authorized to cause to be performed appropriate mitigation or rehabilitation work, or any combination thereof. As the property owner(s), you will be responsible for all costs incurred, including a fifteen percent (15%) administrative fee. You will be notified of a public hearing to be conducted by the City Council to review the costs, and the Council's decision shall be final and conclusive. Upon approval of the costs by the City Council, the City will be authorized to file a Lien of Assessment with the County Recorder's Office. Thereafter, certified copies of the lien will be given to the County Treasurer, and the amount of the Lien of Assessment shall then be collected at the same time and in the same manner as ordinary taxes. All laws applicable to the levy, collection, and enforcement of property taxes shall be applicable to such assessment.

Moreover, you are hereby given notice:

1. That within fifteen (15) days after service of this Notice and Order, you as the owner or responsible party may appeal to the City Council. Such appeal shall be in writing and shall be filed with the City Clerk. Within fifteen (15) days after the appeal has been filed, you will be given written notice of the procedure and time frame for the hearing of the appeal. The appeal will be heard by the City Council or by the Council's designee, with a right to final appeal to the Council. An owner or responsible party who fails to appeal shall be deemed to have waived any and all objections to the actions taken by the Director of Neighborhood Services to satisfy the requirements of this Notice and Order.
2. That this Notice and Order or a copy thereof must be presented to the Department of Building and Safety when requesting any permit(s).
3. That failure to appeal will constitute a waiver of all rights to an administrative hearing to determine this matter.

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more

31

20080918-0002762

Fee: $19.00
N/C Fee: $0.00
09/18/2008 12:14:22
T20080215079
Requestor:
LAS VEGAS CITY
Debbie Conway SCA
Clark County Recorder Pgs: 6

NEIGHBORHOOD SERVICES DEPARTMENT
DIRECTOR
STEPHEN HARSIN, AICP

NOTICE AND ORDER

APN: 162-07-622-021

(6)

September 11, 2008

Case #68177

Certified/Regular Mail
Return Receipt Requested

R F H La Paz, LLC
3910 Pecos-McLeod Rd. #B-100
Las Vegas, NV 89121-0000

NUISANCE HOUSING CODE NOTICE AND ORDER TO COMPLY

As recorded owner(s) of the **residential condominium located at 4152 Silver Dollar Ave. - #5, Las Vegas, NV, legally described as Parcel # 162-07-622-021**, you are hereby given notice that the Building Official or his designee has determined that the aforementioned building(s) is substandard. Said building(s) is substandard, dangerous and declared a public nuisance under Las Vegas Municipal Code (LVMC) 9.04.020 and Section 202 of the Uniform Housing Code because of the following conditions:

Per 9.04 – Graffiti: Remove or paint over graffiti on any building, wall, fence, or other structure allowed to remain for more than 24 hours.

Per 9.04 – Refuse & Waste: Remove any visible non-usable materials, goods, etc. from all yards and other areas, to comply with code. i.e., paper, plastic, wood, bottles, etc.

Per 9.04 – Weeds/Turf: Trim, cut, remove all weeds/turf grass exceeding eight (8) inches in height in all yards. Cut back all trees and bushes to allow unobstructed view from street, sidewalk, and/or alleyway.

LAS VEGAS CITY COUNCIL
MAYOR OSCAR B. GOODMAN
MAYOR PRO TEM GARY REESE • LARRY BROWN • STEVE WOLFSON • LOIS TARKANIAN
STEVEN D. ROSS • RICKI Y. BARLOW
CITY MANAGER DOUGLAS A. SELBY

Return to: CITY OF LAS VEGAS • 400 STEWART AVENUE • LAS VEGAS, NEVADA 89101
VOICE 702.229.6615 • FAX 702.382.4341 • TTY 702.386.9108 • www.lasvegasnevada.gov

1994 Uniform Housing Code 1001.6 Hazardous Plumbing.

16.28.010 Uniform Plumbing Code and supplement adopted.

(A) Uniform Plumbing Code, 2006 Edition, including its Standards and Appendices, except as otherwise indicated, designated as Part 1 of this Chapter; and

(B) A document entitled "Southern Nevada Amendments to the 2006 Uniform Plumbing Code," adding to, deleting from and amending the Uniform Plumbing Code, 2006 Edition, designated as Part 2 of this Chapter.

Chapter 5 Water Heaters

Install correct plumbing fittings and material for water heater by licensed contractor.

Chapter 6 Water Supply and Distribution

Section 601.3 Existing piping used for grounding

Restore and return the copper water piping as the grounding electrode.

1994 Uniform Housing Chapter 10 Section 1001.8 Faulty Weather Protection.

Any and all windows broken or in disrepair are to be made in good repair or replaced.

1994 Uniform Housing Code Section Chapter 7 Mechanical Requirements

1994 UHC 701.1 Heating

Dwelling units, guest rooms and congregate residences shall be provided with heating facilities capable of maintaining a room temperature of 70°F. (21.1°C.) at a point 3 feet (914 mm) above the floor in all habitable rooms. Such facilities shall be installed and maintained in a safe condition and in accordance with Section 3102 of the Building Code , the Mechanical Code, and all other applicable laws. Unvented fuel-burning heaters are not permitted. All heating devices or appliances shall be of an approved type.

1. Cooling Facilities and Cooking Equipment. If a dwelling unit or guest room has been provided with cooling facilities or cooking equipment, or both, such facilities and equipment shall be maintained in a safe working condition or replaced.

Provide safe working cooling facilities or replace.
Provide safe working cooking equipment or replace.

LVMC 16.32.270 Applicability.

The requirements set out in this Article shall apply to all residential-type buildings including those existing, those new and those to be constructed in order to provide the maximum possible security from criminal actions to the permanent and transient occupants thereof, and to their possessions.

16.32.280 Entrance doors direct to outside.

These requirements shall apply to all housing units, whether detached, attached to or within a building, having individual entrances immediately accessible from the outside without other intervening entrance doors:

(A) Entrance doors to housing units shall be capable of resisting forcible entry equal to a single-panel or hollow-core door one-and-three eighths inches thick.

(B) Dead bolts openable without key from the inside shall be provided on all housing unit entrance doors.

proposed landscaping plan is denied, the owner or manager may appeal the denial to the Planning Commission.

(B) Upon approval of a landscaping plan, the owner and manager of the development shall be jointly and severally responsible for maintaining the approved landscaping in accordance with this Chapter.

Provide and maintain landscaping

The listed corrections must be completed in order to obtain compliance. Please note that any repairs requiring replacement of building components must include permits, inspections and must be performed by a licensed contractor.

Post: No trespassing (per NRS 207.200), contact Bolden Area Command, COP Office at 289-5593 to have building properly posted.

Upon correction of violation(s), the responsible party; being resident, tenant, owner, or manager, licensee or other person having control over a structure or parcel of land, must maintain property in compliance or face possible fees, fines, and any such enforcement as permitted by this code.

Responsible party must provide contact information to this department. Contact area code enforcement officer #31 at 229-2016 to supply your current phone number, email address, fax number, or additional mailing address.

Moreover, you are hereby given notice:

1. That within ten (10) days after service of this Notice and Order, you as the owner or responsible party may appeal to the City Council. Such appeal shall be in writing and shall be filed with the City Clerk. Within fifteen (15) days after the appeal has been filed, you will be given written notice of the procedure and time frame for the hearing of the appeal. The appeal will be heard by the City Council or by the Council's designee, with a right to final appeal to the Council. An owner or responsible party who fails to appeal shall be deemed to have waived any and all objections to the actions taken by the Director of Neighborhood Services to satisfy the requirements of this Notice and Order.
2. That this Notice and Order or a copy thereof must be presented to the Department of Building and Safety when requesting any permit(s).
3. That failure to appeal will constitute a waiver of all rights to an administrative hearing to determine this matter.

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed

Receipt/Conformed Copy
Requestor:
LAS VEGAS CITY
09/18/2008 12:14:22 T20080215079
Book/Instr: 20080918-0002766
Notice Page Count: 7
Fees: $20.00 N/C Fee: $0.00

Debbie Conway
Clark County Recorder

NEIGHBORHOOD SERVICES DEPARTMENT
DIRECTOR
STEPHEN HARSIN, AICP

NOTICE AND ORDER

APN: 162-07-622-023

COPY

September 11, 2008

Case #68191

Certified/Regular Mail
Return Receipt Requested

R F H La Paz, LLC
3910 Pecos-McLeod Rd. #B-100
Las Vegas, NV 89121-0000

REVISED
NOTICE AND ORDER REGARDING VACANT OR ABANDONED BUILDING

You are hereby notified as recorded owner(s) of the property located at **4152 Silver Dollar Ave.-#7, Las Vegas, NV, Parcel # 162-07-622-023,** as follows:

One or more vacant or abandoned buildings on the property, by reason of their condition or impact on surrounding property, have been identified as buildings that need to be boarded, demolished, rehabilitated, or any combination thereof, in accordance with Chapter 16.31 of the Las Vegas Municipal Code. The building or buildings are identified as a **residential condominium located at 4152 Silver Dollar Ave. - #7.**

Per 9.04 – Refuse & Waste: Remove any visible non-usable materials, goods, etc. from all yards and other areas, to comply with code. i.e., paper, plastic, wood, bottles, etc.

Per 9.04 – Weeds/Turf: Trim, cut, remove all weeds/turf grass exceeding eight (8) inches in height in all yards. Cut back all trees and bushes to allow unobstructed view from street, sidewalk, and/or alleyway.

Per 16.04 – Building Permits Required - Department of Building and Safety, 731 S. 4th Street, (702) 229-6251.

12. Infestation of insects, vermin or rodents as determined by the health officer.
Provide continuous extermination by licensed pest control.

1994 Uniform Housing Code 1001.6 Hazardous Plumbing.
16.28.010 Uniform Plumbing Code and supplement adopted.
(A) Uniform Plumbing Code, 2006 Edition, including its Standards and Appendices, except as otherwise indicated, designated as Part 1 of this Chapter; and
(B) A document entitled "Southern Nevada Amendments to the 2006 Uniform Plumbing Code," adding to, deleting from and amending the Uniform Plumbing Code, 2006 Edition, designated as Part 2 of this Chapter.
Chapter 5 Water Heaters
Install correct plumbing fittings and material for water heater by license contractor.
Chapter 6 Water Supply and Distribution
Section 601.3 Existing piping used for grounding
Restore and return the copper water piping as the grounding electrode.

1994 Uniform Housing Chapter 10 Section 1001.8 Faulty Weather Protection.
Any and all windows broken or in disrepair are to be made in good repair or replaced.

1994 Uniform Housing Code Section Chapter 7 Mechanical Requirements
1994 UHC 701.1 Heating
Dwelling units, guest rooms and congregate residences shall be provided with heating facilities capable of maintaining a room temperature of 70°F. (21.1°C.) at a point 3 feet (914 mm) above the floor in all habitable rooms. Such facilities shall be installed and maintained in a safe condition and in accordance with Section 3102 of the Building Code , the Mechanical Code, and all other applicable laws. Unvented fuel-burning heaters are not permitted. All heating devices or appliances shall be of an approved type.

1. Cooling Facilities and Cooking Equipment. If a dwelling unit or guest room has been provided with cooling facilities or cooking equipment, or both, such facilities and equipment shall be maintained in a safe working condition or replaced.

Provide safe working cooling facilities or replace.
Provide safe working cooking equipment or replace.

LVMC 16.32.270 Applicability.
The requirements set out in this Article shall apply to all residential-type buildings including those existing, those new and those to be constructed in order to provide the maximum possible security from criminal actions to the permanent and transient occupants thereof, and to their possessions.

16.32.280 Entrance doors direct to outside.
These requirements shall apply to all housing units, whether detached, attached to or within a building, having individual entrances immediately accessible from the outside without other intervening entrance doors:
(A) Entrance doors to housing units shall be capable of resisting forcible entry equal to a single-panel or hollow-core door one-and-three eighths inches thick.

proposed landscaping plan is denied, the owner or manager may appeal the denial to the Planning Commission.

(B) Upon approval of a landscaping plan, the owner and manager of the development shall be jointly and severally responsible for maintaining the approved landscaping in accordance with this Chapter.

Provide and maintain landscaping

The listed corrections must be completed in order to obtain compliance. Please note that any repairs requiring replacement of building components must include permits, inspections and must be performed by a licensed contractor.

Per 16.31 – Vacant Buildings: Submit Letter of Intent. Obtain Boarding Certificate. Provide Mitigation Plan. Provide Rehabilitation Plan.

Post: No trespassing (per NRS 207.200), contact Bolden Area Command, COP Office at 289-5593 to have building properly posted.

Upon correction of violation(s), the responsible party; being resident, tenant, owner, or manager, licensee or other person having control over a structure or parcel of land, must maintain property in compliance or face possible fees, fines, and any such enforcement as permitted by this code.

Responsible party must provide contact information to this department. Contact area code enforcement officer #16 at 229-4918 to supply your current phone number, email address, fax number, or additional mailing address.

In accordance with Chapter 16.31, you are required to:

- **Submit, within 60 days, a Mitigation and Rehabilitation Plan to address the vacant property. The Mitigation and Rehabilitation Plan must be filed with the Department of Neighborhood Services and must include:**

A statement indicating your intentions, as owner(s) of the property, for the future use of the property for the next 12 months, including, without limitation, plans to maintain, redevelop, or reestablish lawful occupancy of the property, or any combination of such activities;

A detailed plan of mitigation measures that you intend to take regarding the property, including, without limitation, measures to maintain the property; restore and maintain landscaping on the property; and provide and maintain adequate security for the property;

A detailed plan of rehabilitation measures that you intend to take regarding the property, including, without limitation, plans to restore buildings, and to maintain the property so as to remove the negative impact on surrounding properties;

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more than one thousand ($1000.00) per day, for each day that any nuisance remained unabated after the date specified for abatement in the notice of violation. The $500.00 or $1000 daily civil penalty will be determined at the discretion of the city council. Any and all unpaid fees are subject to collection and/or liens.

The City is authorized to record this Notice and Order until such time as compliance has been obtained. Should you have any questions or concerns please call me at (702) 229-6615.

Sincerely,

Devin S. Smith, Manager
Neighborhood Response Division
Neighborhood Services Department

Enclosures: City of Las Vegas Abatement Specifications
City of Las Vegas Vacant & Boarded Structures Mitigation/Rehabilitation Plan
City of Las Vegas Vacant & Boarded Structures Statement of Intent

PER ORD 3744-PROVIDE CORRECT ADDRESS AS DEFINED BY COUNTY RECORDS.

PER 2006 IBC SECTION 501.2 AND ORD 3744: PROVIDE ADDRESS ON BUILDING AND INCLUDE IN DESIGN OF ADDRESS SIGN.

PER LVMC 19.10: PROVIDE LITTER FREE PARKING STALL MARKED AND PROVIDE WHEEL STOPS.

PER LVMC 19.12: SUBMIT LANDSCAPE PLAN TO CITY OF LAS VEGAS PLANNING AND DEVELOPMENT LOCATED AT 731 S 4TH ST AND INSTALL TO APPROVED SPECIFICATIONS. KEEP MAINTAINED AT ALL TIMES.

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1994 UNIFORM HOUSING CODE, SUPPLEMENT SECTION 10: PROVIDE SAFE WORKING COOLING FACILITIES.

1994 UNIFORM HOUSING CODE CHAPTER 10: FLOORING TO BE MADE SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001: BATHROOMS TO HAVE FIXTURES PROPERLY INSTALLED, GOOD DRAINAGE, LEAK FREE AND SANITARY.

LVMC TITLE 16.32: REPLACE AND PROPERLY INSTALL ENTRY DOOR WITH ALL REQUIRED HARDWARE

- **Obtain a building permit for one or more buildings on the property that have been boarded without obtaining a permit, the building(s) being identified as a single family dwelling located at 4152 Silver Dollar Ave., #7.**

In order to demolish one or more buildings, you are required to first obtain a demolition permit, and then to secure and maintain the remaining vacant property so as to remove the negative impact on surrounding properties.

If you fail to submit a Mitigation and Rehabilitation Plan or board a building within the timeframe(s) set forth above, the Director of Neighborhood Services is authorized to cause to be performed appropriate mitigation or rehabilitation work, or any combination thereof. As the property owner(s), you will be responsible for all costs incurred, including a fifteen percent (15%) administrative fee. You will be notified of a public hearing to be conducted by the City Council to review the costs, and the Council's decision shall be final and conclusive. Upon approval of the costs by the City Council, the City will be authorized to file a Lien of Assessment with the County Recorder's Office. Thereafter, certified copies of the lien will be given to the County Treasurer, and the amount of the Lien of Assessment shall then be collected at the same time and in the same manner as ordinary taxes. All laws applicable to the levy, collection, and enforcement of property taxes shall be applicable to such assessment.

Moreover, you are hereby given notice:

1. That within fifteen (15) days after service of this Notice and Order, you as the owner or responsible party may appeal to the City Council. Such appeal shall be in writing and shall be filed with the City Clerk. Within fifteen (15) days after the appeal has been filed, you will be given written notice of the procedure and time frame for the hearing of the appeal. The appeal will be heard by the City Council or by the Council's designee, with a right to final appeal to the Council. An owner or responsible party who fails to appeal shall be deemed to have waived any and all objections to the actions taken by the Director of Neighborhood Services to satisfy the requirements of this Notice and Order.
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16

20080918-0002767

Fee: $20.00
N/C Fee: $0.00
09/18/2008 12:14:22
T20080215079
Requestor:
LAS VEGAS CITY
Debbie Conway SCA
Clark County Recorder Pgs: 7

NEIGHBORHOOD SERVICES DEPARTMENT
DIRECTOR
STEPHEN HARSIN, AICP

NOTICE AND ORDER

APN: 162-07-622-024

(7)

September 11, 2008

Case #68472

Certified/Regular Mail
Return Receipt Requested

R F H La Paz, LLC
3910 Pecos-McLeod Rd. #B-100
Las Vegas, NV 89121-0000

REVISED
NOTICE AND ORDER REGARDING VACANT OR ABANDONED BUILDING

You are hereby notified as recorded owner(s) of the property located at **4152 Silver Dollar Ave.- #8, Las Vegas, NV, Parcel # 162-07-622-024,** as follows:

One or more vacant or abandoned buildings on the property, by reason of their condition or impact on surrounding property, have been identified as buildings that need to be boarded, demolished, rehabilitated, or any combination thereof, in accordance with Chapter 16.31 of the Las Vegas Municipal Code. The building or buildings are identified as a **residential condominium located at 4152 Silver Dollar Ave. - #8.**

Per 9.04 – Refuse & Waste: Remove any visible non-usable materials, goods, etc. from all yards and other areas, to comply with code. i.e., paper, plastic, wood, bottles, etc.

Per 9.04 – Weeds/Turf: Trim, cut, remove all weeds/turf grass exceeding eight (8) inches in height in all yards. Cut back all trees and bushes to allow unobstructed view from street, sidewalk, and/or alleyway.

Per 16.04 – Building Permits Required - Department of Building and Safety, 731 S. 4th Street, (702) 229-6251.

LAS VEGAS CITY COUNCIL
MAYOR OSCAR B. GOODMAN
MAYOR PRO TEM GARY REESE • LARRY BROWN • STEVE WOLFSON • LOIS TARKANIAN
STEVEN D. ROSS • RICKI Y. BARLOW
CITY MANAGER DOUGLAS A. SELBY

Return to: CITY OF LAS VEGAS • 400 STEWART AVENUE • LAS VEGAS, NEVADA 89101
VOICE 702.229.6615 • FAX 702.382.4341 • TTY 702.386.9108 • www.lasvegasnevada.gov

12. Infestation of insects, vermin or rodents as determined by the health officer.
Provide continuous extermination by licensed pest control.

1994 Uniform Housing Code 1001.6 Hazardous Plumbing.

16.28.010 Uniform Plumbing Code and supplement adopted.

(A) Uniform Plumbing Code, 2006 Edition, including its Standards and Appendices, except as otherwise indicated, designated as Part 1 of this Chapter; and

(B) A document entitled "Southern Nevada Amendments to the 2006 Uniform Plumbing Code," adding to, deleting from and amending the Uniform Plumbing Code, 2006 Edition, designated as Part 2 of this Chapter.

Chapter 5 Water Heaters

Install correct plumbing fittings and material for water heater by license contractor.

Chapter 6 Water Supply and Distribution

Section 601.3 Existing piping used for grounding

Restore and return the copper water piping as the grounding electrode.

1994 Uniform Housing Chapter 10 Section 1001.8 Faulty Weather Protection.

Any and all windows broken or in disrepair are to be made in good repair or replaced.

1994 Uniform Housing Code Section Chapter 7 Mechanical Requirements

1994 UHC 701.1 Heating

Dwelling units, guest rooms and congregate residences shall be provided with heating facilities capable of maintaining a room temperature of 70°F. (21.1°C.) at a point 3 feet (914 mm) above the floor in all habitable rooms. Such facilities shall be installed and maintained in a safe condition and in accordance with Section 3102 of the Building Code , the Mechanical Code, and all other applicable laws. Unvented fuel-burning heaters are not permitted. All heating devices or appliances shall be of an approved type.

1. Cooling Facilities and Cooking Equipment. If a dwelling unit or guest room has been provided with cooling facilities or cooking equipment, or both, such facilities and equipment shall be maintained in a safe working condition or replaced.

Provide safe working cooling facilities or replace.
Provide safe working cooking equipment or replace.

LVMC 16.32.270 Applicability.

The requirements set out in this Article shall apply to all residential-type buildings including those existing, those new and those to be constructed in order to provide the maximum possible security from criminal actions to the permanent and transient occupants thereof, and to their possessions.

16.32.280 Entrance doors direct to outside.

These requirements shall apply to all housing units, whether detached, attached to or within a building, having individual entrances immediately accessible from the outside without other intervening entrance doors:

(A) Entrance doors to housing units shall be capable of resisting forcible entry equal to a single-panel or hollow-core door one-and-three eighths inches thick.

proposed landscaping plan is denied, the owner or manager may appeal the denial to the Planning Commission.

(B) Upon approval of a landscaping plan, the owner and manager of the development shall be jointly and severally responsible for maintaining the approved landscaping in accordance with this Chapter.

Provide and maintain landscaping

The listed corrections must be completed in order to obtain compliance. Please note that any repairs requiring replacement of building components must include permits, inspections and must be performed by a licensed contractor.

Per 16.31 – Vacant Buildings: Submit Letter of Intent. Obtain Boarding Certificate. Provide Mitigation Plan. Provide Rehabilitation Plan.

Post: No trespassing (per NRS 207.200), contact Bolden Area Command, COP Office at 289-5593 to have building properly posted.

Upon correction of violation(s), the responsible party; being resident, tenant, owner, or manager, licensee or other person having control over a structure or parcel of land, must maintain property in compliance or face possible fees, fines, and any such enforcement as permitted by this code.

Responsible party must provide contact information to this department. Contact area code enforcement officer #16 at 229-4918 to supply your current phone number, email address, fax number, or additional mailing address.

In accordance with Chapter 16.31, you are required to:

- **Submit, within 60 days, a Mitigation and Rehabilitation Plan to address the vacant property. The Mitigation and Rehabilitation Plan must be filed with the Department of Neighborhood Services and must include:**

A statement indicating your intentions, as owner(s) of the property, for the future use of the property for the next 12 months, including, without limitation, plans to maintain, redevelop, or reestablish lawful occupancy of the property, or any combination of such activities;

A detailed plan of mitigation measures that you intend to take regarding the property, including, without limitation, measures to maintain the property; restore and maintain landscaping on the property; and provide and maintain adequate security for the property;

A detailed plan of rehabilitation measures that you intend to take regarding the property, including, without limitation, plans to restore buildings, and to maintain the property so as to remove the negative impact on surrounding properties;

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more than one thousand ($1000.00) per day, for each day that any nuisance remained unabated after the date specified for abatement in the notice of violation. The $500.00 or $1000 daily civil penalty will be determined at the discretion of the city council. Any and all unpaid fees are subject to collection and/or liens.

The City is authorized to record this Notice and Order until such time as compliance has been obtained. Should you have any questions or concerns please call me at (702) 229-6615.

Sincerely,

Devin S. Smith, Manager
Neighborhood Response Division
Neighborhood Services Department

Enclosures: City of Las Vegas Abatement Specifications
City of Las Vegas Vacant & Boarded Structures Mitigation/Rehabilitation Plan
City of Las Vegas Vacant & Boarded Structures Statement of Intent

PER ORD 3744-PROVIDE CORRECT ADDRESS AS DEFINED BY COUNTY RECORDS.

PER 2006 IBC SECTION 501.2 AND ORD 3744: PROVIDE ADDRESS ON BUILDING AND INCLUDE IN DESIGN OF ADDRESS SIGN.

PER LVMC 19.10: PROVIDE LITTER FREE PARKING STALL MARKED AND PROVIDE WHEEL STOPS.

PER LVMC 19.12: SUBMIT LANDSCAPE PLAN TO CITY OF LAS VEGAS PLANNING AND DEVELOPMENT LOCATED AT 731 S 4TH ST AND INSTALL TO APPROVED SPECIFICATIONS. KEEP MAINTAINED AT ALL TIMES.

1994 UNIFORM HOUSING CODE SUPPLEMENT, SECTION 12 -OBTAIN PROPER PERMITS FOR THE REHABILITATION OF UNIT AND ACHIEVE A CERTIFICATE OF OCCUPANCY FOR CONDOMINIUM. REPAIRS MUST INCLUDE (BUT NOT LIMITED TO) THE FOLLOWING:

1994 UNIFORM HOUSING CODE, CHAPTER 10: PROVIDE DRAINAGE FREE FROM OBSTRUCTION INCLUDING THE JETTING OF COMMON DRAIN SYSTEM.

2006 INTERNATIONAL PLUMBING CODE, SECTION 601.3: RESTORE AND RETURN THE COPPER WATER PIPING AS THE GROUNDING ELECTRODE.

1994 UNIFORM HOUSING CODE, SECTION 1001.1: INTERIOR WALLS AND CEILINGS ARE TO HAVE ALL HOLES, PENETRATIONS, ANNULAR OPENINGS SEALED OR CAULKED.

1994 UNIFORM HOUSING CODE, CHAPTER 10: INTERIOR LAUNDRY ROOM TO BE IN GOOD REPAIR AND SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001.8: ANY/ALL WINDOWS BROKEN OR IN DISREPAIR ARE TO BE MADE IN GOOD REPAIR OR REPLACED.

2006 INTERNATIONAL PLUMBING CODE, CHAPTER 5: OBTAIN LICENSED PLUMBING CONTRACTOR TO INSTALL CORRECT PLUMING FITTINGS AND MATERIAL FOR WATER HEATER.

1994 UNIFORM HOUSING CODE, SUPPLEMENT, SECTIONS 9 AND 10: PROVIDE SAFE WORKING COOKING FACILITIES

1994 UNIFORM HOUSING CODE, SUPPLEMENT SECTION 10: PROVIDE SAFE WORKING COOLING FACILITIES.

1994 UNIFORM HOUSING CODE CHAPTER 10: FLOORING TO BE MADE SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001: BATHROOMS TO HAVE FIXTURES PROPERLY INSTALLED, GOOD DRAINAGE, LEAK FREE AND SANITARY.

LVMC TITLE 16.32: REPLACE AND PROPERLY INSTALL ENTRY DOOR WITH ALL REQUIRED HARDWARE

- **Obtain a building permit for one or more buildings on the property that have been boarded without obtaining a permit, the building(s) being identified as a single family dwelling located at 4152 Silver Dollar Ave., #8.**

In order to demolish one or more buildings, you are required to first obtain a demolition permit, and then to secure and maintain the remaining vacant property so as to remove the negative impact on surrounding properties.

If you fail to submit a Mitigation and Rehabilitation Plan or board a building within the timeframe(s) set forth above, the Director of Neighborhood Services is authorized to cause to be performed appropriate mitigation or rehabilitation work, or any combination thereof. As the property owner(s), you will be responsible for all costs incurred, including a fifteen percent (15%) administrative fee. You will be notified of a public hearing to be conducted by the City Council to review the costs, and the Council's decision shall be final and conclusive. Upon approval of the costs by the City Council, the City will be authorized to file a Lien of Assessment with the County Recorder's Office. Thereafter, certified copies of the lien will be given to the County Treasurer, and the amount of the Lien of Assessment shall then be collected at the same time and in the same manner as ordinary taxes. All laws applicable to the levy, collection, and enforcement of property taxes shall be applicable to such assessment.

Moreover, you are hereby given notice:

1. That within fifteen (15) days after service of this Notice and Order, you as the owner or responsible party may appeal to the City Council. Such appeal shall be in writing and shall be filed with the City Clerk. Within fifteen (15) days after the appeal has been filed, you will be given written notice of the procedure and time frame for the hearing of the appeal. The appeal will be heard by the City Council or by the Council's designee, with a right to final appeal to the Council. An owner or responsible party who fails to appeal shall be deemed to have waived any and all objections to the actions taken by the Director of Neighborhood Services to satisfy the requirements of this Notice and Order.
2. That this Notice and Order or a copy thereof must be presented to the Department of Building and Safety when requesting any permit(s).
3. That failure to appeal will constitute a waiver of all rights to an administrative hearing to determine this matter.

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more

16

20080918-0002776

Fee: $20.00
N/C Fee: $0.00
09/18/2008 12:14:22
T20080215079
Requestor:
LAS VEGAS CITY
Debbie Conway SCA
Clark County Recorder Pgs: 7

NEIGHBORHOOD SERVICES DEPARTMENT
DIRECTOR
STEPHEN HARSIN, AICP

NOTICE AND ORDER

(7)

APN: 162-07-622-009

September 11, 2008

Case #68005

Certified/Regular Mail
Return Receipt Requested

R F H La Paz, LLC
3910 Pecos-McLeod Rd. #B-100
Las Vegas, NV 89121-0000

REVISED
NOTICE AND ORDER REGARDING VACANT OR ABANDONED BUILDING

You are hereby notified as recorded owner(s) of the property located at **4168 Silver Dollar Ave.-#1, Las Vegas, NV, Parcel # 162-07-622-016,** as follows:

One or more vacant or abandoned buildings on the property, by reason of their condition or impact on surrounding property, have been identified as buildings that need to be boarded, demolished, rehabilitated, or any combination thereof, in accordance with Chapter 16.31 of the Las Vegas Municipal Code. The building or buildings are identified as a **residential condominium located at 4168 Silver Dollar Ave. - #1.**

Per 9.04 – Refuse & Waste: Remove any visible non-usable materials, goods, etc. from all yards and other areas, to comply with code. i.e., paper, plastic, wood, bottles, etc.

Per 9.04 – Weeds/Turf: Trim, cut, remove all weeds/turf grass exceeding eight (8) inches in height in all yards. Cut back all trees and bushes to allow unobstructed view from street, sidewalk, and/or alleyway.

Per 16.04 – Building Permits Required - Department of Building and Safety, 731 S. 4th Street, (702) 229-6251.

LAS VEGAS CITY COUNCIL
MAYOR OSCAR B. GOODMAN
MAYOR PRO TEM GARY REESE • LARRY BROWN • STEVE WOLFSON • LOIS TARKANIAN
STEVEN D. ROSS • RICKI Y. BARLOW
CITY MANAGER DOUGLAS A. SELBY
Return to: CITY OF LAS VEGAS • 400 STEWART AVENUE • LAS VEGAS, NEVADA 89101
VOICE 702.229.6615 • FAX 702.382.4341 • TTY 702.386.9108 • www.lasvegasnevada.gov

12. Infestation of insects, vermin or rodents as determined by the health officer.
Provide continuous extermination by licensed pest control.

1994 Uniform Housing Code 1001.6 Hazardous Plumbing.
16.28.010 Uniform Plumbing Code and supplement adopted.
(A) Uniform Plumbing Code, 2006 Edition, including its Standards and Appendices, except as otherwise indicated, designated as Part 1 of this Chapter; and
(B) A document entitled "Southern Nevada Amendments to the 2006 Uniform Plumbing Code," adding to, deleting from and amending the Uniform Plumbing Code, 2006 Edition, designated as Part 2 of this Chapter.
Chapter 5 Water Heaters
Install correct plumbing fittings and material for water heater by license contractor.
Chapter 6 Water Supply and Distribution
Section 601.3 Existing piping used for grounding
Restore and return the copper water piping as the grounding electrode.

1994 Uniform Housing Chapter 10 Section 1001.8 Faulty Weather Protection.
Any and all windows broken or in disrepair are to be made in good repair or replaced.

1994 Uniform Housing Code Section Chapter 7 Mechanical Requirements
1994 UHC 701.1 Heating
Dwelling units, guest rooms and congregate residences shall be provided with heating facilities capable of maintaining a room temperature of 70°F. (21.1°C.) at a point 3 feet (914 mm) above the floor in all habitable rooms. Such facilities shall be installed and maintained in a safe condition and in accordance with Section 3102 of the Building Code , the Mechanical Code, and all other applicable laws. Unvented fuel-burning heaters are not permitted. All heating devices or appliances shall be of an approved type.

1. Cooling Facilities and Cooking Equipment. If a dwelling unit or guest room has been provided with cooling facilities or cooking equipment, or both, such facilities and equipment shall be maintained in a safe working condition or replaced.

Provide safe working cooling facilities or replace.
Provide safe working cooking equipment or replace.

LVMC 16.32.270 Applicability.
The requirements set out in this Article shall apply to all residential-type buildings including those existing, those new and those to be constructed in order to provide the maximum possible security from criminal actions to the permanent and transient occupants thereof, and to their possessions.

16.32.280 Entrance doors direct to outside.
These requirements shall apply to all housing units, whether detached, attached to or within a building, having individual entrances immediately accessible from the outside without other intervening entrance doors:
(A) Entrance doors to housing units shall be capable of resisting forcible entry equal to a single-panel or hollow-core door one-and-three eighths inches thick.

proposed landscaping plan is denied, the owner or manager may appeal the denial to the Planning Commission.

(B) Upon approval of a landscaping plan, the owner and manager of the development shall be jointly and severally responsible for maintaining the approved landscaping in accordance with this Chapter.

Provide and maintain landscaping

The listed corrections must be completed in order to obtain compliance. Please note that any repairs requiring replacement of building components must include permits, inspections and must be performed by a licensed contractor.

Per 16.31 – Vacant Buildings: Submit Letter of Intent. Obtain Boarding Certificate. Provide Mitigation Plan. Provide Rehabilitation Plan.

Post: No trespassing (per NRS 207.200), contact Bolden Area Command, COP Office at 289-5593 to have building properly posted.

Upon correction of violation(s), the responsible party; being resident, tenant, owner, or manager, licensee or other person having control over a structure or parcel of land, must maintain property in compliance or face possible fees, fines, and any such enforcement as permitted by this code.

Responsible party must provide contact information to this department. Contact area code enforcement officer #16 at 229-4918 to supply your current phone number, email address, fax number, or additional mailing address.

In accordance with Chapter 16.31, you are required to:

- **Submit, within 60 days, a Mitigation and Rehabilitation Plan to address the vacant property. The Mitigation and Rehabilitation Plan must be filed with the Department of Neighborhood Services and must include:**

A statement indicating your intentions, as owner(s) of the property, for the future use of the property for the next 12 months, including, without limitation, plans to maintain, redevelop, or reestablish lawful occupancy of the property, or any combination of such activities;

A detailed plan of mitigation measures that you intend to take regarding the property, including, without limitation, measures to maintain the property; restore and maintain landscaping on the property; and provide and maintain adequate security for the property;

A detailed plan of rehabilitation measures that you intend to take regarding the property, including, without limitation, plans to restore buildings, and to maintain the property so as to remove the negative impact on surrounding properties;

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more than one thousand ($1000.00) per day, for each day that any nuisance remained unabated after the date specified for abatement in the notice of violation. The $500.00 or $1000 daily civil penalty will be determined at the discretion of the city council. Any and all unpaid fees are subject to collection and/or liens.

The City is authorized to record this Notice and Order until such time as compliance has been obtained. Should you have any questions or concerns please call me at (702) 229-6615.

Sincerely,

Devin S. Smith, Manager
Neighborhood Response Division
Neighborhood Services Department

Enclosures: City of Las Vegas Abatement Specifications
City of Las Vegas Vacant & Boarded Structures Mitigation/Rehabilitation Plan
City of Las Vegas Vacant & Boarded Structures Statement of Intent
City of Las Vegas Boarded Building Certificate Application

PER ORD 3744-PROVIDE CORRECT ADDRESS AS DEFINED BY COUNTY RECORDS.

PER 2006 IBC SECTION 501.2 AND ORD 3744: PROVIDE ADDRESS ON BUILDING AND INCLUDE IN DESIGN OF ADDRESS SIGN.

PER LVMC 19.10: PROVIDE LITTER FREE PARKING STALL MARKED AND PROVIDE WHEEL STOPS.

PER LVMC 19.12: SUBMIT LANDSCAPE PLAN TO CITY OF LAS VEGAS PLANNING AND DEVELOPMENT LOCATED AT 731 S 4TH ST AND INSTALL TO APPROVED SPECIFICATIONS. KEEP MAINTAINED AT ALL TIMES.

1994 UNIFORM HOUSING CODE SUPPLEMENT, SECTION 12 -OBTAIN PROPER PERMITS FOR THE REHABILITATION OF UNIT AND ACHIEVE A CERTIFICATE OF OCCUPANCY FOR CONDOMINIUM. REPAIRS MUST INCLUDE (BUT NOT LIMITED TO) THE FOLLOWING:

1994 UNIFORM HOUSING CODE, CHAPTER 10: PROVIDE DRAINAGE FREE FROM OBSTRUCTION INCLUDING THE JETTING OF COMMON DRAIN SYSTEM.

2006 INTERNATIONAL PLUMBING CODE, SECTION 601.3: RESTORE AND RETURN THE COPPER WATER PIPING AS THE GROUNDING ELECTRODE.

1994 UNIFORM HOUSING CODE, SECTION 1001.1: INTERIOR WALLS AND CEILINGS ARE TO HAVE ALL HOLES, PENETRATIONS, ANNULAR OPENINGS SEALED OR CAULKED.

1994 UNIFORM HOUSING CODE, CHAPTER 10: INTERIOR LAUNDRY ROOM TO BE IN GOOD REPAIR AND SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001.8: ANY/ALL WINDOWS BROKEN OR IN DISREPAIR ARE TO BE MADE IN GOOD REPAIR OR REPLACED.

2006 INTERNATIONAL PLUMBING CODE, CHAPTER 5: OBTAIN LICENSED PLUMBING CONTRACTOR TO INSTALL CORRECT PLUMING FITTINGS AND MATERIAL FOR WATER HEATER.

1994 UNIFORM HOUSING CODE, SUPPLEMENT, SECTIONS 9 AND 10: PROVIDE SAFE WORKING COOKING FACILITIES

1994 UNIFORM HOUSING CODE, SUPPLEMENT SECTION 10: PROVIDE SAFE WORKING COOLING FACILITIES.

1994 UNIFORM HOUSING CODE CHAPTER 10: FLOORING TO BE MADE SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001: BATHROOMS TO HAVE FIXTURES PROPERLY INSTALLED, GOOD DRAINAGE, LEAK FREE AND SANITARY.

LVMC TITLE 16.32: REPLACE AND PROPERLY INSTALL ENTRY DOOR WITH ALL REQUIRED HARDWARE

- **Obtain a building permit for one or more buildings on the property that have been boarded without obtaining a permit, the building(s) being identified as a single family dwelling located at 4168 Silver Dollar Ave., #1.**

In order to demolish one or more buildings, you are required to first obtain a demolition permit, and then to secure and maintain the remaining vacant property so as to remove the negative impact on surrounding properties.

If you fail to submit a Mitigation and Rehabilitation Plan or board a building within the timeframe(s) set forth above, the Director of Neighborhood Services is authorized to cause to be performed appropriate mitigation or rehabilitation work, or any combination thereof. As the property owner(s), you will be responsible for all costs incurred, including a fifteen percent (15%) administrative fee. You will be notified of a public hearing to be conducted by the City Council to review the costs, and the Council's decision shall be final and conclusive. Upon approval of the costs by the City Council, the City will be authorized to file a Lien of Assessment with the County Recorder's Office. Thereafter, certified copies of the lien will be given to the County Treasurer, and the amount of the Lien of Assessment shall then be collected at the same time and in the same manner as ordinary taxes. All laws applicable to the levy, collection, and enforcement of property taxes shall be applicable to such assessment.

Moreover, you are hereby given notice:

1. That within fifteen (15) days after service of this Notice and Order, you as the owner or responsible party may appeal to the City Council. Such appeal shall be in writing and shall be filed with the City Clerk. Within fifteen (15) days after the appeal has been filed, you will be given written notice of the procedure and time frame for the hearing of the appeal. The appeal will be heard by the City Council or by the Council's designee, with a right to final appeal to the Council. An owner or responsible party who fails to appeal shall be deemed to have waived any and all objections to the actions taken by the Director of Neighborhood Services to satisfy the requirements of this Notice and Order.
2. That this Notice and Order or a copy thereof must be presented to the Department of Building and Safety when requesting any permit(s).
3. That failure to appeal will constitute a waiver of all rights to an administrative hearing to determine this matter.

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more

14

20080918-0002771

Fee: $20.00
N/C Fee: $0.00

09/18/2008 12:14:22
T20080215079
Requestor:
LAS VEGAS CITY

Debbie Conway SCA
Clark County Recorder Pgs: 7

NEIGHBORHOOD SERVICES DEPARTMENT
DIRECTOR
STEPHEN HARSIN, AICP

NOTICE AND ORDER

(7)

APN: 162-07-622-010

September 11, 2008

Case #68125

Certified/Regular Mail
Return Receipt Requested

R F H La Paz, LLC
3910 Pecos-McLeod Rd. #B-100
Las Vegas, NV 89121-0000

REVISED
NOTICE AND ORDER REGARDING VACANT OR ABANDONED DANGEROUS BUILDING

You are hereby notified as recorded owner(s) of the property located at **4168 Silver Dollar Ave.-#2, Las Vegas, NV, Parcel # 162-07-622-010,** as follows:

One or more vacant or abandoned buildings on the property, by reason of their condition or impact on surrounding property, have been identified as buildings that need to be boarded, demolished, rehabilitated, or any combination thereof, in accordance with Chapter 16.31 of the Las Vegas Municipal Code. The building or buildings are identified as a **residential condominium located at 4168 Silver Dollar Ave. - #2.**

Per 9.04 – Refuse & Waste: Remove any visible non-usable materials, goods, etc. from all yards and other areas, to comply with code. i.e., paper, plastic, wood, bottles, etc.

Per 9.04 – Weeds/Turf: Trim, cut, remove all weeds/turf grass exceeding eight (8) inches in height in all yards. Cut back all trees and bushes to allow unobstructed view from street, sidewalk, and/or alleyway.

Per 16.04 – Building Permits Required - Department of Building and Safety, 731 S. 4th Street, (702) 229-6251.

LAS VEGAS CITY COUNCIL
MAYOR OSCAR B. GOODMAN
MAYOR PRO TEM GARY REESE • LARRY BROWN • STEVE WOLFSON • LOIS TARKANIAN
STEVEN D. ROSS • RICKI Y. BARLOW
CITY MANAGER DOUGLAS A. SELBY

Return to: CITY OF LAS VEGAS • 400 STEWART AVENUE • LAS VEGAS, NEVADA 89101
VOICE 702.229.6615 • FAX 702.382.4341 • TTY 702.386.9108 • www.lasvegasnevada.gov

12. Infestation of insects, vermin or rodents as determined by the health officer.
Provide continuous extermination by licensed pest control.

1994 Uniform Housing Code 1001.6 Hazardous Plumbing.

16.28.010 Uniform Plumbing Code and supplement adopted.

(A) Uniform Plumbing Code, 2006 Edition, including its Standards and Appendices, except as otherwise indicated, designated as Part 1 of this Chapter; and

(B) A document entitled "Southern Nevada Amendments to the 2006 Uniform Plumbing Code," adding to, deleting from and amending the Uniform Plumbing Code, 2006 Edition, designated as Part 2 of this Chapter.

Chapter 5 Water Heaters

Install correct plumbing fittings and material for water heater by license contractor.

Chapter 6 Water Supply and Distribution

Section 601.3 Existing piping used for grounding

Restore and return the copper water piping as the grounding electrode.

1994 Uniform Housing Chapter 10 Section 1001.8 Faulty Weather Protection.

Any and all windows broken or in disrepair are to be made in good repair or replaced.

1994 Uniform Housing Code Section Chapter 7 Mechanical Requirements

1994 UHC 701.1 Heating

Dwelling units, guest rooms and congregate residences shall be provided with heating facilities capable of maintaining a room temperature of 70°F. (21.1°C.) at a point 3 feet (914 mm) above the floor in all habitable rooms. Such facilities shall be installed and maintained in a safe condition and in accordance with Section 3102 of the Building Code , the Mechanical Code, and all other applicable laws. Unvented fuel-burning heaters are not permitted. All heating devices or appliances shall be of an approved type.

1. Cooling Facilities and Cooking Equipment. If a dwelling unit or guest room has been provided with cooling facilities or cooking equipment, or both, such facilities and equipment shall be maintained in a safe working condition or replaced.

Provide safe working cooling facilities or replace.
Provide safe working cooking equipment or replace.

LVMC 16.32.270 Applicability.

The requirements set out in this Article shall apply to all residential-type buildings including those existing, those new and those to be constructed in order to provide the maximum possible security from criminal actions to the permanent and transient occupants thereof, and to their possessions.

16.32.280 Entrance doors direct to outside.

These requirements shall apply to all housing units, whether detached, attached to or within a building, having individual entrances immediately accessible from the outside without other intervening entrance doors:

(A) Entrance doors to housing units shall be capable of resisting forcible entry equal to a single-panel or hollow-core door one-and-three eighths inches thick.

proposed landscaping plan is denied, the owner or manager may appeal the denial to the Planning Commission.

(B) Upon approval of a landscaping plan, the owner and manager of the development shall be jointly and severally responsible for maintaining the approved landscaping in accordance with this Chapter.

Provide and maintain landscaping

The listed corrections must be completed in order to obtain compliance. Please note that any repairs requiring replacement of building components must include permits, inspections and must be performed by a licensed contractor.

Per 16.31 – Vacant Buildings: Submit Letter of Intent. Obtain Boarding Certificate. Provide Mitigation Plan. Provide Rehabilitation Plan.

Post: No trespassing (per NRS 207.200), contact Bolden Area Command, COP Office at 289-5593 to have building properly posted.

Upon correction of violation(s), the responsible party; being resident, tenant, owner, or manager, licensee or other person having control over a structure or parcel of land, must maintain property in compliance or face possible fees, fines, and any such enforcement as permitted by this code.

Responsible party must provide contact information to this department. Contact area code enforcement officer #16 at 229-4918 to supply your current phone number, email address, fax number, or additional mailing address.

In accordance with Chapter 16.31, you are required to:

- **Submit, within 60 days, a Mitigation and Rehabilitation Plan to address the vacant property. The Mitigation and Rehabilitation Plan must be filed with the Department of Neighborhood Services and must include:**

A statement indicating your intentions, as owner(s) of the property, for the future use of the property for the next 12 months, including, without limitation, plans to maintain, redevelop, or reestablish lawful occupancy of the property, or any combination of such activities;

A detailed plan of mitigation measures that you intend to take regarding the property, including, without limitation, measures to maintain the property; restore and maintain landscaping on the property; and provide and maintain adequate security for the property;

A detailed plan of rehabilitation measures that you intend to take regarding the property, including, without limitation, plans to restore buildings, and to maintain the property so as to remove the negative impact on surrounding properties;

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more than one thousand ($1000.00) per day, for each day that any nuisance remained unabated after the date specified for abatement in the notice of violation. The $500.00 or $1000 daily civil penalty will be determined at the discretion of the city council. Any and all unpaid fees are subject to collection and/or liens.

The City is authorized to record this Notice and Order until such time as compliance has been obtained. Should you have any questions or concerns please call me at (702) 229-6615.

Sincerely,

Devin S. Smith, Manager
Neighborhood Response Division
Neighborhood Services Department

Enclosures: City of Las Vegas Abatement Specifications
City of Las Vegas Vacant & Boarded Structures Mitigation/Rehabilitation Plan
City of Las Vegas Vacant & Boarded Structures Statement of Intent

PER ORD 3744-PROVIDE CORRECT ADDRESS AS DEFINED BY COUNTY RECORDS.

PER 2006 IBC SECTION 501.2 AND ORD 3744: PROVIDE ADDRESS ON BUILDING AND INCLUDE IN DESIGN OF ADDRESS SIGN.

PER LVMC 19.10: PROVIDE LITTER FREE PARKING STALL MARKED AND PROVIDE WHEEL STOPS.

PER LVMC 19.12: SUBMIT LANDSCAPE PLAN TO CITY OF LAS VEGAS PLANNING AND DEVELOPMENT LOCATED AT 731 S 4TH ST AND INSTALL TO APPROVED SPECIFICATIONS. KEEP MAINTAINED AT ALL TIMES.

1994 UNIFORM HOUSING CODE SUPPLEMENT, SECTION 12 -OBTAIN PROPER PERMITS FOR THE REHABILITATION OF UNIT AND ACHIEVE A CERTIFICATE OF OCCUPANCY FOR CONDOMINIUM. REPAIRS MUST INCLUDE (BUT NOT LIMITED TO) THE FOLLOWING:

1994 UNIFORM HOUSING CODE, CHAPTER 10: PROVIDE DRAINAGE FREE FROM OBSTRUCTION INCLUDING THE JETTING OF COMMON DRAIN SYSTEM.

2006 INTERNATIONAL PLUMBING CODE, SECTION 601.3: RESTORE AND RETURN THE COPPER WATER PIPING AS THE GROUNDING ELECTRODE.

1994 UNIFORM HOUSING CODE, SECTION 1001.1: INTERIOR WALLS AND CEILINGS ARE TO HAVE ALL HOLES, PENETRATIONS, ANNULAR OPENINGS SEALED OR CAULKED.

1994 UNIFORM HOUSING CODE, CHAPTER 10: INTERIOR LAUNDRY ROOM TO BE IN GOOD REPAIR AND SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001.8: ANY/ALL WINDOWS BROKEN OR IN DISREPAIR ARE TO BE MADE IN GOOD REPAIR OR REPLACED.

2006 INTERNATIONAL PLUMBING CODE, CHAPTER 5: OBTAIN LICENSED PLUMBING CONTRACTOR TO INSTALL CORRECT PLUMING FITTINGS AND MATERIAL FOR WATER HEATER.

1994 UNIFORM HOUSING CODE, SUPPLEMENT, SECTIONS 9 AND 10: PROVIDE SAFE WORKING COOKING FACILITIES

1994 UNIFORM HOUSING CODE, SUPPLEMENT SECTION 10: PROVIDE SAFE WORKING COOLING FACILITIES.

1994 UNIFORM HOUSING CODE CHAPTER 10: FLOORING TO BE MADE SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001: BATHROOMS TO HAVE FIXTURES PROPERLY INSTALLED, GOOD DRAINAGE, LEAK FREE AND SANITARY.

LVMC TITLE 16.32: REPLACE AND PROPERLY INSTALL ENTRY DOOR WITH ALL REQUIRED HARDWARE

- **Obtain a building permit for one or more buildings on the property that have been boarded without obtaining a permit, the building(s) being identified as a single family dwelling located at 4168 Silver Dollar Ave., #2.**

In order to demolish one or more buildings, you are required to first obtain a demolition permit, and then to secure and maintain the remaining vacant property so as to remove the negative impact on surrounding properties.

If you fail to submit a Mitigation and Rehabilitation Plan or board a building within the timeframe(s) set forth above, the Director of Neighborhood Services is authorized to cause to be performed appropriate mitigation or rehabilitation work, or any combination thereof. As the property owner(s), you will be responsible for all costs incurred, including a fifteen percent (15%) administrative fee. You will be notified of a public hearing to be conducted by the City Council to review the costs, and the Council's decision shall be final and conclusive. Upon approval of the costs by the City Council, the City will be authorized to file a Lien of Assessment with the County Recorder's Office. Thereafter, certified copies of the lien will be given to the County Treasurer, and the amount of the Lien of Assessment shall then be collected at the same time and in the same manner as ordinary taxes. All laws applicable to the levy, collection, and enforcement of property taxes shall be applicable to such assessment.

Moreover, you are hereby given notice:

1. That within fifteen (15) days after service of this Notice and Order, you as the owner or responsible party may appeal to the City Council. Such appeal shall be in writing and shall be filed with the City Clerk. Within fifteen (15) days after the appeal has been filed, you will be given written notice of the procedure and time frame for the hearing of the appeal. The appeal will be heard by the City Council or by the Council's designee, with a right to final appeal to the Council. An owner or responsible party who fails to appeal shall be deemed to have waived any and all objections to the actions taken by the Director of Neighborhood Services to satisfy the requirements of this Notice and Order.
2. That this Notice and Order or a copy thereof must be presented to the Department of Building and Safety when requesting any permit(s).
3. That failure to appeal will constitute a waiver of all rights to an administrative hearing to determine this matter.

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more

31

20080918-0002757

Fee: $19.00
N/C Fee: $0.00
09/18/2008 12:14:22
T20080215079
Requestor:
LAS VEGAS CITY
Debbie Conway SCA
Clark County Recorder Pgs: 6

NEIGHBORHOOD SERVICES DEPARTMENT
DIRECTOR
STEPHEN HARSIN, AICP

NOTICE AND ORDER

(6)

APN: 162-07-622-011

September 11, 2008

Case #68172

Certified/Regular Mail
Return Receipt Requested

R F H La Paz, LLC
3910 Pecos-McLeod Rd. #B-100
Las Vegas, NV 89121-0000

NUISANCE HOUSING CODE NOTICE AND ORDER TO COMPLY

As recorded owner(s) of the **residential condominium located at 4168 Silver Dollar Ave. - #3, Las Vegas, NV, legally described as Parcel # 162-07-622-011**, you are hereby given notice that the Building Official or his designee has determined that the aforementioned building(s) is substandard. Said building(s) is substandard, dangerous and declared a public nuisance under Las Vegas Municipal Code (LVMC) 9.04.020 and Section 202 of the Uniform Housing Code because of the following conditions:

Per 9.04 – Graffiti: Remove or paint over graffiti on any building, wall, fence, or other structure allowed to remain for more than 24 hours.

Per 9.04 – Refuse & Waste: Remove any visible non-usable materials, goods, etc. from all yards and other areas, to comply with code. i.e., paper, plastic, bottles, windblown trash and debris, etc.

Per 9.04 – Weeds/Turf: Trim, cut, remove all weeds/turf grass exceeding eight (8) inches in height in all yards. Cut back all trees and bushes to allow unobstructed view from street, sidewalk, and/or alleyway.

LAS VEGAS CITY COUNCIL
MAYOR OSCAR B. GOODMAN
MAYOR PRO TEM GARY REESE • LARRY BROWN • STEVE WOLFSON • LOIS TARKANIAN
STEVEN D. ROSS • RICKI Y. BARLOW
CITY MANAGER DOUGLAS A. SELBY

Return to: CITY OF LAS VEGAS • 400 STEWART AVENUE • LAS VEGAS, NEVADA 89101
VOICE 702.229.6615 • FAX 702.382.4341 • TTY 702.386.9108 • www.lasvegasnevada.gov

1994 Uniform Housing Code 1001.6 Hazardous Plumbing.

16.28.010 Uniform Plumbing Code and supplement adopted.

(A) Uniform Plumbing Code, 2006 Edition, including its Standards and Appendices, except as otherwise indicated, designated as Part 1 of this Chapter; and

(B) A document entitled "Southern Nevada Amendments to the 2006 Uniform Plumbing Code," adding to, deleting from and amending the Uniform Plumbing Code, 2006 Edition, designated as Part 2 of this Chapter.

Chapter 5 Water Heaters

Install correct plumbing fittings and material for water heater by licensed contractor.

Chapter 6 Water Supply and Distribution

Section 601.3 Existing piping used for grounding

Restore and return the copper water piping as the grounding electrode.

Chapter 7 Inspection, Testing, and Purging

Section 7.1.5.3 Where leakage or other defects are located, the affected portion of the piping system shall be repaired or replaced and retest.

Replace gas piping by license contractor.

1994 Uniform Housing Chapter 10 Section 1001.8 Faulty Weather Protection.

Any and all windows broken or in disrepair are to be made in good repair or replaced.

1994 Uniform Housing Code Section Chapter 7 Mechanical Requirements

1994 UHC 701.1 Heating

Dwelling units, guest rooms and congregate residences shall be provided with heating facilities capable of maintaining a room temperature of 70°F. (21.1°C.) at a point 3 feet (914 mm) above the floor in all habitable rooms. Such facilities shall be installed and maintained in a safe condition and in accordance with Section 3102 of the Building Code , the Mechanical Code, and all other applicable laws. Unvented fuel-burning heaters are not permitted. All heating devices or appliances shall be of an approved type.

1. Cooling Facilities and Cooking Equipment. If a dwelling unit or guest room has been provided with cooling facilities or cooking equipment, or both, such facilities and equipment shall be maintained in a safe working condition or replaced.

Provide safe working cooling facilities or replace.
Provide safe working cooking equipment or replace.

LVMC 16.32.270 Applicability.

The requirements set out in this Article shall apply to all residential-type buildings including those existing, those new and those to be constructed in order to provide the maximum possible security from criminal actions to the permanent and transient occupants thereof, and to their possessions.

16.32.280 Entrance doors direct to outside.

These requirements shall apply to all housing units, whether detached, attached to or within a building, having individual entrances immediately accessible from the outside without other intervening entrance doors:

(A) Entrance doors to housing units shall be capable of resisting forcible entry equal to a single-

manager of a development shall submit to the Planning and Development Department a proposed landscaping plan. The submittal shall be subject to the approval of the Director. If a proposed landscaping plan is denied, the owner or manager may appeal the denial to the Planning Commission.

(B) Upon approval of a landscaping plan, the owner and manager of the development shall be jointly and severally responsible for maintaining the approved landscaping in accordance with this Chapter.

Provide and maintain landscaping

The listed corrections must be completed in order to obtain compliance. Please note that any repairs requiring replacement of building components must include permits, inspections and must be performed by a licensed contractor.

Post: No trespassing (per NRS 207.200), contact Bolden Area Command, COP Office at 289-5593 to have building properly posted.

Upon correction of violation(s), the responsible party; being resident, tenant, owner, or manager, licensee or other person having control over a structure or parcel of land, must maintain property in compliance or face possible fees, fines, and any such enforcement as permitted by this code.

Responsible party must provide contact information to this department. Contact area code enforcement officer #31 at 229-2016 to supply your current phone number, email address, fax number, or additional mailing address.

Moreover, you are hereby given notice:

1. That within ten (10) days after service of this Notice and Order, you as the owner or responsible party may appeal to the City Council. Such appeal shall be in writing and shall be filed with the City Clerk. Within fifteen (15) days after the appeal has been filed, you will be given written notice of the procedure and time frame for the hearing of the appeal. The appeal will be heard by the City Council or by the Council's designee, with a right to final appeal to the Council. An owner or responsible party who fails to appeal shall be deemed to have waived any and all objections to the actions taken by the Director of Neighborhood Services to satisfy the requirements of this Notice and Order.
2. That this Notice and Order or a copy thereof must be presented to the Department of Building and Safety when requesting any permit(s).
3. That failure to appeal will constitute a waiver of all rights to an administrative hearing to determine this matter.

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil

16

20080918-0002775

Fee: $20.00
N/C Fee: $0.00
09/18/2008 12:14:22
T20080215079
Requestor:
LAS VEGAS CITY
Debbie Conway SCA
Clark County Recorder Pgs: 7

NEIGHBORHOOD SERVICES DEPARTMENT
DIRECTOR
STEPHEN HARSIN, AICP

NOTICE AND ORDER

(7)

APN: 162-07-622-012

September 11, 2008

Case #68007

Certified/Regular Mail
Return Receipt Requested

R F H La Paz, LLC
3910 Pecos-McLeod Rd. #B-100
Las Vegas, NV 89121-0000

REVISED
NOTICE AND ORDER REGARDING VACANT OR ABANDONED BUILDING

You are hereby notified as recorded owner(s) of the property located at **4168 Silver Dollar Ave.-#4, Las Vegas, NV, Parcel # 162-07-622-012,** as follows:

One or more vacant or abandoned buildings on the property, by reason of their condition or impact on surrounding property, have been identified as buildings that need to be boarded, demolished, rehabilitated, or any combination thereof, in accordance with Chapter 16.31 of the Las Vegas Municipal Code. The building or buildings are identified as a **residential condominium located at 4168 Silver Dollar Ave. - #4.**

Per 9.04 – Refuse & Waste: Remove any visible non-usable materials, goods, etc. from all yards and other areas, to comply with code. i.e., paper, plastic, wood, bottles, etc.

Per 9.04 – Weeds/Turf: Trim, cut, remove all weeds/turf grass exceeding eight (8) inches in height in all yards. Cut back all trees and bushes to allow unobstructed view from street, sidewalk, and/or alleyway.

Per 16.04 – Building Permits Required - Department of Building and Safety, 731 S. 4th Street, (702) 229-6251.

LAS VEGAS CITY COUNCIL
MAYOR OSCAR B. GOODMAN
MAYOR PRO TEM GARY REESE • LARRY BROWN • STEVE WOLFSON • LOIS TARKANIAN
STEVEN D. ROSS • RICKI Y. BARLOW
CITY MANAGER DOUGLAS A. SELBY

Return to: CITY OF LAS VEGAS • 400 STEWART AVENUE • LAS VEGAS, NEVADA 89101
VOICE 702.229.6615 • FAX 702.382.4341 • TTY 702.386.9108 • www.lasvegasnevada.gov

12. Infestation of insects, vermin or rodents as determined by the health officer.
Provide continuous extermination by licensed pest control.

1994 Uniform Housing Code 1001.6 Hazardous Plumbing.

16.28.010 Uniform Plumbing Code and supplement adopted.

(A) Uniform Plumbing Code, 2006 Edition, including its Standards and Appendices, except as otherwise indicated, designated as Part 1 of this Chapter; and

(B) A document entitled "Southern Nevada Amendments to the 2006 Uniform Plumbing Code," adding to, deleting from and amending the Uniform Plumbing Code, 2006 Edition, designated as Part 2 of this Chapter.

Chapter 5 Water Heaters

Install correct plumbing fittings and material for water heater by license contractor.

Chapter 6 Water Supply and Distribution

Section 601.3 Existing piping used for grounding

Restore and return the copper water piping as the grounding electrode.

1994 Uniform Housing Chapter 10 Section 1001.8 Faulty Weather Protection.

Any and all windows broken or in disrepair are to be made in good repair or replaced.

1994 Uniform Housing Code Section Chapter 7 Mechanical Requirements

1994 UHC 701.1 Heating

Dwelling units, guest rooms and congregate residences shall be provided with heating facilities capable of maintaining a room temperature of 70°F. (21.1°C.) at a point 3 feet (914 mm) above the floor in all habitable rooms. Such facilities shall be installed and maintained in a safe condition and in accordance with Section 3102 of the Building Code , the Mechanical Code, and all other applicable laws. Unvented fuel-burning heaters are not permitted. All heating devices or appliances shall be of an approved type.

1. Cooling Facilities and Cooking Equipment. If a dwelling unit or guest room has been provided with cooling facilities or cooking equipment, or both, such facilities and equipment shall be maintained in a safe working condition or replaced.

Provide safe working cooling facilities or replace.
Provide safe working cooking equipment or replace.

LVMC 16.32.270 Applicability.

The requirements set out in this Article shall apply to all residential-type buildings including those existing, those new and those to be constructed in order to provide the maximum possible security from criminal actions to the permanent and transient occupants thereof, and to their possessions.

16.32.280 Entrance doors direct to outside.

These requirements shall apply to all housing units, whether detached, attached to or within a building, having individual entrances immediately accessible from the outside without other intervening entrance doors:

(A) Entrance doors to housing units shall be capable of resisting forcible entry equal to a single-panel or hollow-core door one-and-three eighths inches thick.

proposed landscaping plan is denied, the owner or manager may appeal the denial to the Planning Commission.

(B) Upon approval of a landscaping plan, the owner and manager of the development shall be jointly and severally responsible for maintaining the approved landscaping in accordance with this Chapter.

Provide and maintain landscaping

The listed corrections must be completed in order to obtain compliance. Please note that any repairs requiring replacement of building components must include permits, inspections and must be performed by a licensed contractor.

Per 16.31 – Vacant Buildings: Submit Letter of Intent. Obtain Boarding Certificate. Provide Mitigation Plan. Provide Rehabilitation Plan.

Post: No trespassing (per NRS 207.200), contact Bolden Area Command, COP Office at 289-5593 to have building properly posted.

Upon correction of violation(s), the responsible party; being resident, tenant, owner, or manager, licensee or other person having control over a structure or parcel of land, must maintain property in compliance or face possible fees, fines, and any such enforcement as permitted by this code.

Responsible party must provide contact information to this department. Contact area code enforcement officer #16 at 229-4918 to supply your current phone number, email address, fax number, or additional mailing address.

In accordance with Chapter 16.31, you are required to:

- **Submit, within 60 days, a Mitigation and Rehabilitation Plan to address the vacant property. The Mitigation and Rehabilitation Plan must be filed with the Department of Neighborhood Services and must include:**

A statement indicating your intentions, as owner(s) of the property, for the future use of the property for the next 12 months, including, without limitation, plans to maintain, redevelop, or reestablish lawful occupancy of the property, or any combination of such activities;

A detailed plan of mitigation measures that you intend to take regarding the property, including, without limitation, measures to maintain the property; restore and maintain landscaping on the property; and provide and maintain adequate security for the property;

A detailed plan of rehabilitation measures that you intend to take regarding the property, including, without limitation, plans to restore buildings, and to maintain the property so as to remove the negative impact on surrounding properties;

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The City is authorized to record this Notice and Order until such time as compliance has been obtained. Should you have any questions or concerns please call me at (702) 229-6615.

Sincerely,

Devin S. Smith, Manager
Neighborhood Response Division
Neighborhood Services Department

Enclosures: City of Las Vegas Abatement Specifications
City of Las Vegas Vacant & Boarded Structures Mitigation/Rehabilitation Plan
City of Las Vegas Vacant & Boarded Structures Statement of Intent
City of Las Vegas Boarded Building Certificate Application

PER ORD 3744-PROVIDE CORRECT ADDRESS AS DEFINED BY COUNTY RECORDS.

PER 2006 IBC SECTION 501.2 AND ORD 3744: PROVIDE ADDRESS ON BUILDING AND INCLUDE IN DESIGN OF ADDRESS SIGN.

PER LVMC 19.10: PROVIDE LITTER FREE PARKING STALL MARKED AND PROVIDE WHEEL STOPS.

PER LVMC 19.12: SUBMIT LANDSCAPE PLAN TO CITY OF LAS VEGAS PLANNING AND DEVELOPMENT LOCATED AT 731 S 4TH ST AND INSTALL TO APPROVED SPECIFICATIONS. KEEP MAINTAINED AT ALL TIMES.

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2006 INTERNATIONAL PLUMBING CODE, SECTION 601.3: RESTORE AND RETURN THE COPPER WATER PIPING AS THE GROUNDING ELECTRODE.

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1994 UNIFORM HOUSING CODE, SECTION 1001.8: ANY/ALL WINDOWS BROKEN OR IN DISREPAIR ARE TO BE MADE IN GOOD REPAIR OR REPLACED.

2006 INTERNATIONAL PLUMBING CODE, CHAPTER 5: OBTAIN LICENSED PLUMBING CONTRACTOR TO INSTALL CORRECT PLUMING FITTINGS AND MATERIAL FOR WATER HEATER.

1994 UNIFORM HOUSING CODE, SUPPLEMENT, SECTIONS 9 AND 10: PROVIDE SAFE WORKING COOKING FACILITIES

1994 UNIFORM HOUSING CODE, SUPPLEMENT SECTION 10: PROVIDE SAFE WORKING COOLING FACILITIES.

1994 UNIFORM HOUSING CODE CHAPTER 10: FLOORING TO BE MADE SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001: BATHROOMS TO HAVE FIXTURES PROPERLY INSTALLED, GOOD DRAINAGE, LEAK FREE AND SANITARY.

LVMC TITLE 16.32: REPLACE AND PROPERLY INSTALL ENTRY DOOR WITH ALL REQUIRED HARDWARE

- **Obtain a building permit for one or more buildings on the property that have been boarded without obtaining a permit, the building(s) being identified as a single family dwelling located at 4168 Silver Dollar Ave., #4.**

In order to demolish one or more buildings, you are required to first obtain a demolition permit, and then to secure and maintain the remaining vacant property so as to remove the negative impact on surrounding properties.

If you fail to submit a Mitigation and Rehabilitation Plan or board a building within the timeframe(s) set forth above, the Director of Neighborhood Services is authorized to cause to be performed appropriate mitigation or rehabilitation work, or any combination thereof. As the property owner(s), you will be responsible for all costs incurred, including a fifteen percent (15%) administrative fee. You will be notified of a public hearing to be conducted by the City Council to review the costs, and the Council's decision shall be final and conclusive. Upon approval of the costs by the City Council, the City will be authorized to file a Lien of Assessment with the County Recorder's Office. Thereafter, certified copies of the lien will be given to the County Treasurer, and the amount of the Lien of Assessment shall then be collected at the same time and in the same manner as ordinary taxes. All laws applicable to the levy, collection, and enforcement of property taxes shall be applicable to such assessment.

Moreover, you are hereby given notice:

1. That within fifteen (15) days after service of this Notice and Order, you as the owner or responsible party may appeal to the City Council. Such appeal shall be in writing and shall be filed with the City Clerk. Within fifteen (15) days after the appeal has been filed, you will be given written notice of the procedure and time frame for the hearing of the appeal. The appeal will be heard by the City Council or by the Council's designee, with a right to final appeal to the Council. An owner or responsible party who fails to appeal shall be deemed to have waived any and all objections to the actions taken by the Director of Neighborhood Services to satisfy the requirements of this Notice and Order.
2. That this Notice and Order or a copy thereof must be presented to the Department of Building and Safety when requesting any permit(s).
3. That failure to appeal will constitute a waiver of all rights to an administrative hearing to determine this matter.

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more

16

20080918-0002770

Fee: $20.00
N/C Fee: $0.00

09/18/2008 12:14:22
T20080215079
Requestor:
LAS VEGAS CITY

Debbie Conway SCA
Clark County Recorder Pgs: 7

NEIGHBORHOOD SERVICES DEPARTMENT
DIRECTOR
STEPHEN HARSIN, AICP

NOTICE AND ORDER

APN: 162-07-622-014

(7)

September 11, 2008

Case #68009

Certified/Regular Mail
Return Receipt Requested

R F H La Paz, LLC
3910 Pecos-McLeod Rd. #B-100
Las Vegas, NV 89121-0000

REVISED
NOTICE AND ORDER REGARDING VACANT OR ABANDONED DANGEROUS BUILDING

You are hereby notified as recorded owner(s) of the property located at **4168 Silver Dollar Ave.-#6, Las Vegas, NV, Parcel # 162-07-622-014,** as follows:

One or more vacant or abandoned buildings on the property, by reason of their condition or impact on surrounding property, have been identified as buildings that need to be boarded, demolished, rehabilitated, or any combination thereof, in accordance with Chapter 16.31 of the Las Vegas Municipal Code. The building or buildings are identified as a **residential condominium located at 4168 Silver Dollar Ave. - #6.**

Per 9.04 – Refuse & Waste: Remove any visible non-usable materials, goods, etc. from all yards and other areas, to comply with code. i.e., paper, plastic, wood, bottles, etc.

Per 9.04 – Weeds/Turf: Trim, cut, remove all weeds/turf grass exceeding eight (8) inches in height in all yards. Cut back all trees and bushes to allow unobstructed view from street, sidewalk, and/or alleyway.

Per 16.04 – Building Permits Required - Department of Building and Safety, 731 S. 4th Street, (702) 229-6251.

LAS VEGAS CITY COUNCIL
MAYOR OSCAR B. GOODMAN
MAYOR PRO TEM GARY REESE • LARRY BROWN • STEVE WOLFSON • LOIS TARKANIAN
STEVEN D. ROSS • RICKI Y. BARLOW
CITY MANAGER DOUGLAS A. SELBY

Return to: CITY OF LAS VEGAS • 400 STEWART AVENUE • LAS VEGAS, NEVADA 89101
VOICE 702.229.6615 • FAX 702.382.4341 • TTY 702.386.9108 • www.lasvegasnevada.gov

12. Infestation of insects, vermin or rodents as determined by the health officer.
Provide continuous extermination by licensed pest control.

1994 Uniform Housing Code 1001.6 Hazardous Plumbing.

16.28.010 Uniform Plumbing Code and supplement adopted.

(A) Uniform Plumbing Code, 2006 Edition, including its Standards and Appendices, except as otherwise indicated, designated as Part 1 of this Chapter; and

(B) A document entitled "Southern Nevada Amendments to the 2006 Uniform Plumbing Code," adding to, deleting from and amending the Uniform Plumbing Code, 2006 Edition, designated as Part 2 of this Chapter.

Chapter 5 Water Heaters

Install correct plumbing fittings and material for water heater by license contractor.

Chapter 6 Water Supply and Distribution

Section 601.3 Existing piping used for grounding

Restore and return the copper water piping as the grounding electrode.

1994 Uniform Housing Chapter 10 Section 1001.8 Faulty Weather Protection.

Any and all windows broken or in disrepair are to be made in good repair or replaced.

1994 Uniform Housing Code Section Chapter 7 Mechanical Requirements

1994 UHC 701.1 Heating

Dwelling units, guest rooms and congregate residences shall be provided with heating facilities capable of maintaining a room temperature of 70°F. (21.1°C.) at a point 3 feet (914 mm) above the floor in all habitable rooms. Such facilities shall be installed and maintained in a safe condition and in accordance with Section 3102 of the Building Code , the Mechanical Code, and all other applicable laws. Unvented fuel-burning heaters are not permitted. All heating devices or appliances shall be of an approved type.

1. Cooling Facilities and Cooking Equipment. If a dwelling unit or guest room has been provided with cooling facilities or cooking equipment, or both, such facilities and equipment shall be maintained in a safe working condition or replaced.

Provide safe working cooling facilities or replace.
Provide safe working cooking equipment or replace.

LVMC 16.32.270 Applicability.

The requirements set out in this Article shall apply to all residential-type buildings including those existing, those new and those to be constructed in order to provide the maximum possible security from criminal actions to the permanent and transient occupants thereof, and to their possessions.

16.32.280 Entrance doors direct to outside.

These requirements shall apply to all housing units, whether detached, attached to or within a building, having individual entrances immediately accessible from the outside without other intervening entrance doors:

(A) Entrance doors to housing units shall be capable of resisting forcible entry equal to a single-panel or hollow-core door one-and-three eighths inches thick.

proposed landscaping plan is denied, the owner or manager may appeal the denial to the Planning Commission.

(B) Upon approval of a landscaping plan, the owner and manager of the development shall be jointly and severally responsible for maintaining the approved landscaping in accordance with this Chapter.

Provide and maintain landscaping

The listed corrections must be completed in order to obtain compliance. Please note that any repairs requiring replacement of building components must include permits, inspections and must be performed by a licensed contractor.

Per 16.31 – Vacant Buildings: Submit Letter of Intent. Obtain Boarding Certificate. Provide Mitigation Plan. Provide Rehabilitation Plan.

Post: No trespassing (per NRS 207.200), contact Bolden Area Command, COP Office at 289-5593 to have building properly posted.

Upon correction of violation(s), the responsible party; being resident, tenant, owner, or manager, licensee or other person having control over a structure or parcel of land, must maintain property in compliance or face possible fees, fines, and any such enforcement as permitted by this code.

Responsible party must provide contact information to this department. Contact area code enforcement officer #16 at 229-4918 to supply your current phone number, email address, fax number, or additional mailing address.

In accordance with Chapter 16.31, you are required to:

- **Submit, within 60 days, a Mitigation and Rehabilitation Plan to address the vacant property. The Mitigation and Rehabilitation Plan must be filed with the Department of Neighborhood Services and must include:**

A statement indicating your intentions, as owner(s) of the property, for the future use of the property for the next 12 months, including, without limitation, plans to maintain, redevelop, or reestablish lawful occupancy of the property, or any combination of such activities;

A detailed plan of mitigation measures that you intend to take regarding the property, including, without limitation, measures to maintain the property; restore and maintain landscaping on the property; and provide and maintain adequate security for the property;

A detailed plan of rehabilitation measures that you intend to take regarding the property, including, without limitation, plans to restore buildings, and to maintain the property so as to remove the negative impact on surrounding properties;

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more than one thousand ($1000.00) per day, for each day that any nuisance remained unabated after the date specified for abatement in the notice of violation. The $500.00 or $1000 daily civil penalty will be determined at the discretion of the city council. Any and all unpaid fees are subject to collection and/or liens.

The City is authorized to record this Notice and Order until such time as compliance has been obtained. Should you have any questions or concerns please call me at (702) 229-6615.

Sincerely,

Devin S. Smith, Manager
Neighborhood Response Division
Neighborhood Services Department

Enclosures: City of Las Vegas Abatement Specifications
City of Las Vegas Vacant & Boarded Structures Mitigation/Rehabilitation Plan
City of Las Vegas Vacant & Boarded Structures Statement of Intent

PER ORD 3744-PROVIDE CORRECT ADDRESS AS DEFINED BY COUNTY RECORDS.

PER 2006 IBC SECTION 501.2 AND ORD 3744: PROVIDE ADDRESS ON BUILDING AND INCLUDE IN DESIGN OF ADDRESS SIGN.

PER LVMC 19.10: PROVIDE LITTER FREE PARKING STALL MARKED AND PROVIDE WHEEL STOPS.

PER LVMC 19.12: SUBMIT LANDSCAPE PLAN TO CITY OF LAS VEGAS PLANNING AND DEVELOPMENT LOCATED AT 731 S 4TH ST AND INSTALL TO APPROVED SPECIFICATIONS. KEEP MAINTAINED AT ALL TIMES.

1994 UNIFORM HOUSING CODE SUPPLEMENT, SECTION 12 -OBTAIN PROPER PERMITS FOR THE REHABILITATION OF UNIT AND ACHIEVE A CERTIFICATE OF OCCUPANCY FOR CONDOMINIUM. REPAIRS MUST INCLUDE (BUT NOT LIMITED TO) THE FOLLOWING:

1994 UNIFORM HOUSING CODE, CHAPTER 10: PROVIDE DRAINAGE FREE FROM OBSTRUCTION INCLUDING THE JETTING OF COMMON DRAIN SYSTEM.

2006 INTERNATIONAL PLUMBING CODE, SECTION 601.3: RESTORE AND RETURN THE COPPER WATER PIPING AS THE GROUNDING ELECTRODE.

1994 UNIFORM HOUSING CODE, SECTION 1001.1: INTERIOR WALLS AND CEILINGS ARE TO HAVE ALL HOLES, PENETRATIONS, ANNULAR OPENINGS SEALED OR CAULKED.

1994 UNIFORM HOUSING CODE, CHAPTER 10: INTERIOR LAUNDRY ROOM TO BE IN GOOD REPAIR AND SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001.8: ANY/ALL WINDOWS BROKEN OR IN DISREPAIR ARE TO BE MADE IN GOOD REPAIR OR REPLACED.

2006 INTERNATIONAL PLUMBING CODE, CHAPTER 5: OBTAIN LICENSED PLUMBING CONTRACTOR TO INSTALL CORRECT PLUMING FITTINGS AND MATERIAL FOR WATER HEATER.

1994 UNIFORM HOUSING CODE, SUPPLEMENT, SECTIONS 9 AND 10: PROVIDE SAFE WORKING COOKING FACILITIES

1994 UNIFORM HOUSING CODE, SUPPLEMENT SECTION 10: PROVIDE SAFE WORKING COOLING FACILITIES.

1994 UNIFORM HOUSING CODE CHAPTER 10: FLOORING TO BE MADE SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001: BATHROOMS TO HAVE FIXTURES PROPERLY INSTALLED, GOOD DRAINAGE, LEAK FREE AND SANITARY.

LVMC TITLE 16.32: REPLACE AND PROPERLY INSTALL ENTRY DOOR WITH ALL REQUIRED HARDWARE

- **Obtain a building permit for one or more buildings on the property that have been boarded without obtaining a permit, the building(s) being identified as a single family dwelling located at 4168 Silver Dollar Ave., #6.**

In order to demolish one or more buildings, you are required to first obtain a demolition permit, and then to secure and maintain the remaining vacant property so as to remove the negative impact on surrounding properties.

If you fail to submit a Mitigation and Rehabilitation Plan or board a building within the timeframe(s) set forth above, the Director of Neighborhood Services is authorized to cause to be performed appropriate mitigation or rehabilitation work, or any combination thereof. As the property owner(s), you will be responsible for all costs incurred, including a fifteen percent (15%) administrative fee. You will be notified of a public hearing to be conducted by the City Council to review the costs, and the Council's decision shall be final and conclusive. Upon approval of the costs by the City Council, the City will be authorized to file a Lien of Assessment with the County Recorder's Office. Thereafter, certified copies of the lien will be given to the County Treasurer, and the amount of the Lien of Assessment shall then be collected at the same time and in the same manner as ordinary taxes. All laws applicable to the levy, collection, and enforcement of property taxes shall be applicable to such assessment.

Moreover, you are hereby given notice:

1. That within fifteen (15) days after service of this Notice and Order, you as the owner or responsible party may appeal to the City Council. Such appeal shall be in writing and shall be filed with the City Clerk. Within fifteen (15) days after the appeal has been filed, you will be given written notice of the procedure and time frame for the hearing of the appeal. The appeal will be heard by the City Council or by the Council's designee, with a right to final appeal to the Council. An owner or responsible party who fails to appeal shall be deemed to have waived any and all objections to the actions taken by the Director of Neighborhood Services to satisfy the requirements of this Notice and Order.
2. That this Notice and Order or a copy thereof must be presented to the Department of Building and Safety when requesting any permit(s).
3. That failure to appeal will constitute a waiver of all rights to an administrative hearing to determine this matter.

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more

16

20080918-0002774

Fee: $20.00
N/C Fee: $0.00
09/18/2008 12:14:22
T20080215079
Requestor:
LAS VEGAS CITY
Debbie Conway SCA
Clark County Recorder Pgs: 7

NEIGHBORHOOD SERVICES DEPARTMENT
DIRECTOR
STEPHEN HARSIN, AICP

NOTICE AND ORDER

APN: 162-07-622-015

(7)

September 11, 2008

Case #68010

Certified/Regular Mail
Return Receipt Requested

R F H La Paz, LLC
3910 Pecos-McLeod Rd. #B-100
Las Vegas, NV 89121-0000

REVISED
NOTICE AND ORDER REGARDING VACANT OR ABANDONED BUILDING

You are hereby notified as recorded owner(s) of the property located at **4168 Silver Dollar Ave.-#7, Las Vegas, NV, Parcel # 162-07-622-015,** as follows:

One or more vacant or abandoned buildings on the property, by reason of their condition or impact on surrounding property, have been identified as buildings that need to be boarded, demolished, rehabilitated, or any combination thereof, in accordance with Chapter 16.31 of the Las Vegas Municipal Code. The building or buildings are identified as a **residential condominium located at 4168 Silver Dollar Ave. - #7.**

Per 9.04 – Refuse & Waste: Remove any visible non-usable materials, goods, etc. from all yards and other areas, to comply with code. i.e., paper, plastic, wood, bottles, etc.

Per 9.04 – Weeds/Turf: Trim, cut, remove all weeds/turf grass exceeding eight (8) inches in height in all yards. Cut back all trees and bushes to allow unobstructed view from street, sidewalk, and/or alleyway.

Per 16.04 – Building Permits Required - Department of Building and Safety, 731 S. 4th Street, (702) 229-6251.

LAS VEGAS CITY COUNCIL
MAYOR OSCAR B. GOODMAN
MAYOR PRO TEM GARY REESE • LARRY BROWN • STEVE WOLFSON • LOIS TARKANIAN
STEVEN D. ROSS • RICKI Y. BARLOW
CITY MANAGER DOUGLAS A. SELBY
Return to: CITY OF LAS VEGAS • 400 STEWART AVENUE • LAS VEGAS, NEVADA 89101
VOICE 702.229.6615 • FAX 702.382.4341 • TTY 702.386.9108 • www.lasvegasnevada.gov

12. Infestation of insects, vermin or rodents as determined by the health officer.
Provide continuous extermination by licensed pest control.

1994 Uniform Housing Code 1001.6 Hazardous Plumbing.
16.28.010 Uniform Plumbing Code and supplement adopted.
(A) Uniform Plumbing Code, 2006 Edition, including its Standards and Appendices, except as otherwise indicated, designated as Part 1 of this Chapter; and
(B) A document entitled "Southern Nevada Amendments to the 2006 Uniform Plumbing Code," adding to, deleting from and amending the Uniform Plumbing Code, 2006 Edition, designated as Part 2 of this Chapter.
Chapter 5 Water Heaters
Install correct plumbing fittings and material for water heater by license contractor.
Chapter 6 Water Supply and Distribution
Section 601.3 Existing piping used for grounding
Restore and return the copper water piping as the grounding electrode.

1994 Uniform Housing Chapter 10 Section 1001.8 Faulty Weather Protection.
Any and all windows broken or in disrepair are to be made in good repair or replaced.

1994 Uniform Housing Code Section Chapter 7 Mechanical Requirements
1994 UHC 701.1 Heating
Dwelling units, guest rooms and congregate residences shall be provided with heating facilities capable of maintaining a room temperature of 70°F. (21.1°C.) at a point 3 feet (914 mm) above the floor in all habitable rooms. Such facilities shall be installed and maintained in a safe condition and in accordance with Section 3102 of the Building Code , the Mechanical Code, and all other applicable laws. Unvented fuel-burning heaters are not permitted. All heating devices or appliances shall be of an approved type.

1. Cooling Facilities and Cooking Equipment. If a dwelling unit or guest room has been provided with cooling facilities or cooking equipment, or both, such facilities and equipment shall be maintained in a safe working condition or replaced.

Provide safe working cooling facilities or replace.
Provide safe working cooking equipment or replace.

LVMC 16.32.270 Applicability.
The requirements set out in this Article shall apply to all residential-type buildings including those existing, those new and those to be constructed in order to provide the maximum possible security from criminal actions to the permanent and transient occupants thereof, and to their possessions.

16.32.280 Entrance doors direct to outside.
These requirements shall apply to all housing units, whether detached, attached to or within a building, having individual entrances immediately accessible from the outside without other intervening entrance doors:
(A) Entrance doors to housing units shall be capable of resisting forcible entry equal to a single-panel or hollow-core door one-and-three eighths inches thick.

proposed landscaping plan is denied, the owner or manager may appeal the denial to the Planning Commission.

(B) Upon approval of a landscaping plan, the owner and manager of the development shall be jointly and severally responsible for maintaining the approved landscaping in accordance with this Chapter.

Provide and maintain landscaping

The listed corrections must be completed in order to obtain compliance. Please note that any repairs requiring replacement of building components must include permits, inspections and must be performed by a licensed contractor.

Per 16.31 – Vacant Buildings: Submit Letter of Intent. Obtain Boarding Certificate. Provide Mitigation Plan. Provide Rehabilitation Plan.

Post: No trespassing (per NRS 207.200), contact Bolden Area Command, COP Office at 289-5593 to have building properly posted.

Upon correction of violation(s), the responsible party; being resident, tenant, owner, or manager, licensee or other person having control over a structure or parcel of land, must maintain property in compliance or face possible fees, fines, and any such enforcement as permitted by this code.

Responsible party must provide contact information to this department. Contact area code enforcement officer #16 at 229-4918 to supply your current phone number, email address, fax number, or additional mailing address.

In accordance with Chapter 16.31, you are required to:

- **Submit, within 60 days, a Mitigation and Rehabilitation Plan to address the vacant property. The Mitigation and Rehabilitation Plan must be filed with the Department of Neighborhood Services and must include:**

A statement indicating your intentions, as owner(s) of the property, for the future use of the property for the next 12 months, including, without limitation, plans to maintain, redevelop, or reestablish lawful occupancy of the property, or any combination of such activities;

A detailed plan of mitigation measures that you intend to take regarding the property, including, without limitation, measures to maintain the property; restore and maintain landscaping on the property; and provide and maintain adequate security for the property;

A detailed plan of rehabilitation measures that you intend to take regarding the property, including, without limitation, plans to restore buildings, and to maintain the property so as to remove the negative impact on surrounding properties;

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more than one thousand ($1000.00) per day, for each day that any nuisance remained unabated after the date specified for abatement in the notice of violation. The $500.00 or $1000 daily civil penalty will be determined at the discretion of the city council. Any and all unpaid fees are subject to collection and/or liens.

The City is authorized to record this Notice and Order until such time as compliance has been obtained. Should you have any questions or concerns please call me at (702) 229-6615.

Sincerely,

Devin S. Smith, Manager
Neighborhood Response Division
Neighborhood Services Department

Enclosures: City of Las Vegas Abatement Specifications
City of Las Vegas Vacant & Boarded Structures Mitigation/Rehabilitation Plan
City of Las Vegas Vacant & Boarded Structures Statement of Intent

PER ORD 3744-PROVIDE CORRECT ADDRESS AS DEFINED BY COUNTY RECORDS.

PER 2006 IBC SECTION 501.2 AND ORD 3744: PROVIDE ADDRESS ON BUILDING AND INCLUDE IN DESIGN OF ADDRESS SIGN.

PER LVMC 19.10: PROVIDE LITTER FREE PARKING STALL MARKED AND PROVIDE WHEEL STOPS.

PER LVMC 19.12: SUBMIT LANDSCAPE PLAN TO CITY OF LAS VEGAS PLANNING AND DEVELOPMENT LOCATED AT 731 S 4TH ST AND INSTALL TO APPROVED SPECIFICATIONS. KEEP MAINTAINED AT ALL TIMES.

1994 UNIFORM HOUSING CODE SUPPLEMENT, SECTION 12 -OBTAIN PROPER PERMITS FOR THE REHABILITATION OF UNIT AND ACHIEVE A CERTIFICATE OF OCCUPANCY FOR CONDOMINIUM. REPAIRS MUST INCLUDE (BUT NOT LIMITED TO) THE FOLLOWING:

1994 UNIFORM HOUSING CODE, CHAPTER 10: PROVIDE DRAINAGE FREE FROM OBSTRUCTION INCLUDING THE JETTING OF COMMON DRAIN SYSTEM.

2006 INTERNATIONAL PLUMBING CODE, SECTION 601.3: RESTORE AND RETURN THE COPPER WATER PIPING AS THE GROUNDING ELECTRODE.

1994 UNIFORM HOUSING CODE, SECTION 1001.1: INTERIOR WALLS AND CEILINGS ARE TO HAVE ALL HOLES, PENETRATIONS, ANNULAR OPENINGS SEALED OR CAULKED.

1994 UNIFORM HOUSING CODE, CHAPTER 10: INTERIOR LAUNDRY ROOM TO BE IN GOOD REPAIR AND SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001.8: ANY/ALL WINDOWS BROKEN OR IN DISREPAIR ARE TO BE MADE IN GOOD REPAIR OR REPLACED.

2006 INTERNATIONAL PLUMBING CODE, CHAPTER 5: OBTAIN LICENSED PLUMBING CONTRACTOR TO INSTALL CORRECT PLUMING FITTINGS AND MATERIAL FOR WATER HEATER.

1994 UNIFORM HOUSING CODE, SUPPLEMENT, SECTIONS 9 AND 10: PROVIDE SAFE WORKING COOKING FACILITIES

1994 UNIFORM HOUSING CODE, SUPPLEMENT SECTION 10: PROVIDE SAFE WORKING COOLING FACILITIES.

1994 UNIFORM HOUSING CODE CHAPTER 10: FLOORING TO BE MADE SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001: BATHROOMS TO HAVE FIXTURES PROPERLY INSTALLED, GOOD DRAINAGE, LEAK FREE AND SANITARY.

LVMC TITLE 16.32: REPLACE AND PROPERLY INSTALL ENTRY DOOR WITH ALL REQUIRED HARDWARE

- **Obtain a building permit for one or more buildings on the property that have been boarded without obtaining a permit, the building(s) being identified as a single family dwelling located at 4168 Silver Dollar Ave., #7.**

In order to demolish one or more buildings, you are required to first obtain a demolition permit, and then to secure and maintain the remaining vacant property so as to remove the negative impact on surrounding properties.

If you fail to submit a Mitigation and Rehabilitation Plan or board a building within the timeframe(s) set forth above, the Director of Neighborhood Services is authorized to cause to be performed appropriate mitigation or rehabilitation work, or any combination thereof. As the property owner(s), you will be responsible for all costs incurred, including a fifteen percent (15%) administrative fee. You will be notified of a public hearing to be conducted by the City Council to review the costs, and the Council's decision shall be final and conclusive. Upon approval of the costs by the City Council, the City will be authorized to file a Lien of Assessment with the County Recorder's Office. Thereafter, certified copies of the lien will be given to the County Treasurer, and the amount of the Lien of Assessment shall then be collected at the same time and in the same manner as ordinary taxes. All laws applicable to the levy, collection, and enforcement of property taxes shall be applicable to such assessment.

Moreover, you are hereby given notice:

1. That within fifteen (15) days after service of this Notice and Order, you as the owner or responsible party may appeal to the City Council. Such appeal shall be in writing and shall be filed with the City Clerk. Within fifteen (15) days after the appeal has been filed, you will be given written notice of the procedure and time frame for the hearing of the appeal. The appeal will be heard by the City Council or by the Council's designee, with a right to final appeal to the Council. An owner or responsible party who fails to appeal shall be deemed to have waived any and all objections to the actions taken by the Director of Neighborhood Services to satisfy the requirements of this Notice and Order.
2. That this Notice and Order or a copy thereof must be presented to the Department of Building and Safety when requesting any permit(s).
3. That failure to appeal will constitute a waiver of all rights to an administrative hearing to determine this matter.

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more

14

20080918-0002772

Fee: $20.00
N/C Fee: $0.00
09/18/2008 12:14:22
T20080215079
Requestor:
LAS VEGAS CITY
Debbie Conway SCA
Clark County Recorder Pgs: 7

NEIGHBORHOOD SERVICES DEPARTMENT
DIRECTOR
STEPHEN HARSIN, AICP

NOTICE AND ORDER

(7)

APN: 162-07-622-016

September 11, 2008

Case #68176

Certified/Regular Mail
Return Receipt Requested

R F H La Paz, LLC
3910 Pecos-McLeod Rd. #B-100
Las Vegas, NV 89121-0000

REVISED
NOTICE AND ORDER REGARDING VACANT OR ABANDONED DANGEROUS BUILDING

You are hereby notified as recorded owner(s) of the property located at **4168 Silver Dollar Ave.-#8, Las Vegas, NV, Parcel # 162-07-622-016,** as follows:

One or more vacant or abandoned buildings on the property, by reason of their condition or impact on surrounding property, have been identified as buildings that need to be boarded, demolished, rehabilitated, or any combination thereof, in accordance with Chapter 16.31 of the Las Vegas Municipal Code. The building or buildings are identified as a **residential condominium located at 4168 Silver Dollar Ave. - #8.**

Per 9.04 – Refuse & Waste: Remove any visible non-usable materials, goods, etc. from all yards and other areas, to comply with code. i.e., paper, plastic, wood, bottles, etc.

Per 9.04 – Weeds/Turf: Trim, cut, remove all weeds/turf grass exceeding eight (8) inches in height in all yards. Cut back all trees and bushes to allow unobstructed view from street, sidewalk, and/or alleyway.

Per 16.04 – Building Permits Required - Department of Building and Safety, 731 S. 4th Street, (702) 229-6251.

LAS VEGAS CITY COUNCIL
MAYOR OSCAR B. GOODMAN
MAYOR PRO TEM GARY REESE • LARRY BROWN • STEVE WOLFSON • LOIS TARKANIAN
STEVEN D. ROSS • RICKI Y. BARLOW
CITY MANAGER DOUGLAS A. SELBY

12. Infestation of insects, vermin or rodents as determined by the health officer.
Provide continuous extermination by licensed pest control.

1994 Uniform Housing Code 1001.6 Hazardous Plumbing.

16.28.010 Uniform Plumbing Code and supplement adopted.

(A) Uniform Plumbing Code, 2006 Edition, including its Standards and Appendices, except as otherwise indicated, designated as Part 1 of this Chapter; and

(B) A document entitled "Southern Nevada Amendments to the 2006 Uniform Plumbing Code," adding to, deleting from and amending the Uniform Plumbing Code, 2006 Edition, designated as Part 2 of this Chapter.

Chapter 5 Water Heaters

Install correct plumbing fittings and material for water heater by license contractor.

Chapter 6 Water Supply and Distribution

Section 601.3 Existing piping used for grounding

Restore and return the copper water piping as the grounding electrode.

1994 Uniform Housing Chapter 10 Section 1001.8 Faulty Weather Protection.

Any and all windows broken or in disrepair are to be made in good repair or replaced.

1994 Uniform Housing Code Section Chapter 7 Mechanical Requirements

1994 UHC 701.1 Heating

Dwelling units, guest rooms and congregate residences shall be provided with heating facilities capable of maintaining a room temperature of 70°F. (21.1°C.) at a point 3 feet (914 mm) above the floor in all habitable rooms. Such facilities shall be installed and maintained in a safe condition and in accordance with Section 3102 of the Building Code , the Mechanical Code, and all other applicable laws. Unvented fuel-burning heaters are not permitted. All heating devices or appliances shall be of an approved type.

1. Cooling Facilities and Cooking Equipment. If a dwelling unit or guest room has been provided with cooling facilities or cooking equipment, or both, such facilities and equipment shall be maintained in a safe working condition or replaced.

Provide safe working cooling facilities or replace.
Provide safe working cooking equipment or replace.

LVMC 16.32.270 Applicability.

The requirements set out in this Article shall apply to all residential-type buildings including those existing, those new and those to be constructed in order to provide the maximum possible security from criminal actions to the permanent and transient occupants thereof, and to their possessions.

16.32.280 Entrance doors direct to outside.

These requirements shall apply to all housing units, whether detached, attached to or within a building, having individual entrances immediately accessible from the outside without other intervening entrance doors:

(A) Entrance doors to housing units shall be capable of resisting forcible entry equal to a single-panel or hollow-core door one-and-three eighths inches thick.

16

20080918-0002772

Fee: $20.00
N/C Fee: $0.00
09/18/2008 12:14:22
T20080215079
Requestor:
LAS VEGAS CITY
Debbie Conway SCA
Clark County Recorder Pgs: 7

NEIGHBORHOOD SERVICES DEPARTMENT
DIRECTOR
STEPHEN HARSIN, AICP

NOTICE AND ORDER

(7)

APN: 162-07-622-016

September 11, 2008

Case #68176

Certified/Regular Mail
Return Receipt Requested

R F H La Paz, LLC
3910 Pecos-McLeod Rd. #B-100
Las Vegas, NV 89121-0000

REVISED
NOTICE AND ORDER REGARDING VACANT OR ABANDONED DANGEROUS BUILDING

You are hereby notified as recorded owner(s) of the property located at **4168 Silver Dollar Ave.- #8, Las Vegas, NV, Parcel # 162-07-622-016,** as follows:

One or more vacant or abandoned buildings on the property, by reason of their condition or impact on surrounding property, have been identified as buildings that need to be boarded, demolished, rehabilitated, or any combination thereof, in accordance with Chapter 16.31 of the Las Vegas Municipal Code. The building or buildings are identified as a **residential condominium located at 4168 Silver Dollar Ave. - #8.**

Per 9.04 – Refuse & Waste: Remove any visible non-usable materials, goods, etc. from all yards and other areas, to comply with code. i.e., paper, plastic, wood, bottles, etc.

Per 9.04 – Weeds/Turf: Trim, cut, remove all weeds/turf grass exceeding eight (8) inches in height in all yards. Cut back all trees and bushes to allow unobstructed view from street, sidewalk, and/or alleyway.

Per 16.04 – Building Permits Required - Department of Building and Safety, 731 S. 4th Street, (702) 229-6251.

LAS VEGAS CITY COUNCIL
MAYOR OSCAR B. GOODMAN
MAYOR PRO TEM GARY REESE • LARRY BROWN • STEVE WOLFSON • LOIS TARKANIAN
STEVEN D. ROSS • RICKI Y. BARLOW
CITY MANAGER DOUGLAS A. SELBY
CITY OF LAS VEGAS • 400 STEWART AVENUE • LAS VEGAS, NEVADA 89101
VOICE 702.229.6615 • FAX 702.382.4341 • TTY 702.386.9108 • www.lasvegasnevada.gov

12. Infestation of insects, vermin or rodents as determined by the health officer.
Provide continuous extermination by licensed pest control.

1994 Uniform Housing Code 1001.6 Hazardous Plumbing.

16.28.010 Uniform Plumbing Code and supplement adopted.

(A) Uniform Plumbing Code, 2006 Edition, including its Standards and Appendices, except as otherwise indicated, designated as Part 1 of this Chapter; and

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Chapter 5 Water Heaters

Install correct plumbing fittings and material for water heater by license contractor.

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1. Cooling Facilities and Cooking Equipment. If a dwelling unit or guest room has been provided with cooling facilities or cooking equipment, or both, such facilities and equipment shall be maintained in a safe working condition or replaced.

Provide safe working cooling facilities or replace.
Provide safe working cooking equipment or replace.

LVMC 16.32.270 Applicability.

The requirements set out in this Article shall apply to all residential-type buildings including those existing, those new and those to be constructed in order to provide the maximum possible security from criminal actions to the permanent and transient occupants thereof, and to their possessions.

16.32.280 Entrance doors direct to outside.

These requirements shall apply to all housing units, whether detached, attached to or within a building, having individual entrances immediately accessible from the outside without other intervening entrance doors:

(A) Entrance doors to housing units shall be capable of resisting forcible entry equal to a single-panel or hollow-core door one-and-three eighths inches thick.

proposed landscaping plan is denied, the owner or manager may appeal the denial to the Planning Commission.

(B) Upon approval of a landscaping plan, the owner and manager of the development shall be jointly and severally responsible for maintaining the approved landscaping in accordance with this Chapter.

Provide and maintain landscaping

The listed corrections must be completed in order to obtain compliance. Please note that any repairs requiring replacement of building components must include permits, inspections and must be performed by a licensed contractor.

Per 16.31 – Vacant Buildings: Submit Letter of Intent. Obtain Boarding Certificate. Provide Mitigation Plan. Provide Rehabilitation Plan.

Post: No trespassing (per NRS 207.200), contact Bolden Area Command, COP Office at 289-5593 to have building properly posted.

Upon correction of violation(s), the responsible party; being resident, tenant, owner, or manager, licensee or other person having control over a structure or parcel of land, must maintain property in compliance or face possible fees, fines, and any such enforcement as permitted by this code.

Responsible party must provide contact information to this department. Contact area code enforcement officer #16 at 229-4918 to supply your current phone number, email address, fax number, or additional mailing address.

In accordance with Chapter 16.31, you are required to:

- **Submit, within 60 days, a Mitigation and Rehabilitation Plan to address the vacant property. The Mitigation and Rehabilitation Plan must be filed with the Department of Neighborhood Services and must include:**

A statement indicating your intentions, as owner(s) of the property, for the future use of the property for the next 12 months, including, without limitation, plans to maintain, redevelop, or reestablish lawful occupancy of the property, or any combination of such activities;

A detailed plan of mitigation measures that you intend to take regarding the property, including, without limitation, measures to maintain the property; restore and maintain landscaping on the property; and provide and maintain adequate security for the property;

A detailed plan of rehabilitation measures that you intend to take regarding the property, including, without limitation, plans to restore buildings, and to maintain the property so as to remove the negative impact on surrounding properties;

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more than one thousand ($1000.00) per day, for each day that any nuisance remained unabated after the date specified for abatement in the notice of violation. The $500.00 or $1000 daily civil penalty will be determined at the discretion of the city council. Any and all unpaid fees are subject to collection and/or liens.

The City is authorized to record this Notice and Order until such time as compliance has been obtained. Should you have any questions or concerns please call me at (702) 229-6615.

Sincerely,

Devin S. Smith, Manager
Neighborhood Response Division
Neighborhood Services Department

Enclosures: City of Las Vegas Abatement Specifications
City of Las Vegas Vacant & Boarded Structures Mitigation/Rehabilitation Plan
City of Las Vegas Vacant & Boarded Structures Statement of Intent

PER ORD 3744-PROVIDE CORRECT ADDRESS AS DEFINED BY COUNTY RECORDS.

PER 2006 IBC SECTION 501.2 AND ORD 3744: PROVIDE ADDRESS ON BUILDING AND INCLUDE IN DESIGN OF ADDRESS SIGN.

PER LVMC 19.10: PROVIDE LITTER FREE PARKING STALL MARKED AND PROVIDE WHEEL STOPS.

PER LVMC 19.12: SUBMIT LANDSCAPE PLAN TO CITY OF LAS VEGAS PLANNING AND DEVELOPMENT LOCATED AT 731 S 4TH ST AND INSTALL TO APPROVED SPECIFICATIONS. KEEP MAINTAINED AT ALL TIMES.

1994 UNIFORM HOUSING CODE SUPPLEMENT, SECTION 12 -OBTAIN PROPER PERMITS FOR THE REHABILITATION OF UNIT AND ACHIEVE A CERTIFICATE OF OCCUPANCY FOR CONDOMINIUM. REPAIRS MUST INCLUDE (BUT NOT LIMITED TO) THE FOLLOWING:

1994 UNIFORM HOUSING CODE, CHAPTER 10: PROVIDE DRAINAGE FREE FROM OBSTRUCTION INCLUDING THE JETTING OF COMMON DRAIN SYSTEM.

2006 INTERNATIONAL PLUMBING CODE, SECTION 601.3: RESTORE AND RETURN THE COPPER WATER PIPING AS THE GROUNDING ELECTRODE.

1994 UNIFORM HOUSING CODE, SECTION 1001.1: INTERIOR WALLS AND CEILINGS ARE TO HAVE ALL HOLES, PENETRATIONS, ANNULAR OPENINGS SEALED OR CAULKED.

1994 UNIFORM HOUSING CODE, CHAPTER 10: INTERIOR LAUNDRY ROOM TO BE IN GOOD REPAIR AND SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001.8: ANY/ALL WINDOWS BROKEN OR IN DISREPAIR ARE TO BE MADE IN GOOD REPAIR OR REPLACED.

2006 INTERNATIONAL PLUMBING CODE, CHAPTER 5: OBTAIN LICENSED PLUMBING CONTRACTOR TO INSTALL CORRECT PLUMING FITTINGS AND MATERIAL FOR WATER HEATER.

1994 UNIFORM HOUSING CODE, SUPPLEMENT, SECTIONS 9 AND 10: PROVIDE SAFE WORKING COOKING FACILITIES

1994 UNIFORM HOUSING CODE, SUPPLEMENT SECTION 10: PROVIDE SAFE WORKING COOLING FACILITIES.

1994 UNIFORM HOUSING CODE CHAPTER 10: FLOORING TO BE MADE SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001: BATHROOMS TO HAVE FIXTURES PROPERLY INSTALLED, GOOD DRAINAGE, LEAK FREE AND SANITARY.

LVMC TITLE 16.32: REPLACE AND PROPERLY INSTALL ENTRY DOOR WITH ALL REQUIRED HARDWARE

- **Obtain a building permit for one or more buildings on the property that have been boarded without obtaining a permit, the building(s) being identified as a single family dwelling located at 4168 Silver Dollar Ave., #8.**

In order to demolish one or more buildings, you are required to first obtain a demolition permit, and then to secure and maintain the remaining vacant property so as to remove the negative impact on surrounding properties.

If you fail to submit a Mitigation and Rehabilitation Plan or board a building within the timeframe(s) set forth above, the Director of Neighborhood Services is authorized to cause to be performed appropriate mitigation or rehabilitation work, or any combination thereof. As the property owner(s), you will be responsible for all costs incurred, including a fifteen percent (15%) administrative fee. You will be notified of a public hearing to be conducted by the City Council to review the costs, and the Council's decision shall be final and conclusive. Upon approval of the costs by the City Council, the City will be authorized to file a Lien of Assessment with the County Recorder's Office. Thereafter, certified copies of the lien will be given to the County Treasurer, and the amount of the Lien of Assessment shall then be collected at the same time and in the same manner as ordinary taxes. All laws applicable to the levy, collection, and enforcement of property taxes shall be applicable to such assessment.

Moreover, you are hereby given notice:

1. That within fifteen (15) days after service of this Notice and Order, you as the owner or responsible party may appeal to the City Council. Such appeal shall be in writing and shall be filed with the City Clerk. Within fifteen (15) days after the appeal has been filed, you will be given written notice of the procedure and time frame for the hearing of the appeal. The appeal will be heard by the City Council or by the Council's designee, with a right to final appeal to the Council. An owner or responsible party who fails to appeal shall be deemed to have waived any and all objections to the actions taken by the Director of Neighborhood Services to satisfy the requirements of this Notice and Order.
2. That this Notice and Order or a copy thereof must be presented to the Department of Building and Safety when requesting any permit(s).
3. That failure to appeal will constitute a waiver of all rights to an administrative hearing to determine this matter.

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more

31

20080918-0002765

Fee: $19.00
N/C Fee: $0.00
09/18/2008 12:14:22
T20080215079
Requestor:
LAS VEGAS CITY
Debbie Conway SCA
Clark County Recorder Pgs: 6

NEIGHBORHOOD SERVICES DEPARTMENT
DIRECTOR
STEPHEN HARSIN, AICP

NOTICE AND ORDER

APN: 162-07-622-001

(10)

September 11, 2008

Case #67914

Certified/Regular Mail
Return Receipt Requested

R F H La Paz, LLC
3910 Pecos-McLeod Rd. #B-100
Las Vegas, NV 89121-0000

NUISANCE HOUSING CODE NOTICE AND ORDER TO COMPLY

As recorded owner(s) of the **residential condominium located at 4186 Silver Dollar Ave. - #1, Las Vegas, NV, legally described as Parcel # 162-07-622-001**, you are hereby given notice that the Building Official or his designee has determined that the aforementioned building(s) is substandard. Said building(s) is substandard, dangerous and declared a public nuisance under Las Vegas Municipal Code (LVMC) 9.04.020 and Section 202 of the Uniform Housing Code because of the following conditions:

Per 9.04 – Graffiti: Remove or paint over graffiti on any building, wall, fence, or other structure allowed to remain for more than 24 hours.

Per 9.04 – Refuse & Waste: Remove any visible non-usable materials, goods, etc. from all yards and other areas, to comply with code. i.e., paper, plastic, bottles, windblown trash and debris, etc.

Per 9.04 – Weeds/Turf: Trim, cut, remove all weeds/turf grass exceeding eight (8) inches in height in all yards. Cut back all trees and bushes to allow unobstructed view from street, sidewalk, and/or alleyway.

1994 Uniform Housing Code 1001.6 Hazardous Plumbing.

16.28.010 Uniform Plumbing Code and supplement adopted.

(A) Uniform Plumbing Code, 2006 Edition, including its Standards and Appendices, except as otherwise indicated, designated as Part 1 of this Chapter; and

(B) A document entitled "Southern Nevada Amendments to the 2006 Uniform Plumbing Code," adding to, deleting from and amending the Uniform Plumbing Code, 2006 Edition, designated as Part 2 of this Chapter.

Chapter 5 Water Heaters

Install correct plumbing fittings and material for water heater by licensed contractor.

Chapter 6 Water Supply and Distribution

Section 601.3 Existing piping used for grounding

Restore and return the copper water piping as the grounding electrode.

1994 Uniform Housing Chapter 10 Section 1001.8 Faulty Weather Protection.

Any and all windows broken or in disrepair are to be made in good repair or replaced.

1994 Uniform Housing Code Section Chapter 7 Mechanical Requirements

1994 UHC 701.1 Heating

Dwelling units, guest rooms and congregate residences shall be provided with heating facilities capable of maintaining a room temperature of 70°F. (21.1°C.) at a point 3 feet (914 mm) above the floor in all habitable rooms. Such facilities shall be installed and maintained in a safe condition and in accordance with Section 3102 of the Building Code , the Mechanical Code, and all other applicable laws. Unvented fuel-burning heaters are not permitted. All heating devices or appliances shall be of an approved type.

1. Cooling Facilities and Cooking Equipment. If a dwelling unit or guest room has been provided with cooling facilities or cooking equipment, or both, such facilities and equipment shall be maintained in a safe working condition or replaced.

Provide safe working cooling facilities or replace.
Provide safe working cooking equipment or replace.

LVMC 16.32.270 Applicability.

The requirements set out in this Article shall apply to all residential-type buildings including those existing, those new and those to be constructed in order to provide the maximum possible security from criminal actions to the permanent and transient occupants thereof, and to their possessions.

16.32.280 Entrance doors direct to outside.

These requirements shall apply to all housing units, whether detached, attached to or within a building, having individual entrances immediately accessible from the outside without other intervening entrance doors:

(A) Entrance doors to housing units shall be capable of resisting forcible entry equal to a single-panel or hollow-core door one-and-three eighths inches thick.

(B) Dead bolts openable without key from the inside shall be provided on all housing unit entrance doors.

proposed landscaping plan is denied, the owner or manager may appeal the denial to the Planning Commission.

(B) Upon approval of a landscaping plan, the owner and manager of the development shall be jointly and severally responsible for maintaining the approved landscaping in accordance with this Chapter.

Provide and maintain landscaping

The listed corrections must be completed in order to obtain compliance. Please note that any repairs requiring replacement of building components must include permits, inspections and must be performed by a licensed contractor.

Post: No trespassing (per NRS 207.200), contact Bolden Area Command, COP Office at 289-5593 to have building properly posted.

Upon correction of violation(s), the responsible party; being resident, tenant, owner, or manager, licensee or other person having control over a structure or parcel of land, must maintain property in compliance or face possible fees, fines, and any such enforcement as permitted by this code.

Responsible party must provide contact information to this department. Contact area code enforcement officer #31 at 229-2016 to supply your current phone number, email address, fax number, or additional mailing address.

Moreover, you are hereby given notice:

1. That within ten (10) days after service of this Notice and Order, you as the owner or responsible party may appeal to the City Council. Such appeal shall be in writing and shall be filed with the City Clerk. Within fifteen (15) days after the appeal has been filed, you will be given written notice of the procedure and time frame for the hearing of the appeal. The appeal will be heard by the City Council or by the Council's designee, with a right to final appeal to the Council. An owner or responsible party who fails to appeal shall be deemed to have waived any and all objections to the actions taken by the Director of Neighborhood Services to satisfy the requirements of this Notice and Order.
2. That this Notice and Order or a copy thereof must be presented to the Department of Building and Safety when requesting any permit(s).
3. That failure to appeal will constitute a waiver of all rights to an administrative hearing to determine this matter.

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or

14

20080918-0002780

Fee: $20.00
N/C Fee: $0.00
09/18/2008 12:14:22
T20080215079
Requestor:
LAS VEGAS CITY
Debbie Conway SCA
Clark County Recorder Pgs: 7

NEIGHBORHOOD SERVICES DEPARTMENT
DIRECTOR
STEPHEN HARSIN, AICP

NOTICE AND ORDER

(7)

APN: 162-07-622-002

September 11, 2008

Case #68011

Certified/Regular Mail
Return Receipt Requested

R F H La Paz, LLC
3910 Pecos-McLeod Rd. #B-100
Las Vegas, NV 89121-0000

REVISED
NOTICE AND ORDER REGARDING VACANT OR ABANDONED BUILDING

You are hereby notified as recorded owner(s) of the property located at **4186 Silver Dollar Ave.-#2, Las Vegas, NV, Parcel # 162-07-622-002,** as follows:

One or more vacant or abandoned buildings on the property, by reason of their condition or impact on surrounding property, have been identified as buildings that need to be boarded, demolished, rehabilitated, or any combination thereof, in accordance with Chapter 16.31 of the Las Vegas Municipal Code. The building or buildings are identified as **residential condominium located at 4186 Silver Dollar Ave. - #2 .**

Per 9.04 – Refuse & Waste: Remove any visible non-usable materials, goods, etc. from all yards and other areas, to comply with code. i.e., paper, plastic, wood, bottles, etc.

Per 9.04 – Weeds/Turf: Trim, cut, remove all weeds/turf grass exceeding eight (8) inches in height in all yards. Cut back all trees and bushes to allow unobstructed view from street, sidewalk, and/or alleyway.

Per 16.04 – Building Permits Required - Department of Building and Safety, 731 S. 4th Street, (702) 229-6251.

LAS VEGAS CITY COUNCIL
MAYOR OSCAR B. GOODMAN
MAYOR PRO TEM GARY REESE • LARRY BROWN • STEVE WOLFSON • LOIS TARKANIAN
STEVEN D. ROSS • RICKI Y. BARLOW
CITY MANAGER DOUGLAS A. SELBY

Return to: CITY OF LAS VEGAS • 400 STEWART AVENUE • LAS VEGAS, NEVADA 89101
VOICE 702.229.6615 • FAX 702.382.4341 • TTY 702.386.9108 • www.lasvegasnevada.gov

12. Infestation of insects, vermin or rodents as determined by the health officer.
Provide continuous extermination by licensed pest control.

1994 Uniform Housing Code 1001.6 Hazardous Plumbing.

16.28.010 Uniform Plumbing Code and supplement adopted.

(A) Uniform Plumbing Code, 2006 Edition, including its Standards and Appendices, except as otherwise indicated, designated as Part 1 of this Chapter; and

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Chapter 5 Water Heaters

Install correct plumbing fittings and material for water heater by license contractor.

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(B) Upon approval of a landscaping plan, the owner and manager of the development shall be jointly and severally responsible for maintaining the approved landscaping in accordance with this Chapter.

Provide and maintain landscaping

The listed corrections must be completed in order to obtain compliance. Please note that any repairs requiring replacement of building components must include permits, inspections and must be performed by a licensed contractor.

Per 16.31 – Vacant Buildings: Submit Letter of Intent. Obtain Boarding Certificate. Provide Mitigation Plan. Provide Rehabilitation Plan.

Post: No trespassing (per NRS 207.200), contact Bolden Area Command, COP Office at 289-5593 to have building properly posted.

Upon correction of violation(s), the responsible party; being resident, tenant, owner, or manager, licensee or other person having control over a structure or parcel of land, must maintain property in compliance or face possible fees, fines, and any such enforcement as permitted by this code.

Responsible party must provide contact information to this department. Contact area code enforcement officer #16 at 229-4918 to supply your current phone number, email address, fax number, or additional mailing address.

In accordance with Chapter 16.31, you are required to:

- **Submit, within 60 days, a Mitigation and Rehabilitation Plan to address the vacant property. The Mitigation and Rehabilitation Plan must be filed with the Department of Neighborhood Services and must include:**

A statement indicating your intentions, as owner(s) of the property, for the future use of the property for the next 12 months, including, without limitation, plans to maintain, redevelop, or reestablish lawful occupancy of the property, or any combination of such activities;

A detailed plan of mitigation measures that you intend to take regarding the property, including, without limitation, measures to maintain the property; restore and maintain landscaping on the property; and provide and maintain adequate security for the property;

A detailed plan of rehabilitation measures that you intend to take regarding the property, including, without limitation, plans to restore buildings, and to maintain the property so as to remove the negative impact on surrounding properties;

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more than one thousand ($1000.00) per day, for each day that any nuisance remained unabated after the date specified for abatement in the notice of violation. The $500.00 or $1000 daily civil penalty will be determined at the discretion of the city council. Any and all unpaid fees are subject to collection and/or liens.

The City is authorized to record this Notice and Order until such time as compliance has been obtained. Should you have any questions or concerns please call me at (702) 229-6615.

Sincerely,

Devin S. Smith, Manager
Neighborhood Response Division
Neighborhood Services Department

Enclosures: City of Las Vegas Abatement Specifications
City of Las Vegas Vacant & Boarded Structures Mitigation/Rehabilitation Plan
City of Las Vegas Vacant & Boarded Structures Statement of Intent
City of Las Vegas Boarded Building Certificate Application

PER ORD 3744-PROVIDE CORRECT ADDRESS AS DEFINED BY COUNTY RECORDS.

PER 2006 IBC SECTION 501.2 AND ORD 3744: PROVIDE ADDRESS ON BUILDING AND INCLUDE IN DESIGN OF ADDRESS SIGN.

PER LVMC 19.10: PROVIDE LITTER FREE PARKING STALL MARKED AND PROVIDE WHEEL STOPS.

PER LVMC 19.12: SUBMIT LANDSCAPE PLAN TO CITY OF LAS VEGAS PLANNING AND DEVELOPMENT LOCATED AT 731 S 4TH ST AND INSTALL TO APPROVED SPECIFICATIONS. KEEP MAINTAINED AT ALL TIMES.

1994 UNIFORM HOUSING CODE SUPPLEMENT, SECTION 12 -OBTAIN PROPER PERMITS FOR THE REHABILITATION OF UNIT AND ACHIEVE A CERTIFICATE OF OCCUPANCY FOR CONDOMINIUM. REPAIRS MUST INCLUDE (BUT NOT LIMITED TO) THE FOLLOWING:

1994 UNIFORM HOUSING CODE, CHAPTER 10: PROVIDE DRAINAGE FREE FROM OBSTRUCTION INCLUDING THE JETTING OF COMMON DRAIN SYSTEM.

2006 INTERNATIONAL PLUMBING CODE, SECTION 601.3: RESTORE AND RETURN THE COPPER WATER PIPING AS THE GROUNDING ELECTRODE.

1994 UNIFORM HOUSING CODE, SECTION 1001.1: INTERIOR WALLS AND CEILINGS ARE TO HAVE ALL HOLES, PENETRATIONS, ANNULAR OPENINGS SEALED OR CAULKED.

1994 UNIFORM HOUSING CODE, CHAPTER 10: INTERIOR LAUNDRY ROOM TO BE IN GOOD REPAIR AND SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001.8: ANY/ALL WINDOWS BROKEN OR IN DISREPAIR ARE TO BE MADE IN GOOD REPAIR OR REPLACED.

2006 INTERNATIONAL PLUMBING CODE, CHAPTER 5: OBTAIN LICENSED PLUMBING CONTRACTOR TO INSTALL CORRECT PLUMING FITTINGS AND MATERIAL FOR WATER HEATER.

1994 UNIFORM HOUSING CODE, SUPPLEMENT, SECTIONS 9 AND 10: PROVIDE SAFE WORKING COOKING FACILITIES

1994 UNIFORM HOUSING CODE, SUPPLEMENT SECTION 10: PROVIDE SAFE WORKING COOLING FACILITIES.

1994 UNIFORM HOUSING CODE CHAPTER 10: FLOORING TO BE MADE SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001: BATHROOMS TO HAVE FIXTURES PROPERLY INSTALLED, GOOD DRAINAGE, LEAK FREE AND SANITARY.

LVMC TITLE 16.32: REPLACE AND PROPERLY INSTALL ENTRY DOOR WITH ALL REQUIRED HARDWARE

- **Obtain a building permit for one or more buildings on the property that have been boarded without obtaining a permit, the building(s) being identified as a single family dwelling located at 4186 Silver Dollar Ave., #2.**

In order to demolish one or more buildings, you are required to first obtain a demolition permit, and then to secure and maintain the remaining vacant property so as to remove the negative impact on surrounding properties.

If you fail to submit a Mitigation and Rehabilitation Plan or board a building within the timeframe(s) set forth above, the Director of Neighborhood Services is authorized to cause to be performed appropriate mitigation or rehabilitation work, or any combination thereof. As the property owner(s), you will be responsible for all costs incurred, including a fifteen percent (15%) administrative fee. You will be notified of a public hearing to be conducted by the City Council to review the costs, and the Council's decision shall be final and conclusive. Upon approval of the costs by the City Council, the City will be authorized to file a Lien of Assessment with the County Recorder's Office. Thereafter, certified copies of the lien will be given to the County Treasurer, and the amount of the Lien of Assessment shall then be collected at the same time and in the same manner as ordinary taxes. All laws applicable to the levy, collection, and enforcement of property taxes shall be applicable to such assessment.

Moreover, you are hereby given notice:

1. That within fifteen (15) days after service of this Notice and Order, you as the owner or responsible party may appeal to the City Council. Such appeal shall be in writing and shall be filed with the City Clerk. Within fifteen (15) days after the appeal has been filed, you will be given written notice of the procedure and time frame for the hearing of the appeal. The appeal will be heard by the City Council or by the Council's designee, with a right to final appeal to the Council. An owner or responsible party who fails to appeal shall be deemed to have waived any and all objections to the actions taken by the Director of Neighborhood Services to satisfy the requirements of this Notice and Order.
2. That this Notice and Order or a copy thereof must be presented to the Department of Building and Safety when requesting any permit(s).
3. That failure to appeal will constitute a waiver of all rights to an administrative hearing to determine this matter.

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more

14

20080918-0002773

Fee: $20.00
N/C Fee: $0.00
09/18/2008 12:14:22
T20080215079
Requestor:
LAS VEGAS CITY
Debbie Conway SCA
Clark County Recorder Pgs: 7

NEIGHBORHOOD SERVICES DEPARTMENT
DIRECTOR
STEPHEN HARSIN, AICP

NOTICE AND ORDER

(7)

APN: 162-07-622-003

September 11, 2008

Case #68012

Certified/Regular Mail
Return Receipt Requested

R F H La Paz, LLC
3910 Pecos-McLeod Rd. #B-100
Las Vegas, NV 89121-0000

REVISED
NOTICE AND ORDER REGARDING VACANT OR ABANDONED DANGEROUS BUILDING

You are hereby notified as recorded owner(s) of the property located at **4186 Silver Dollar Ave.- #3, Las Vegas, NV, Parcel # 162-07-622-006,** as follows:

One or more vacant or abandoned buildings on the property, by reason of their condition or impact on surrounding property, have been identified as buildings that need to be boarded, demolished, rehabilitated, or any combination thereof, in accordance with Chapter 16.31 of the Las Vegas Municipal Code. The building or buildings are identified as a **residential condominium located at 4186 Silver Dollar Ave. - #3.**

Per 9.04 – Refuse & Waste: Remove any visible non-usable materials, goods, etc. from all yards and other areas, to comply with code. i.e., paper, plastic, wood, bottles, etc.

Per 9.04 – Weeds/Turf: Trim, cut, remove all weeds/turf grass exceeding eight (8) inches in height in all yards. Cut back all trees and bushes to allow unobstructed view from street, sidewalk, and/or alleyway.

Per 16.04 – Building Permits Required - Department of Building and Safety, 731 S. 4th Street, (702) 229-6251.

LAS VEGAS CITY COUNCIL
MAYOR OSCAR B. GOODMAN
MAYOR PRO TEM GARY REESE • LARRY BROWN • STEVE WOLFSON • LOIS TARKANIAN
STEVEN D. ROSS • RICKI Y. BARLOW
CITY MANAGER DOUGLAS A. SELBY

Return to: CITY OF LAS VEGAS • 400 STEWART AVENUE • LAS VEGAS, NEVADA 89101
VOICE 702.229.6615 • FAX 702.382.4341 • TTY 702.386.9108 • www.lasvegasnevada.gov

12. Infestation of insects, vermin or rodents as determined by the health officer.
Provide continuous extermination by licensed pest control.

1994 Uniform Housing Code 1001.6 Hazardous Plumbing.
16.28.010 Uniform Plumbing Code and supplement adopted.
(A) Uniform Plumbing Code, 2006 Edition, including its Standards and Appendices, except as otherwise indicated, designated as Part 1 of this Chapter; and
(B) A document entitled "Southern Nevada Amendments to the 2006 Uniform Plumbing Code," adding to, deleting from and amending the Uniform Plumbing Code, 2006 Edition, designated as Part 2 of this Chapter.
Chapter 5 Water Heaters
Install correct plumbing fittings and material for water heater by license contractor.
Chapter 6 Water Supply and Distribution
Section 601.3 Existing piping used for grounding
Restore and return the copper water piping as the grounding electrode.

1994 Uniform Housing Chapter 10 Section 1001.8 Faulty Weather Protection.
Any and all windows broken or in disrepair are to be made in good repair or replaced.

1994 Uniform Housing Code Section Chapter 7 Mechanical Requirements
1994 UHC 701.1 Heating
Dwelling units, guest rooms and congregate residences shall be provided with heating facilities capable of maintaining a room temperature of 70°F. (21.1°C.) at a point 3 feet (914 mm) above the floor in all habitable rooms. Such facilities shall be installed and maintained in a safe condition and in accordance with Section 3102 of the Building Code , the Mechanical Code, and all other applicable laws. Unvented fuel-burning heaters are not permitted. All heating devices or appliances shall be of an approved type.

1. Cooling Facilities and Cooking Equipment. If a dwelling unit or guest room has been provided with cooling facilities or cooking equipment, or both, such facilities and equipment shall be maintained in a safe working condition or replaced.

Provide safe working cooling facilities or replace.
Provide safe working cooking equipment or replace.

LVMC 16.32.270 Applicability.
The requirements set out in this Article shall apply to all residential-type buildings including those existing, those new and those to be constructed in order to provide the maximum possible security from criminal actions to the permanent and transient occupants thereof, and to their possessions.

16.32.280 Entrance doors direct to outside.
These requirements shall apply to all housing units, whether detached, attached to or within a building, having individual entrances immediately accessible from the outside without other intervening entrance doors:
(A) Entrance doors to housing units shall be capable of resisting forcible entry equal to a single-panel or hollow-core door one-and-three eighths inches thick.

proposed landscaping plan is denied, the owner or manager may appeal the denial to the Planning Commission.

(B) Upon approval of a landscaping plan, the owner and manager of the development shall be jointly and severally responsible for maintaining the approved landscaping in accordance with this Chapter.

Provide and maintain landscaping

The listed corrections must be completed in order to obtain compliance. Please note that any repairs requiring replacement of building components must include permits, inspections and must be performed by a licensed contractor.

Per 16.31 – Vacant Buildings: Submit Letter of Intent. Obtain Boarding Certificate. Provide Mitigation Plan. Provide Rehabilitation Plan.

Post: No trespassing (per NRS 207.200), contact Bolden Area Command, COP Office at 289-5593 to have building properly posted.

Upon correction of violation(s), the responsible party; being resident, tenant, owner, or manager, licensee or other person having control over a structure or parcel of land, must maintain property in compliance or face possible fees, fines, and any such enforcement as permitted by this code.

Responsible party must provide contact information to this department. Contact area code enforcement officer #16 at 229-4918 to supply your current phone number, email address, fax number, or additional mailing address.

In accordance with Chapter 16.31, you are required to:

- **Submit, within 60 days, a Mitigation and Rehabilitation Plan to address the vacant property. The Mitigation and Rehabilitation Plan must be filed with the Department of Neighborhood Services and must include:**

A statement indicating your intentions, as owner(s) of the property, for the future use of the property for the next 12 months, including, without limitation, plans to maintain, redevelop, or reestablish lawful occupancy of the property, or any combination of such activities;

A detailed plan of mitigation measures that you intend to take regarding the property, including, without limitation, measures to maintain the property; restore and maintain landscaping on the property; and provide and maintain adequate security for the property;

A detailed plan of rehabilitation measures that you intend to take regarding the property, including, without limitation, plans to restore buildings, and to maintain the property so as to remove the negative impact on surrounding properties;

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more than one thousand ($1000.00) per day, for each day that any nuisance remained unabated after the date specified for abatement in the notice of violation. The $500.00 or $1000 daily civil penalty will be determined at the discretion of the city council. Any and all unpaid fees are subject to collection and/or liens.

The City is authorized to record this Notice and Order until such time as compliance has been obtained. Should you have any questions or concerns please call me at (702) 229-6615.

Sincerely,

Devin S. Smith, Manager
Neighborhood Response Division
Neighborhood Services Department

Enclosures: City of Las Vegas Abatement Specifications
City of Las Vegas Vacant & Boarded Structures Mitigation/Rehabilitation Plan
City of Las Vegas Vacant & Boarded Structures Statement of Intent

PER ORD 3744-PROVIDE CORRECT ADDRESS AS DEFINED BY COUNTY RECORDS.

PER 2006 IBC SECTION 501.2 AND ORD 3744: PROVIDE ADDRESS ON BUILDING AND INCLUDE IN DESIGN OF ADDRESS SIGN.

PER LVMC 19.10: PROVIDE LITTER FREE PARKING STALL MARKED AND PROVIDE WHEEL STOPS.

PER LVMC 19.12: SUBMIT LANDSCAPE PLAN TO CITY OF LAS VEGAS PLANNING AND DEVELOPMENT LOCATED AT 731 S 4TH ST AND INSTALL TO APPROVED SPECIFICATIONS. KEEP MAINTAINED AT ALL TIMES.

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1994 UNIFORM HOUSING CODE, CHAPTER 10: INTERIOR LAUNDRY ROOM TO BE IN GOOD REPAIR AND SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001.8: ANY/ALL WINDOWS BROKEN OR IN DISREPAIR ARE TO BE MADE IN GOOD REPAIR OR REPLACED.

2006 INTERNATIONAL PLUMBING CODE, CHAPTER 5: OBTAIN LICENSED PLUMBING CONTRACTOR TO INSTALL CORRECT PLUMING FITTINGS AND MATERIAL FOR WATER HEATER.

1994 UNIFORM HOUSING CODE, SUPPLEMENT, SECTIONS 9 AND 10: PROVIDE SAFE WORKING COOKING FACILITIES

1994 UNIFORM HOUSING CODE, SUPPLEMENT SECTION 10: PROVIDE SAFE WORKING COOLING FACILITIES.

1994 UNIFORM HOUSING CODE CHAPTER 10: FLOORING TO BE MADE SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001: BATHROOMS TO HAVE FIXTURES PROPERLY INSTALLED, GOOD DRAINAGE, LEAK FREE AND SANITARY.

LVMC TITLE 16.32: REPLACE AND PROPERLY INSTALL ENTRY DOOR WITH ALL REQUIRED HARDWARE

- **Obtain a building permit for one or more buildings on the property that have been boarded without obtaining a permit, the building(s) being identified as a single family dwelling located at 4186 Silver Dollar Ave., #3.**

In order to demolish one or more buildings, you are required to first obtain a demolition permit, and then to secure and maintain the remaining vacant property so as to remove the negative impact on surrounding properties.

If you fail to submit a Mitigation and Rehabilitation Plan or board a building within the timeframe(s) set forth above, the Director of Neighborhood Services is authorized to cause to be performed appropriate mitigation or rehabilitation work, or any combination thereof. As the property owner(s), you will be responsible for all costs incurred, including a fifteen percent (15%) administrative fee. You will be notified of a public hearing to be conducted by the City Council to review the costs, and the Council's decision shall be final and conclusive. Upon approval of the costs by the City Council, the City will be authorized to file a Lien of Assessment with the County Recorder's Office. Thereafter, certified copies of the lien will be given to the County Treasurer, and the amount of the Lien of Assessment shall then be collected at the same time and in the same manner as ordinary taxes. All laws applicable to the levy, collection, and enforcement of property taxes shall be applicable to such assessment.

Moreover, you are hereby given notice:

1. That within fifteen (15) days after service of this Notice and Order, you as the owner or responsible party may appeal to the City Council. Such appeal shall be in writing and shall be filed with the City Clerk. Within fifteen (15) days after the appeal has been filed, you will be given written notice of the procedure and time frame for the hearing of the appeal. The appeal will be heard by the City Council or by the Council's designee, with a right to final appeal to the Council. An owner or responsible party who fails to appeal shall be deemed to have waived any and all objections to the actions taken by the Director of Neighborhood Services to satisfy the requirements of this Notice and Order.
2. That this Notice and Order or a copy thereof must be presented to the Department of Building and Safety when requesting any permit(s).
3. That failure to appeal will constitute a waiver of all rights to an administrative hearing to determine this matter.

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more

31

20080918-0002763

Fee: $19.00
N/C Fee: $0.00
09/18/2008 12:14:22
T20080215079
Requestor:
LAS VEGAS CITY
Debbie Conway SCA
Clark County Recorder Pgs: 6

NEIGHBORHOOD SERVICES DEPARTMENT
DIRECTOR
STEPHEN HARSIN, AICP

NOTICE AND ORDER

(6)

APN: 162-07-622-004

September 11, 2008

Case #68016

Certified/Regular Mail
Return Receipt Requested

R F H La Paz, LLC
3910 Pecos-McLeod Rd. #B-100
Las Vegas, NV 89121-0000

NUISANCE HOUSING CODE NOTICE AND ORDER TO COMPLY

As recorded owner(s) of the **residential condominium located at 4186 Silver Dollar Ave. - #4, Las Vegas, NV, legally described as Parcel # 162-07-622-004**, you are hereby given notice that the Building Official or his designee has determined that the aforementioned building(s) is substandard. Said building(s) is substandard, dangerous and declared a public nuisance under Las Vegas Municipal Code (LVMC) 9.04.020 and Section 202 of the Uniform Housing Code because of the following conditions:

Per 9.04 – Graffiti: Remove or paint over graffiti on any building, wall, fence, or other structure allowed to remain for more than 24 hours.

Per 9.04 – Refuse & Waste: Remove any visible non-usable materials, goods, etc. from all yards and other areas, to comply with code. i.e., paper, plastic, bottles, windblown trash and debris, etc.

Per 9.04 – Weeds/Turf: Trim, cut, remove all weeds/turf grass exceeding eight (8) inches in height in all yards. Cut back all trees and bushes to allow unobstructed view from street, sidewalk, and/or alleyway.

LAS VEGAS CITY COUNCIL
MAYOR OSCAR B. GOODMAN
MAYOR PRO TEM GARY REESE • LARRY BROWN • STEVE WOLFSON • LOIS TARKANIAN
STEVEN D. ROSS • RICKI Y. BARLOW
CITY MANAGER DOUGLAS A. SELBY
Return to: CITY OF LAS VEGAS • 400 STEWART AVENUE • LAS VEGAS, NEVADA 89101
VOICE 702.229.6615 • FAX 702.382.4341 • TTY 702.386.9108 • www.lasvegasnevada.gov

1994 Uniform Housing Code 1001.6 Hazardous Plumbing.

16.28.010 Uniform Plumbing Code and supplement adopted.

(A) Uniform Plumbing Code, 2006 Edition, including its Standards and Appendices, except as otherwise indicated, designated as Part 1 of this Chapter; and

(B) A document entitled "Southern Nevada Amendments to the 2006 Uniform Plumbing Code," adding to, deleting from and amending the Uniform Plumbing Code, 2006 Edition, designated as Part 2 of this Chapter.

Chapter 5 Water Heaters

Install correct plumbing fittings and material for water heater by licensed contractor.

Chapter 6 Water Supply and Distribution

Section 601.3 Existing piping used for grounding

Restore and return the copper water piping as the grounding electrode.

1994 Uniform Housing Chapter 10 Section 1001.8 Faulty Weather Protection.

Any and all windows broken or in disrepair are to be made in good repair or replaced.

1994 Uniform Housing Code Section Chapter 7 Mechanical Requirements

1994 UHC 701.1 Heating

Dwelling units, guest rooms and congregate residences shall be provided with heating facilities capable of maintaining a room temperature of 70°F. (21.1°C.) at a point 3 feet (914 mm) above the floor in all habitable rooms. Such facilities shall be installed and maintained in a safe condition and in accordance with Section 3102 of the Building Code , the Mechanical Code, and all other applicable laws. Unvented fuel-burning heaters are not permitted. All heating devices or appliances shall be of an approved type.

1. Cooling Facilities and Cooking Equipment. If a dwelling unit or guest room has been provided with cooling facilities or cooking equipment, or both, such facilities and equipment shall be maintained in a safe working condition or replaced.

Provide safe working cooling facilities or replace.
Provide safe working cooking equipment or replace.

LVMC 16.32.270 Applicability.

The requirements set out in this Article shall apply to all residential-type buildings including those existing, those new and those to be constructed in order to provide the maximum possible security from criminal actions to the permanent and transient occupants thereof, and to their possessions.

16.32.280 Entrance doors direct to outside.

These requirements shall apply to all housing units, whether detached, attached to or within a building, having individual entrances immediately accessible from the outside without other intervening entrance doors:

(A) Entrance doors to housing units shall be capable of resisting forcible entry equal to a single-panel or hollow-core door one-and-three eighths inches thick.

(B) Dead bolts openable without key from the inside shall be provided on all housing unit entrance doors.

proposed landscaping plan is denied, the owner or manager may appeal the denial to the Planning Commission.

(B) Upon approval of a landscaping plan, the owner and manager of the development shall be jointly and severally responsible for maintaining the approved landscaping in accordance with this Chapter.

Provide and maintain landscaping

The listed corrections must be completed in order to obtain compliance. Please note that any repairs requiring replacement of building components must include permits, inspections and must be performed by a licensed contractor.

Post: No trespassing (per NRS 207.200), contact Bolden Area Command, COP Office at 289-5593 to have building properly posted.

Upon correction of violation(s), the responsible party; being resident, tenant, owner, or manager, licensee or other person having control over a structure or parcel of land, must maintain property in compliance or face possible fees, fines, and any such enforcement as permitted by this code.

Responsible party must provide contact information to this department. Contact area code enforcement officer #31 at 229-2016 to supply your current phone number, email address, fax number, or additional mailing address.

Moreover, you are hereby given notice:

1. That within ten (10) days after service of this Notice and Order, you as the owner or responsible party may appeal to the City Council. Such appeal shall be in writing and shall be filed with the City Clerk. Within fifteen (15) days after the appeal has been filed, you will be given written notice of the procedure and time frame for the hearing of the appeal. The appeal will be heard by the City Council or by the Council's designee, with a right to final appeal to the Council. An owner or responsible party who fails to appeal shall be deemed to have waived any and all objections to the actions taken by the Director of Neighborhood Services to satisfy the requirements of this Notice and Order.
2. That this Notice and Order or a copy thereof must be presented to the Department of Building and Safety when requesting any permit(s).
3. That failure to appeal will constitute a waiver of all rights to an administrative hearing to determine this matter.

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or

16

20080918-0002769

Fee: $20.00
N/C Fee: $0.00
09/18/2008 12:14:22
T20080215079
Requestor:
LAS VEGAS CITY
Debbie Conway SCA
Clark County Recorder Pgs: 7

NEIGHBORHOOD SERVICES DEPARTMENT
DIRECTOR
STEPHEN HARSIN, AICP

NOTICE AND ORDER

(7)

APN: 162-07-622-005

September 11, 2008

Case #68168

Certified/Regular Mail
Return Receipt Requested

R F H La Paz, LLC
3910 Pecos-McLeod Rd. #B-100
Las Vegas, NV 89121-0000

REVISED
NOTICE AND ORDER REGARDING VACANT OR ABANDONED DANGEROUS BUILDING

You are hereby notified as recorded owner(s) of the property located at **4186 Silver Dollar Ave.-#5, Las Vegas, NV, Parcel # 162-07-622-005,** as follows:

One or more vacant or abandoned buildings on the property, by reason of their condition or impact on surrounding property, have been identified as buildings that need to be boarded, demolished, rehabilitated, or any combination thereof, in accordance with Chapter 16.31 of the Las Vegas Municipal Code. The building or buildings are identified as a **residential condominium located at 4186 Silver Dollar Ave. - #5.**

Per 9.04 – Refuse & Waste: Remove any visible non-usable materials, goods, etc. from all yards and other areas, to comply with code. i.e., paper, plastic, wood, bottles, etc.

Per 9.04 – Weeds/Turf: Trim, cut, remove all weeds/turf grass exceeding eight (8) inches in height in all yards. Cut back all trees and bushes to allow unobstructed view from street, sidewalk, and/or alleyway.

Per 16.04 – Building Permits Required - Department of Building and Safety, 731 S. 4th Street, (702) 229-6251.

LAS VEGAS CITY COUNCIL
MAYOR OSCAR B. GOODMAN
MAYOR PRO TEM GARY REESE • LARRY BROWN • STEVE WOLFSON • LOIS TARKANIAN
STEVEN D. ROSS • RICKI Y. BARLOW
CITY MANAGER DOUGLAS A. SELBY

Return to: CITY OF LAS VEGAS • 400 STEWART AVENUE • LAS VEGAS, NEVADA 89101
VOICE 702.229.6615 • FAX 702.382.4341 • TTY 702.386.9108 • www.lasvegasnevada.gov

12. Infestation of insects, vermin or rodents as determined by the health officer.
Provide continuous extermination by licensed pest control.

1994 Uniform Housing Code 1001.6 Hazardous Plumbing.

16.28.010 Uniform Plumbing Code and supplement adopted.

(A) Uniform Plumbing Code, 2006 Edition, including its Standards and Appendices, except as otherwise indicated, designated as Part 1 of this Chapter; and

(B) A document entitled "Southern Nevada Amendments to the 2006 Uniform Plumbing Code," adding to, deleting from and amending the Uniform Plumbing Code, 2006 Edition, designated as Part 2 of this Chapter.

Chapter 5 Water Heaters

Install correct plumbing fittings and material for water heater by license contractor.

Chapter 6 Water Supply and Distribution

Section 601.3 Existing piping used for grounding

Restore and return the copper water piping as the grounding electrode.

1994 Uniform Housing Chapter 10 Section 1001.8 Faulty Weather Protection.

Any and all windows broken or in disrepair are to be made in good repair or replaced.

1994 Uniform Housing Code Section Chapter 7 Mechanical Requirements

1994 UHC 701.1 Heating

Dwelling units, guest rooms and congregate residences shall be provided with heating facilities capable of maintaining a room temperature of 70°F. (21.1°C.) at a point 3 feet (914 mm) above the floor in all habitable rooms. Such facilities shall be installed and maintained in a safe condition and in accordance with Section 3102 of the Building Code , the Mechanical Code, and all other applicable laws. Unvented fuel-burning heaters are not permitted. All heating devices or appliances shall be of an approved type.

1. Cooling Facilities and Cooking Equipment. If a dwelling unit or guest room has been provided with cooling facilities or cooking equipment, or both, such facilities and equipment shall be maintained in a safe working condition or replaced.

Provide safe working cooling facilities or replace.
Provide safe working cooking equipment or replace.

LVMC 16.32.270 Applicability.

The requirements set out in this Article shall apply to all residential-type buildings including those existing, those new and those to be constructed in order to provide the maximum possible security from criminal actions to the permanent and transient occupants thereof, and to their possessions.

16.32.280 Entrance doors direct to outside.

These requirements shall apply to all housing units, whether detached, attached to or within a building, having individual entrances immediately accessible from the outside without other intervening entrance doors:

(A) Entrance doors to housing units shall be capable of resisting forcible entry equal to a single-panel or hollow-core door one-and-three eighths inches thick.

proposed landscaping plan is denied, the owner or manager may appeal the denial to the Planning Commission.

(B) Upon approval of a landscaping plan, the owner and manager of the development shall be jointly and severally responsible for maintaining the approved landscaping in accordance with this Chapter.

Provide and maintain landscaping

The listed corrections must be completed in order to obtain compliance. Please note that any repairs requiring replacement of building components must include permits, inspections and must be performed by a licensed contractor.

Per 16.31 – Vacant Buildings: Submit Letter of Intent. Obtain Boarding Certificate. Provide Mitigation Plan. Provide Rehabilitation Plan.

Post: No trespassing (per NRS 207.200), contact Bolden Area Command, COP Office at 289-5593 to have building properly posted.

Upon correction of violation(s), the responsible party; being resident, tenant, owner, or manager, licensee or other person having control over a structure or parcel of land, must maintain property in compliance or face possible fees, fines, and any such enforcement as permitted by this code.

Responsible party must provide contact information to this department. Contact area code enforcement officer #16 at 229-4918 to supply your current phone number, email address, fax number, or additional mailing address.

In accordance with Chapter 16.31, you are required to:

- **Submit, within 60 days, a Mitigation and Rehabilitation Plan to address the vacant property. The Mitigation and Rehabilitation Plan must be filed with the Department of Neighborhood Services and must include:**

A statement indicating your intentions, as owner(s) of the property, for the future use of the property for the next 12 months, including, without limitation, plans to maintain, redevelop, or reestablish lawful occupancy of the property, or any combination of such activities;

A detailed plan of mitigation measures that you intend to take regarding the property, including, without limitation, measures to maintain the property; restore and maintain landscaping on the property; and provide and maintain adequate security for the property;

A detailed plan of rehabilitation measures that you intend to take regarding the property, including, without limitation, plans to restore buildings, and to maintain the property so as to remove the negative impact on surrounding properties;

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more than one thousand ($1000.00) per day, for each day that any nuisance remained unabated after the date specified for abatement in the notice of violation. The $500.00 or $1000 daily civil penalty will be determined at the discretion of the city council. Any and all unpaid fees are subject to collection and/or liens.

The City is authorized to record this Notice and Order until such time as compliance has been obtained. Should you have any questions or concerns please call me at (702) 229-6615.

Sincerely,

Devin S. Smith, Manager
Neighborhood Response Division
Neighborhood Services Department

Enclosures: City of Las Vegas Abatement Specifications
City of Las Vegas Vacant & Boarded Structures Mitigation/Rehabilitation Plan
City of Las Vegas Vacant & Boarded Structures Statement of Intent

PER ORD 3744-PROVIDE CORRECT ADDRESS AS DEFINED BY COUNTY RECORDS.

PER 2006 IBC SECTION 501.2 AND ORD 3744: PROVIDE ADDRESS ON BUILDING AND INCLUDE IN DESIGN OF ADDRESS SIGN.

PER LVMC 19.10: PROVIDE LITTER FREE PARKING STALL MARKED AND PROVIDE WHEEL STOPS.

PER LVMC 19.12: SUBMIT LANDSCAPE PLAN TO CITY OF LAS VEGAS PLANNING AND DEVELOPMENT LOCATED AT 731 S 4TH ST AND INSTALL TO APPROVED SPECIFICATIONS. KEEP MAINTAINED AT ALL TIMES.

1994 UNIFORM HOUSING CODE SUPPLEMENT, SECTION 12 -OBTAIN PROPER PERMITS FOR THE REHABILITATION OF UNIT AND ACHIEVE A CERTIFICATE OF OCCUPANCY FOR CONDOMINIUM. REPAIRS MUST INCLUDE (BUT NOT LIMITED TO) THE FOLLOWING:

1994 UNIFORM HOUSING CODE, CHAPTER 10: PROVIDE DRAINAGE FREE FROM OBSTRUCTION INCLUDING THE JETTING OF COMMON DRAIN SYSTEM.

2006 INTERNATIONAL PLUMBING CODE, SECTION 601.3: RESTORE AND RETURN THE COPPER WATER PIPING AS THE GROUNDING ELECTRODE.

1994 UNIFORM HOUSING CODE, SECTION 1001.1: INTERIOR WALLS AND CEILINGS ARE TO HAVE ALL HOLES, PENETRATIONS, ANNULAR OPENINGS SEALED OR CAULKED.

1994 UNIFORM HOUSING CODE, CHAPTER 10: INTERIOR LAUNDRY ROOM TO BE IN GOOD REPAIR AND SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001.8: ANY/ALL WINDOWS BROKEN OR IN DISREPAIR ARE TO BE MADE IN GOOD REPAIR OR REPLACED.

2006 INTERNATIONAL PLUMBING CODE, CHAPTER 5: OBTAIN LICENSED PLUMBING CONTRACTOR TO INSTALL CORRECT PLUMING FITTINGS AND MATERIAL FOR WATER HEATER.

1994 UNIFORM HOUSING CODE, SUPPLEMENT, SECTIONS 9 AND 10: PROVIDE SAFE WORKING COOKING FACILITIES

1994 UNIFORM HOUSING CODE, SUPPLEMENT SECTION 10: PROVIDE SAFE WORKING COOLING FACILITIES.

1994 UNIFORM HOUSING CODE CHAPTER 10: FLOORING TO BE MADE SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001: BATHROOMS TO HAVE FIXTURES PROPERLY INSTALLED, GOOD DRAINAGE, LEAK FREE AND SANITARY.

LVMC TITLE 16.32: REPLACE AND PROPERLY INSTALL ENTRY DOOR WITH ALL REQUIRED HARDWARE

- **Obtain a building permit for one or more buildings on the property that have been boarded without obtaining a permit, the building(s) being identified as a single family dwelling located at 4186 Silver Dollar Ave., #5.**

In order to demolish one or more buildings, you are required to first obtain a demolition permit, and then to secure and maintain the remaining vacant property so as to remove the negative impact on surrounding properties.

If you fail to submit a Mitigation and Rehabilitation Plan or board a building within the timeframe(s) set forth above, the Director of Neighborhood Services is authorized to cause to be performed appropriate mitigation or rehabilitation work, or any combination thereof. As the property owner(s), you will be responsible for all costs incurred, including a fifteen percent (15%) administrative fee. You will be notified of a public hearing to be conducted by the City Council to review the costs, and the Council's decision shall be final and conclusive. Upon approval of the costs by the City Council, the City will be authorized to file a Lien of Assessment with the County Recorder's Office. Thereafter, certified copies of the lien will be given to the County Treasurer, and the amount of the Lien of Assessment shall then be collected at the same time and in the same manner as ordinary taxes. All laws applicable to the levy, collection, and enforcement of property taxes shall be applicable to such assessment.

Moreover, you are hereby given notice:

1. That within fifteen (15) days after service of this Notice and Order, you as the owner or responsible party may appeal to the City Council. Such appeal shall be in writing and shall be filed with the City Clerk. Within fifteen (15) days after the appeal has been filed, you will be given written notice of the procedure and time frame for the hearing of the appeal. The appeal will be heard by the City Council or by the Council's designee, with a right to final appeal to the Council. An owner or responsible party who fails to appeal shall be deemed to have waived any and all objections to the actions taken by the Director of Neighborhood Services to satisfy the requirements of this Notice and Order.
2. That this Notice and Order or a copy thereof must be presented to the Department of Building and Safety when requesting any permit(s).
3. That failure to appeal will constitute a waiver of all rights to an administrative hearing to determine this matter.

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more

16

20080918-0002778

Fee: $20.00
N/C Fee: $0.00
09/18/2008 12:14:22
T20080215079
Requestor:
LAS VEGAS CITY
Debbie Conway SCA
Clark County Recorder Pgs: 7

NEIGHBORHOOD SERVICES DEPARTMENT
DIRECTOR
STEPHEN HARSIN, AICP

NOTICE AND ORDER

(7)

APN: 162-07-622-006

September 11, 2008

Case #68013

Certified/Regular Mail
Return Receipt Requested

R F H La Paz, LLC
3910 Pecos-McLeod Rd. #B-100
Las Vegas, NV 89121-0000

REVISED
NOTICE AND ORDER REGARDING VACANT OR ABANDONED BUILDING

You are hereby notified as recorded owner(s) of the property located at **4186 Silver Dollar Ave.- #6, Las Vegas, NV, Parcel # 162-07-622-006,** as follows:

One or more vacant or abandoned buildings on the property, by reason of their condition or impact on surrounding property, have been identified as buildings that need to be boarded, demolished, rehabilitated, or any combination thereof, in accordance with Chapter 16.31 of the Las Vegas Municipal Code. The building or buildings are identified as a **residential condominium located at 4186 Silver Dollar Ave. - #6.**

Per 9.04 – Refuse & Waste: Remove any visible non-usable materials, goods, etc. from all yards and other areas, to comply with code. i.e., paper, plastic, wood, bottles, etc.

Per 9.04 – Weeds/Turf: Trim, cut, remove all weeds/turf grass exceeding eight (8) inches in height in all yards. Cut back all trees and bushes to allow unobstructed view from street, sidewalk, and/or alleyway.

Per 16.04 – Building Permits Required - Department of Building and Safety, 731 S. 4th Street, (702) 229-6251.

LAS VEGAS CITY COUNCIL
MAYOR OSCAR B. GOODMAN
MAYOR PRO TEM GARY REESE • LARRY BROWN • STEVE WOLFSON • LOIS TARKANIAN
STEVEN D. ROSS • RICKI Y. BARLOW
CITY MANAGER DOUGLAS A. SELBY

Return to: CITY OF LAS VEGAS • 400 STEWART AVENUE • LAS VEGAS, NEVADA 89101
VOICE 702.229.6615 • FAX 702.382.4341 • TTY 702.386.9108 • www.lasvegasnevada.gov

12. Infestation of insects, vermin or rodents as determined by the health officer.
Provide continuous extermination by licensed pest control.

1994 Uniform Housing Code 1001.6 Hazardous Plumbing.

16.28.010 Uniform Plumbing Code and supplement adopted.

(A) Uniform Plumbing Code, 2006 Edition, including its Standards and Appendices, except as otherwise indicated, designated as Part 1 of this Chapter; and

(B) A document entitled "Southern Nevada Amendments to the 2006 Uniform Plumbing Code," adding to, deleting from and amending the Uniform Plumbing Code, 2006 Edition, designated as Part 2 of this Chapter.

Chapter 5 Water Heaters

Install correct plumbing fittings and material for water heater by license contractor.

Chapter 6 Water Supply and Distribution

Section 601.3 Existing piping used for grounding

Restore and return the copper water piping as the grounding electrode.

1994 Uniform Housing Chapter 10 Section 1001.8 Faulty Weather Protection.

Any and all windows broken or in disrepair are to be made in good repair or replaced.

1994 Uniform Housing Code Section Chapter 7 Mechanical Requirements

1994 UHC 701.1 Heating

Dwelling units, guest rooms and congregate residences shall be provided with heating facilities capable of maintaining a room temperature of 70°F. (21.1°C.) at a point 3 feet (914 mm) above the floor in all habitable rooms. Such facilities shall be installed and maintained in a safe condition and in accordance with Section 3102 of the Building Code , the Mechanical Code, and all other applicable laws. Unvented fuel-burning heaters are not permitted. All heating devices or appliances shall be of an approved type.

1. Cooling Facilities and Cooking Equipment. If a dwelling unit or guest room has been provided with cooling facilities or cooking equipment, or both, such facilities and equipment shall be maintained in a safe working condition or replaced.

Provide safe working cooling facilities or replace.
Provide safe working cooking equipment or replace.

LVMC 16.32.270 Applicability.

The requirements set out in this Article shall apply to all residential-type buildings including those existing, those new and those to be constructed in order to provide the maximum possible security from criminal actions to the permanent and transient occupants thereof, and to their possessions.

16.32.280 Entrance doors direct to outside.

These requirements shall apply to all housing units, whether detached, attached to or within a building, having individual entrances immediately accessible from the outside without other intervening entrance doors:

(A) Entrance doors to housing units shall be capable of resisting forcible entry equal to a single-panel or hollow-core door one-and-three eighths inches thick.

proposed landscaping plan is denied, the owner or manager may appeal the denial to the Planning Commission.

(B) Upon approval of a landscaping plan, the owner and manager of the development shall be jointly and severally responsible for maintaining the approved landscaping in accordance with this Chapter.

Provide and maintain landscaping

The listed corrections must be completed in order to obtain compliance. Please note that any repairs requiring replacement of building components must include permits, inspections and must be performed by a licensed contractor.

Per 16.31 – Vacant Buildings: Submit Letter of Intent. Obtain Boarding Certificate. Provide Mitigation Plan. Provide Rehabilitation Plan.

Post: No trespassing (per NRS 207.200), contact Bolden Area Command, COP Office at 289-5593 to have building properly posted.

Upon correction of violation(s), the responsible party; being resident, tenant, owner, or manager, licensee or other person having control over a structure or parcel of land, must maintain property in compliance or face possible fees, fines, and any such enforcement as permitted by this code.

Responsible party must provide contact information to this department. Contact area code enforcement officer #16 at 229-4918 to supply your current phone number, email address, fax number, or additional mailing address.

In accordance with Chapter 16.31, you are required to:

- **Submit, within 60 days, a Mitigation and Rehabilitation Plan to address the vacant property. The Mitigation and Rehabilitation Plan must be filed with the Department of Neighborhood Services and must include:**

A statement indicating your intentions, as owner(s) of the property, for the future use of the property for the next 12 months, including, without limitation, plans to maintain, redevelop, or reestablish lawful occupancy of the property, or any combination of such activities;

A detailed plan of mitigation measures that you intend to take regarding the property, including, without limitation, measures to maintain the property; restore and maintain landscaping on the property; and provide and maintain adequate security for the property;

A detailed plan of rehabilitation measures that you intend to take regarding the property, including, without limitation, plans to restore buildings, and to maintain the property so as to remove the negative impact on surrounding properties;

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more than one thousand ($1000.00) per day, for each day that any nuisance remained unabated after the date specified for abatement in the notice of violation. The $500.00 or $1000 daily civil penalty will be determined at the discretion of the city council. Any and all unpaid fees are subject to collection and/or liens.

The City is authorized to record this Notice and Order until such time as compliance has been obtained. Should you have any questions or concerns please call me at (702) 229-6615.

Sincerely,

Devin S. Smith, Manager
Neighborhood Response Division
Neighborhood Services Department

Enclosures: City of Las Vegas Abatement Specifications
City of Las Vegas Vacant & Boarded Structures Mitigation/Rehabilitation Plan
City of Las Vegas Vacant & Boarded Structures Statement of Intent
City of Las Vegas Boarded Building Certificate Application

PER ORD 3744-PROVIDE CORRECT ADDRESS AS DEFINED BY COUNTY RECORDS.

PER 2006 IBC SECTION 501.2 AND ORD 3744: PROVIDE ADDRESS ON BUILDING AND INCLUDE IN DESIGN OF ADDRESS SIGN.

PER LVMC 19.10: PROVIDE LITTER FREE PARKING STALL MARKED AND PROVIDE WHEEL STOPS.

PER LVMC 19.12: SUBMIT LANDSCAPE PLAN TO CITY OF LAS VEGAS PLANNING AND DEVELOPMENT LOCATED AT 731 S 4TH ST AND INSTALL TO APPROVED SPECIFICATIONS. KEEP MAINTAINED AT ALL TIMES.

1994 UNIFORM HOUSING CODE SUPPLEMENT, SECTION 12 -OBTAIN PROPER PERMITS FOR THE REHABILITATION OF UNIT AND ACHIEVE A CERTIFICATE OF OCCUPANCY FOR CONDOMINIUM. REPAIRS MUST INCLUDE (BUT NOT LIMITED TO) THE FOLLOWING:

1994 UNIFORM HOUSING CODE, CHAPTER 10: PROVIDE DRAINAGE FREE FROM OBSTRUCTION INCLUDING THE JETTING OF COMMON DRAIN SYSTEM.

2006 INTERNATIONAL PLUMBING CODE, SECTION 601.3: RESTORE AND RETURN THE COPPER WATER PIPING AS THE GROUNDING ELECTRODE.

1994 UNIFORM HOUSING CODE, SECTION 1001.1: INTERIOR WALLS AND CEILINGS ARE TO HAVE ALL HOLES, PENETRATIONS, ANNULAR OPENINGS SEALED OR CAULKED.

1994 UNIFORM HOUSING CODE, CHAPTER 10: INTERIOR LAUNDRY ROOM TO BE IN GOOD REPAIR AND SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001.8: ANY/ALL WINDOWS BROKEN OR IN DISREPAIR ARE TO BE MADE IN GOOD REPAIR OR REPLACED.

2006 INTERNATIONAL PLUMBING CODE, CHAPTER 5: OBTAIN LICENSED PLUMBING CONTRACTOR TO INSTALL CORRECT PLUMING FITTINGS AND MATERIAL FOR WATER HEATER.

1994 UNIFORM HOUSING CODE, SUPPLEMENT, SECTIONS 9 AND 10: PROVIDE SAFE WORKING COOKING FACILITIES

1994 UNIFORM HOUSING CODE, SUPPLEMENT SECTION 10: PROVIDE SAFE WORKING COOLING FACILITIES.

1994 UNIFORM HOUSING CODE CHAPTER 10: FLOORING TO BE MADE SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001: BATHROOMS TO HAVE FIXTURES PROPERLY INSTALLED, GOOD DRAINAGE, LEAK FREE AND SANITARY.

LVMC TITLE 16.32: REPLACE AND PROPERLY INSTALL ENTRY DOOR WITH ALL REQUIRED HARDWARE

- **Obtain a building permit for one or more buildings on the property that have been boarded without obtaining a permit, the building(s) being identified as a single family dwelling located at 4186 Silver Dollar Ave., #6.**

In order to demolish one or more buildings, you are required to first obtain a demolition permit, and then to secure and maintain the remaining vacant property so as to remove the negative impact on surrounding properties.

If you fail to submit a Mitigation and Rehabilitation Plan or board a building within the timeframe(s) set forth above, the Director of Neighborhood Services is authorized to cause to be performed appropriate mitigation or rehabilitation work, or any combination thereof. As the property owner(s), you will be responsible for all costs incurred, including a fifteen percent (15%) administrative fee. You will be notified of a public hearing to be conducted by the City Council to review the costs, and the Council's decision shall be final and conclusive. Upon approval of the costs by the City Council, the City will be authorized to file a Lien of Assessment with the County Recorder's Office. Thereafter, certified copies of the lien will be given to the County Treasurer, and the amount of the Lien of Assessment shall then be collected at the same time and in the same manner as ordinary taxes. All laws applicable to the levy, collection, and enforcement of property taxes shall be applicable to such assessment.

Moreover, you are hereby given notice:

1. That within fifteen (15) days after service of this Notice and Order, you as the owner or responsible party may appeal to the City Council. Such appeal shall be in writing and shall be filed with the City Clerk. Within fifteen (15) days after the appeal has been filed, you will be given written notice of the procedure and time frame for the hearing of the appeal. The appeal will be heard by the City Council or by the Council's designee, with a right to final appeal to the Council. An owner or responsible party who fails to appeal shall be deemed to have waived any and all objections to the actions taken by the Director of Neighborhood Services to satisfy the requirements of this Notice and Order.
2. That this Notice and Order or a copy thereof must be presented to the Department of Building and Safety when requesting any permit(s).
3. That failure to appeal will constitute a waiver of all rights to an administrative hearing to determine this matter.

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16

20080918-0002779

Fee: $20.00
N/C Fee: $0.00
09/18/2008 12:14:22
T20080215079
Requestor:
LAS VEGAS CITY
Debbie Conway SCA
Clark County Recorder Pgs: 7

NEIGHBORHOOD SERVICES DEPARTMENT
DIRECTOR
STEPHEN HARSIN, AICP

NOTICE AND ORDER

(7)

APN: 162-07-622-007

September 11, 2008

Case #68014

Certified/Regular Mail
Return Receipt Requested

R F H La Paz, LLC
3910 Pecos-McLeod Rd. #B-100
Las Vegas, NV 89121-0000

REVISED
NOTICE AND ORDER REGARDING VACANT OR ABANDONED BUILDING

You are hereby notified as recorded owner(s) of the property located at **4186 Silver Dollar Ave.-#7, Las Vegas, NV, Parcel # 162-07-622-007,** as follows:

One or more vacant or abandoned buildings on the property, by reason of their condition or impact on surrounding property, have been identified as buildings that need to be boarded, demolished, rehabilitated, or any combination thereof, in accordance with Chapter 16.31 of the Las Vegas Municipal Code. The building or buildings are identified as **residential condominium located at 4186 Silver Dollar Ave. - #7.**

Per 9.04 – Refuse & Waste: Remove any visible non-usable materials, goods, etc. from all yards and other areas, to comply with code. i.e., paper, plastic, wood, bottles, etc.

Per 9.04 – Weeds/Turf: Trim, cut, remove all weeds/turf grass exceeding eight (8) inches in height in all yards. Cut back all trees and bushes to allow unobstructed view from street, sidewalk, and/or alleyway.

Per 16.04 – Building Permits Required - Department of Building and Safety, 731 S. 4th Street, (702) 229-6251.

LAS VEGAS CITY COUNCIL
MAYOR OSCAR B. GOODMAN
MAYOR PRO TEM GARY REESE • LARRY BROWN • STEVE WOLFSON • LOIS TARKANIAN
STEVEN D. ROSS • RICKI Y. BARLOW
CITY MANAGER DOUGLAS A. SELBY

Return to: CITY OF LAS VEGAS • 400 STEWART AVENUE • LAS VEGAS, NEVADA 89101
VOICE 702.229.6615 • FAX 702.382.4341 • TTY 702.386.9108 • www.lasvegasnevada.gov

12. Infestation of insects, vermin or rodents as determined by the health officer.
Provide continuous extermination by licensed pest control.

1994 Uniform Housing Code 1001.6 Hazardous Plumbing.

16.28.010 Uniform Plumbing Code and supplement adopted.

(A) Uniform Plumbing Code, 2006 Edition, including its Standards and Appendices, except as otherwise indicated, designated as Part 1 of this Chapter; and

(B) A document entitled "Southern Nevada Amendments to the 2006 Uniform Plumbing Code," adding to, deleting from and amending the Uniform Plumbing Code, 2006 Edition, designated as Part 2 of this Chapter.

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Install correct plumbing fittings and material for water heater by license contractor.

Chapter 6 Water Supply and Distribution

Section 601.3 Existing piping used for grounding

Restore and return the copper water piping as the grounding electrode.

1994 Uniform Housing Chapter 10 Section 1001.8 Faulty Weather Protection.

Any and all windows broken or in disrepair are to be made in good repair or replaced.

1994 Uniform Housing Code Section Chapter 7 Mechanical Requirements

1994 UHC 701.1 Heating

Dwelling units, guest rooms and congregate residences shall be provided with heating facilities capable of maintaining a room temperature of 70°F. (21.1°C.) at a point 3 feet (914 mm) above the floor in all habitable rooms. Such facilities shall be installed and maintained in a safe condition and in accordance with Section 3102 of the Building Code , the Mechanical Code, and all other applicable laws. Unvented fuel-burning heaters are not permitted. All heating devices or appliances shall be of an approved type.

1. Cooling Facilities and Cooking Equipment. If a dwelling unit or guest room has been provided with cooling facilities or cooking equipment, or both, such facilities and equipment shall be maintained in a safe working condition or replaced.

Provide safe working cooling facilities or replace.
Provide safe working cooking equipment or replace.

LVMC 16.32.270 Applicability.

The requirements set out in this Article shall apply to all residential-type buildings including those existing, those new and those to be constructed in order to provide the maximum possible security from criminal actions to the permanent and transient occupants thereof, and to their possessions.

16.32.280 Entrance doors direct to outside.

These requirements shall apply to all housing units, whether detached, attached to or within a building, having individual entrances immediately accessible from the outside without other intervening entrance doors:

(A) Entrance doors to housing units shall be capable of resisting forcible entry equal to a single-panel or hollow-core door one-and-three eighths inches thick.

proposed landscaping plan is denied, the owner or manager may appeal the denial to the Planning Commission.

(B) Upon approval of a landscaping plan, the owner and manager of the development shall be jointly and severally responsible for maintaining the approved landscaping in accordance with this Chapter.

Provide and maintain landscaping

The listed corrections must be completed in order to obtain compliance. Please note that any repairs requiring replacement of building components must include permits, inspections and must be performed by a licensed contractor.

Per 16.31 – Vacant Buildings: Submit Letter of Intent. Obtain Boarding Certificate. Provide Mitigation Plan. Provide Rehabilitation Plan.

Post: No trespassing (per NRS 207.200), contact Bolden Area Command, COP Office at 289-5593 to have building properly posted.

Upon correction of violation(s), the responsible party; being resident, tenant, owner, or manager, licensee or other person having control over a structure or parcel of land, must maintain property in compliance or face possible fees, fines, and any such enforcement as permitted by this code.

Responsible party must provide contact information to this department. Contact area code enforcement officer #16 at 229-4918 to supply your current phone number, email address, fax number, or additional mailing address.

In accordance with Chapter 16.31, you are required to:

- **Submit, within 60 days, a Mitigation and Rehabilitation Plan to address the vacant property. The Mitigation and Rehabilitation Plan must be filed with the Department of Neighborhood Services and must include:**

A statement indicating your intentions, as owner(s) of the property, for the future use of the property for the next 12 months, including, without limitation, plans to maintain, redevelop, or reestablish lawful occupancy of the property, or any combination of such activities;

A detailed plan of mitigation measures that you intend to take regarding the property, including, without limitation, measures to maintain the property; restore and maintain landscaping on the property; and provide and maintain adequate security for the property;

A detailed plan of rehabilitation measures that you intend to take regarding the property, including, without limitation, plans to restore buildings, and to maintain the property so as to remove the negative impact on surrounding properties;

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more than one thousand ($1000.00) per day, for each day that any nuisance remained unabated after the date specified for abatement in the notice of violation. The $500.00 or $1000 daily civil penalty will be determined at the discretion of the city council. Any and all unpaid fees are subject to collection and/or liens.

The City is authorized to record this Notice and Order until such time as compliance has been obtained. Should you have any questions or concerns please call me at (702) 229-6615.

Sincerely,

Devin S. Smith, Manager
Neighborhood Response Division
Neighborhood Services Department

Enclosures: City of Las Vegas Abatement Specifications
City of Las Vegas Vacant & Boarded Structures Mitigation/Rehabilitation Plan
City of Las Vegas Vacant & Boarded Structures Statement of Intent
City of Las Vegas Boarded Building Certificate Application

PER ORD 3744-PROVIDE CORRECT ADDRESS AS DEFINED BY COUNTY RECORDS.

PER 2006 IBC SECTION 501.2 AND ORD 3744: PROVIDE ADDRESS ON BUILDING AND INCLUDE IN DESIGN OF ADDRESS SIGN.

PER LVMC 19.10: PROVIDE LITTER FREE PARKING STALL MARKED AND PROVIDE WHEEL STOPS.

PER LVMC 19.12: SUBMIT LANDSCAPE PLAN TO CITY OF LAS VEGAS PLANNING AND DEVELOPMENT LOCATED AT 731 S 4TH ST AND INSTALL TO APPROVED SPECIFICATIONS. KEEP MAINTAINED AT ALL TIMES.

1994 UNIFORM HOUSING CODE SUPPLEMENT, SECTION 12 -OBTAIN PROPER PERMITS FOR THE REHABILITATION OF UNIT AND ACHIEVE A CERTIFICATE OF OCCUPANCY FOR CONDOMINIUM. REPAIRS MUST INCLUDE (BUT NOT LIMITED TO) THE FOLLOWING:

1994 UNIFORM HOUSING CODE, CHAPTER 10: PROVIDE DRAINAGE FREE FROM OBSTRUCTION INCLUDING THE JETTING OF COMMON DRAIN SYSTEM.

2006 INTERNATIONAL PLUMBING CODE, SECTION 601.3: RESTORE AND RETURN THE COPPER WATER PIPING AS THE GROUNDING ELECTRODE.

1994 UNIFORM HOUSING CODE, SECTION 1001.1: INTERIOR WALLS AND CEILINGS ARE TO HAVE ALL HOLES, PENETRATIONS, ANNULAR OPENINGS SEALED OR CAULKED.

1994 UNIFORM HOUSING CODE, CHAPTER 10: INTERIOR LAUNDRY ROOM TO BE IN GOOD REPAIR AND SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001.8: ANY/ALL WINDOWS BROKEN OR IN DISREPAIR ARE TO BE MADE IN GOOD REPAIR OR REPLACED.

2006 INTERNATIONAL PLUMBING CODE, CHAPTER 5: OBTAIN LICENSED PLUMBING CONTRACTOR TO INSTALL CORRECT PLUMING FITTINGS AND MATERIAL FOR WATER HEATER.

1994 UNIFORM HOUSING CODE, SUPPLEMENT, SECTIONS 9 AND 10: PROVIDE SAFE WORKING COOKING FACILITIES

1994 UNIFORM HOUSING CODE, SUPPLEMENT SECTION 10: PROVIDE SAFE WORKING COOLING FACILITIES.

1994 UNIFORM HOUSING CODE CHAPTER 10: FLOORING TO BE MADE SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001: BATHROOMS TO HAVE FIXTURES PROPERLY INSTALLED, GOOD DRAINAGE, LEAK FREE AND SANITARY.

LVMC TITLE 16.32: REPLACE AND PROPERLY INSTALL ENTRY DOOR WITH ALL REQUIRED HARDWARE

- **Obtain a building permit for one or more buildings on the property that have been boarded without obtaining a permit, the building(s) being identified as a single family dwelling located at 4186 Silver Dollar Ave., #7.**

In order to demolish one or more buildings, you are required to first obtain a demolition permit, and then to secure and maintain the remaining vacant property so as to remove the negative impact on surrounding properties.

If you fail to submit a Mitigation and Rehabilitation Plan or board a building within the timeframe(s) set forth above, the Director of Neighborhood Services is authorized to cause to be performed appropriate mitigation or rehabilitation work, or any combination thereof. As the property owner(s), you will be responsible for all costs incurred, including a fifteen percent (15%) administrative fee. You will be notified of a public hearing to be conducted by the City Council to review the costs, and the Council's decision shall be final and conclusive. Upon approval of the costs by the City Council, the City will be authorized to file a Lien of Assessment with the County Recorder's Office. Thereafter, certified copies of the lien will be given to the County Treasurer, and the amount of the Lien of Assessment shall then be collected at the same time and in the same manner as ordinary taxes. All laws applicable to the levy, collection, and enforcement of property taxes shall be applicable to such assessment.

Moreover, you are hereby given notice:

1. That within fifteen (15) days after service of this Notice and Order, you as the owner or responsible party may appeal to the City Council. Such appeal shall be in writing and shall be filed with the City Clerk. Within fifteen (15) days after the appeal has been filed, you will be given written notice of the procedure and time frame for the hearing of the appeal. The appeal will be heard by the City Council or by the Council's designee, with a right to final appeal to the Council. An owner or responsible party who fails to appeal shall be deemed to have waived any and all objections to the actions taken by the Director of Neighborhood Services to satisfy the requirements of this Notice and Order.
2. That this Notice and Order or a copy thereof must be presented to the Department of Building and Safety when requesting any permit(s).
3. That failure to appeal will constitute a waiver of all rights to an administrative hearing to determine this matter.

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proposed landscaping plan is denied, the owner or manager may appeal the denial to the Planning Commission.

(B) Upon approval of a landscaping plan, the owner and manager of the development shall be jointly and severally responsible for maintaining the approved landscaping in accordance with this Chapter.

Provide and maintain landscaping

The listed corrections must be completed in order to obtain compliance. Please note that any repairs requiring replacement of building components must include permits, inspections and must be performed by a licensed contractor.

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Sincerely,

Devin S. Smith, Manager
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LVMC TITLE 16.32: REPLACE AND PROPERLY INSTALL ENTRY DOOR WITH ALL REQUIRED HARDWARE

- **Obtain a building permit for one or more buildings on the property that have been boarded without obtaining a permit, the building(s) being identified as a single family dwelling located at 4168 Silver Dollar Ave., #8.**

In order to demolish one or more buildings, you are required to first obtain a demolition permit, and then to secure and maintain the remaining vacant property so as to remove the negative impact on surrounding properties.

If you fail to submit a Mitigation and Rehabilitation Plan or board a building within the timeframe(s) set forth above, the Director of Neighborhood Services is authorized to cause to be performed appropriate mitigation or rehabilitation work, or any combination thereof. As the property owner(s), you will be responsible for all costs incurred, including a fifteen percent (15%) administrative fee. You will be notified of a public hearing to be conducted by the City Council to review the costs, and the Council's decision shall be final and conclusive. Upon approval of the costs by the City Council, the City will be authorized to file a Lien of Assessment with the County Recorder's Office. Thereafter, certified copies of the lien will be given to the County Treasurer, and the amount of the Lien of Assessment shall then be collected at the same time and in the same manner as ordinary taxes. All laws applicable to the levy, collection, and enforcement of property taxes shall be applicable to such assessment.

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31

20080918-0002765

Fee: $19.00
N/C Fee: $0.00

09/18/2008 12:14:22
T20080215079
Requestor:
LAS VEGAS CITY

Debbie Conway SCA
Clark County Recorder Pgs: 6

NEIGHBORHOOD SERVICES DEPARTMENT
DIRECTOR
STEPHEN HARSIN, AICP

NOTICE AND ORDER

(10)

APN: 162-07-622-001

September 11, 2008

Case #67914

Certified/Regular Mail
Return Receipt Requested

R F H La Paz, LLC
3910 Pecos-McLeod Rd. #B-100
Las Vegas, NV 89121-0000

NUISANCE HOUSING CODE NOTICE AND ORDER TO COMPLY

As recorded owner(s) of the **residential condominium located at 4186 Silver Dollar Ave. - #1, Las Vegas, NV, legally described as Parcel # 162-07-622-001**, you are hereby given notice that the Building Official or his designee has determined that the aforementioned building(s) is substandard. Said building(s) is substandard, dangerous and declared a public nuisance under Las Vegas Municipal Code (LVMC) 9.04.020 and Section 202 of the Uniform Housing Code because of the following conditions:

Per 9.04 – Graffiti: Remove or paint over graffiti on any building, wall, fence, or other structure allowed to remain for more than 24 hours.

Per 9.04 – Refuse & Waste: Remove any visible non-usable materials, goods, etc. from all yards and other areas, to comply with code. i.e., paper, plastic, bottles, windblown trash and debris, etc.

Per 9.04 – Weeds/Turf: Trim, cut, remove all weeds/turf grass exceeding eight (8) inches in height in all yards. Cut back all trees and bushes to allow unobstructed view from street, sidewalk, and/or alleyway.

Return to: CITY OF LAS VEGAS • 400 STEWART AVENUE • LAS VEGAS, NEVADA 89101
VOICE 702.229.6615 • FAX 702.382.4341 • TTY 702.386.9108 • www.lasvegasnevada.gov

1994 Uniform Housing Code 1001.6 Hazardous Plumbing.

16.28.010 Uniform Plumbing Code and supplement adopted.

(A) Uniform Plumbing Code, 2006 Edition, including its Standards and Appendices, except as otherwise indicated, designated as Part 1 of this Chapter; and

(B) A document entitled "Southern Nevada Amendments to the 2006 Uniform Plumbing Code," adding to, deleting from and amending the Uniform Plumbing Code, 2006 Edition, designated as Part 2 of this Chapter.

Chapter 5 Water Heaters

Install correct plumbing fittings and material for water heater by licensed contractor.

Chapter 6 Water Supply and Distribution

Section 601.3 Existing piping used for grounding

Restore and return the copper water piping as the grounding electrode.

1994 Uniform Housing Chapter 10 Section 1001.8 Faulty Weather Protection.

Any and all windows broken or in disrepair are to be made in good repair or replaced.

1994 Uniform Housing Code Section Chapter 7 Mechanical Requirements

1994 UHC 701.1 Heating

Dwelling units, guest rooms and congregate residences shall be provided with heating facilities capable of maintaining a room temperature of 70°F. (21.1°C.) at a point 3 feet (914 mm) above the floor in all habitable rooms. Such facilities shall be installed and maintained in a safe condition and in accordance with Section 3102 of the Building Code , the Mechanical Code, and all other applicable laws. Unvented fuel-burning heaters are not permitted. All heating devices or appliances shall be of an approved type.

1. Cooling Facilities and Cooking Equipment. If a dwelling unit or guest room has been provided with cooling facilities or cooking equipment, or both, such facilities and equipment shall be maintained in a safe working condition or replaced.

Provide safe working cooling facilities or replace.
Provide safe working cooking equipment or replace.

LVMC 16.32.270 Applicability.

The requirements set out in this Article shall apply to all residential-type buildings including those existing, those new and those to be constructed in order to provide the maximum possible security from criminal actions to the permanent and transient occupants thereof, and to their possessions.

16.32.280 Entrance doors direct to outside.

These requirements shall apply to all housing units, whether detached, attached to or within a building, having individual entrances immediately accessible from the outside without other intervening entrance doors:

(A) Entrance doors to housing units shall be capable of resisting forcible entry equal to a single-panel or hollow-core door one-and-three eighths inches thick.

(B) Dead bolts openable without key from the inside shall be provided on all housing unit entrance doors.

proposed landscaping plan is denied, the owner or manager may appeal the denial to the Planning Commission.

(B) Upon approval of a landscaping plan, the owner and manager of the development shall be jointly and severally responsible for maintaining the approved landscaping in accordance with this Chapter.

Provide and maintain landscaping

The listed corrections must be completed in order to obtain compliance. Please note that any repairs requiring replacement of building components must include permits, inspections and must be performed by a licensed contractor.

Post: No trespassing (per NRS 207.200), contact Bolden Area Command, COP Office at 289-5593 to have building properly posted.

Upon correction of violation(s), the responsible party; being resident, tenant, owner, or manager, licensee or other person having control over a structure or parcel of land, must maintain property in compliance or face possible fees, fines, and any such enforcement as permitted by this code.

Responsible party must provide contact information to this department. Contact area code enforcement officer #31 at 229-2016 to supply your current phone number, email address, fax number, or additional mailing address.

Moreover, you are hereby given notice:

1. That within ten (10) days after service of this Notice and Order, you as the owner or responsible party may appeal to the City Council. Such appeal shall be in writing and shall be filed with the City Clerk. Within fifteen (15) days after the appeal has been filed, you will be given written notice of the procedure and time frame for the hearing of the appeal. The appeal will be heard by the City Council or by the Council's designee, with a right to final appeal to the Council. An owner or responsible party who fails to appeal shall be deemed to have waived any and all objections to the actions taken by the Director of Neighborhood Services to satisfy the requirements of this Notice and Order.
2. That this Notice and Order or a copy thereof must be presented to the Department of Building and Safety when requesting any permit(s).
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16

20080918-0002780

Fee: $20.00
N/C Fee: $0.00
09/18/2008 12:14:22
T20080215079
Requestor:
LAS VEGAS CITY
Debbie Conway SCA
Clark County Recorder Pgs: 7

NEIGHBORHOOD SERVICES DEPARTMENT
DIRECTOR
STEPHEN HARSIN, AICP

NOTICE AND ORDER

(7)

APN: 162-07-622-002

September 11, 2008

Case #68011

Certified/Regular Mail
Return Receipt Requested

R F H La Paz, LLC
3910 Pecos-McLeod Rd. #B-100
Las Vegas, NV 89121-0000

REVISED
NOTICE AND ORDER REGARDING VACANT OR ABANDONED BUILDING

You are hereby notified as recorded owner(s) of the property located at **4186 Silver Dollar Ave.-#2, Las Vegas, NV, Parcel # 162-07-622-002,** as follows:

One or more vacant or abandoned buildings on the property, by reason of their condition or impact on surrounding property, have been identified as buildings that need to be boarded, demolished, rehabilitated, or any combination thereof, in accordance with Chapter 16.31 of the Las Vegas Municipal Code. The building or buildings are identified as **residential condominium located at 4186 Silver Dollar Ave. - #2 .**

Per 9.04 – Refuse & Waste: Remove any visible non-usable materials, goods, etc. from all yards and other areas, to comply with code. i.e., paper, plastic, wood, bottles, etc.

Per 9.04 – Weeds/Turf: Trim, cut, remove all weeds/turf grass exceeding eight (8) inches in height in all yards. Cut back all trees and bushes to allow unobstructed view from street, sidewalk, and/or alleyway.

Per 16.04 – Building Permits Required - Department of Building and Safety, 731 S. 4th Street, (702) 229-6251.

LAS VEGAS CITY COUNCIL
MAYOR OSCAR B. GOODMAN
MAYOR PRO TEM GARY REESE • LARRY BROWN • STEVE WOLFSON • LOIS TARKANIAN
STEVEN D. ROSS • RICKI Y. BARLOW
CITY MANAGER DOUGLAS A. SELBY

Return to: CITY OF LAS VEGAS • 400 STEWART AVENUE • LAS VEGAS, NEVADA 89101
VOICE 702.229.6615 • FAX 702.382.4341 • TTY 702.386.9108 • www.lasvegasnevada.gov

12. Infestation of insects, vermin or rodents as determined by the health officer.
Provide continuous extermination by licensed pest control.

1994 Uniform Housing Code 1001.6 Hazardous Plumbing.

16.28.010 Uniform Plumbing Code and supplement adopted.

(A) Uniform Plumbing Code, 2006 Edition, including its Standards and Appendices, except as otherwise indicated, designated as Part 1 of this Chapter; and

(B) A document entitled "Southern Nevada Amendments to the 2006 Uniform Plumbing Code," adding to, deleting from and amending the Uniform Plumbing Code, 2006 Edition, designated as Part 2 of this Chapter.

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Install correct plumbing fittings and material for water heater by license contractor.

Chapter 6 Water Supply and Distribution

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1994 Uniform Housing Code Section Chapter 7 Mechanical Requirements

1994 UHC 701.1 Heating

Dwelling units, guest rooms and congregate residences shall be provided with heating facilities capable of maintaining a room temperature of 70°F. (21.1°C.) at a point 3 feet (914 mm) above the floor in all habitable rooms. Such facilities shall be installed and maintained in a safe condition and in accordance with Section 3102 of the Building Code , the Mechanical Code, and all other applicable laws. Unvented fuel-burning heaters are not permitted. All heating devices or appliances shall be of an approved type.

1. Cooling Facilities and Cooking Equipment. If a dwelling unit or guest room has been provided with cooling facilities or cooking equipment, or both, such facilities and equipment shall be maintained in a safe working condition or replaced.

Provide safe working cooling facilities or replace.
Provide safe working cooking equipment or replace.

LVMC 16.32.270 Applicability.

The requirements set out in this Article shall apply to all residential-type buildings including those existing, those new and those to be constructed in order to provide the maximum possible security from criminal actions to the permanent and transient occupants thereof, and to their possessions.

16.32.280 Entrance doors direct to outside.

These requirements shall apply to all housing units, whether detached, attached to or within a building, having individual entrances immediately accessible from the outside without other intervening entrance doors:

(A) Entrance doors to housing units shall be capable of resisting forcible entry equal to a single-panel or hollow-core door one-and-three eighths inches thick.

proposed landscaping plan is denied, the owner or manager may appeal the denial to the Planning Commission.

(B) Upon approval of a landscaping plan, the owner and manager of the development shall be jointly and severally responsible for maintaining the approved landscaping in accordance with this Chapter.

Provide and maintain landscaping

The listed corrections must be completed in order to obtain compliance. Please note that any repairs requiring replacement of building components must include permits, inspections and must be performed by a licensed contractor.

Per 16.31 – Vacant Buildings: Submit Letter of Intent. Obtain Boarding Certificate. Provide Mitigation Plan. Provide Rehabilitation Plan.

Post: No trespassing (per NRS 207.200), contact Bolden Area Command, COP Office at 289-5593 to have building properly posted.

Upon correction of violation(s), the responsible party; being resident, tenant, owner, or manager, licensee or other person having control over a structure or parcel of land, must maintain property in compliance or face possible fees, fines, and any such enforcement as permitted by this code.

Responsible party must provide contact information to this department. Contact area code enforcement officer #16 at 229-4918 to supply your current phone number, email address, fax number, or additional mailing address.

In accordance with Chapter 16.31, you are required to:

- **Submit, within 60 days, a Mitigation and Rehabilitation Plan to address the vacant property. The Mitigation and Rehabilitation Plan must be filed with the Department of Neighborhood Services and must include:**

A statement indicating your intentions, as owner(s) of the property, for the future use of the property for the next 12 months, including, without limitation, plans to maintain, redevelop, or reestablish lawful occupancy of the property, or any combination of such activities;

A detailed plan of mitigation measures that you intend to take regarding the property, including, without limitation, measures to maintain the property; restore and maintain landscaping on the property; and provide and maintain adequate security for the property;

A detailed plan of rehabilitation measures that you intend to take regarding the property, including, without limitation, plans to restore buildings, and to maintain the property so as to remove the negative impact on surrounding properties;

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more than one thousand ($1000.00) per day, for each day that any nuisance remained unabated after the date specified for abatement in the notice of violation. The $500.00 or $1000 daily civil penalty will be determined at the discretion of the city council. Any and all unpaid fees are subject to collection and/or liens.

The City is authorized to record this Notice and Order until such time as compliance has been obtained. Should you have any questions or concerns please call me at (702) 229-6615.

Sincerely,

Devin S. Smith, Manager
Neighborhood Response Division
Neighborhood Services Department

Enclosures: City of Las Vegas Abatement Specifications
City of Las Vegas Vacant & Boarded Structures Mitigation/Rehabilitation Plan
City of Las Vegas Vacant & Boarded Structures Statement of Intent
City of Las Vegas Boarded Building Certificate Application

PER ORD 3744-PROVIDE CORRECT ADDRESS AS DEFINED BY COUNTY RECORDS.

PER 2006 IBC SECTION 501.2 AND ORD 3744: PROVIDE ADDRESS ON BUILDING AND INCLUDE IN DESIGN OF ADDRESS SIGN.

PER LVMC 19.10: PROVIDE LITTER FREE PARKING STALL MARKED AND PROVIDE WHEEL STOPS.

PER LVMC 19.12: SUBMIT LANDSCAPE PLAN TO CITY OF LAS VEGAS PLANNING AND DEVELOPMENT LOCATED AT 731 S 4TH ST AND INSTALL TO APPROVED SPECIFICATIONS. KEEP MAINTAINED AT ALL TIMES.

1994 UNIFORM HOUSING CODE SUPPLEMENT, SECTION 12 -OBTAIN PROPER PERMITS FOR THE REHABILITATION OF UNIT AND ACHIEVE A CERTIFICATE OF OCCUPANCY FOR CONDOMINIUM. REPAIRS MUST INCLUDE (BUT NOT LIMITED TO) THE FOLLOWING:

1994 UNIFORM HOUSING CODE, CHAPTER 10: PROVIDE DRAINAGE FREE FROM OBSTRUCTION INCLUDING THE JETTING OF COMMON DRAIN SYSTEM.

2006 INTERNATIONAL PLUMBING CODE, SECTION 601.3: RESTORE AND RETURN THE COPPER WATER PIPING AS THE GROUNDING ELECTRODE.

1994 UNIFORM HOUSING CODE, SECTION 1001.1: INTERIOR WALLS AND CEILINGS ARE TO HAVE ALL HOLES, PENETRATIONS, ANNULAR OPENINGS SEALED OR CAULKED.

1994 UNIFORM HOUSING CODE, CHAPTER 10: INTERIOR LAUNDRY ROOM TO BE IN GOOD REPAIR AND SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001.8: ANY/ALL WINDOWS BROKEN OR IN DISREPAIR ARE TO BE MADE IN GOOD REPAIR OR REPLACED.

2006 INTERNATIONAL PLUMBING CODE, CHAPTER 5: OBTAIN LICENSED PLUMBING CONTRACTOR TO INSTALL CORRECT PLUMING FITTINGS AND MATERIAL FOR WATER HEATER.

1994 UNIFORM HOUSING CODE, SUPPLEMENT, SECTIONS 9 AND 10: PROVIDE SAFE WORKING COOKING FACILITIES

1994 UNIFORM HOUSING CODE, SUPPLEMENT SECTION 10: PROVIDE SAFE WORKING COOLING FACILITIES.

1994 UNIFORM HOUSING CODE CHAPTER 10: FLOORING TO BE MADE SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001: BATHROOMS TO HAVE FIXTURES PROPERLY INSTALLED, GOOD DRAINAGE, LEAK FREE AND SANITARY.

LVMC TITLE 16.32: REPLACE AND PROPERLY INSTALL ENTRY DOOR WITH ALL REQUIRED HARDWARE

- **Obtain a building permit for one or more buildings on the property that have been boarded without obtaining a permit, the building(s) being identified as a single family dwelling located at 4186 Silver Dollar Ave., #2.**

In order to demolish one or more buildings, you are required to first obtain a demolition permit, and then to secure and maintain the remaining vacant property so as to remove the negative impact on surrounding properties.

If you fail to submit a Mitigation and Rehabilitation Plan or board a building within the timeframe(s) set forth above, the Director of Neighborhood Services is authorized to cause to be performed appropriate mitigation or rehabilitation work, or any combination thereof. As the property owner(s), you will be responsible for all costs incurred, including a fifteen percent (15%) administrative fee. You will be notified of a public hearing to be conducted by the City Council to review the costs, and the Council's decision shall be final and conclusive. Upon approval of the costs by the City Council, the City will be authorized to file a Lien of Assessment with the County Recorder's Office. Thereafter, certified copies of the lien will be given to the County Treasurer, and the amount of the Lien of Assessment shall then be collected at the same time and in the same manner as ordinary taxes. All laws applicable to the levy, collection, and enforcement of property taxes shall be applicable to such assessment.

Moreover, you are hereby given notice:

1. That within fifteen (15) days after service of this Notice and Order, you as the owner or responsible party may appeal to the City Council. Such appeal shall be in writing and shall be filed with the City Clerk. Within fifteen (15) days after the appeal has been filed, you will be given written notice of the procedure and time frame for the hearing of the appeal. The appeal will be heard by the City Council or by the Council's designee, with a right to final appeal to the Council. An owner or responsible party who fails to appeal shall be deemed to have waived any and all objections to the actions taken by the Director of Neighborhood Services to satisfy the requirements of this Notice and Order.
2. That this Notice and Order or a copy thereof must be presented to the Department of Building and Safety when requesting any permit(s).
3. That failure to appeal will constitute a waiver of all rights to an administrative hearing to determine this matter.

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more

14

20080918-0002773

Fee: $20.00
N/C Fee: $0.00
09/18/2008 12:14:22
T20080215079
Requestor:
LAS VEGAS CITY
Debbie Conway SCA
Clark County Recorder Pgs: 7

NEIGHBORHOOD SERVICES DEPARTMENT
DIRECTOR
STEPHEN HARSIN, AICP

NOTICE AND ORDER

(7)

APN: 162-07-622-003

September 11, 2008

Case #68012

Certified/Regular Mail
Return Receipt Requested

R F H La Paz, LLC
3910 Pecos-McLeod Rd. #B-100
Las Vegas, NV 89121-0000

REVISED
NOTICE AND ORDER REGARDING VACANT OR ABANDONED DANGEROUS BUILDING

You are hereby notified as recorded owner(s) of the property located at **4186 Silver Dollar Ave.- #3, Las Vegas, NV, Parcel # 162-07-622-006,** as follows:

One or more vacant or abandoned buildings on the property, by reason of their condition or impact on surrounding property, have been identified as buildings that need to be boarded, demolished, rehabilitated, or any combination thereof, in accordance with Chapter 16.31 of the Las Vegas Municipal Code. The building or buildings are identified as a **residential condominium located at 4186 Silver Dollar Ave. - #3.**

Per 9.04 – Refuse & Waste: Remove any visible non-usable materials, goods, etc. from all yards and other areas, to comply with code. i.e., paper, plastic, wood, bottles, etc.

Per 9.04 – Weeds/Turf: Trim, cut, remove all weeds/turf grass exceeding eight (8) inches in height in all yards. Cut back all trees and bushes to allow unobstructed view from street, sidewalk, and/or alleyway.

Per 16.04 – Building Permits Required - Department of Building and Safety, 731 S. 4th Street, (702) 229-6251.

LAS VEGAS CITY COUNCIL
MAYOR OSCAR B. GOODMAN
MAYOR PRO TEM GARY REESE • LARRY BROWN • STEVE WOLFSON • LOIS TARKANIAN
STEVEN D. ROSS • RICKI Y. BARLOW
CITY MANAGER DOUGLAS A. SELBY
Return to: CITY OF LAS VEGAS • 400 STEWART AVENUE • LAS VEGAS, NEVADA 89101
VOICE 702.229.6615 • FAX 702.382.4341 • TTY 702.386.9108 • www.lasvegasnevada.gov

12. Infestation of insects, vermin or rodents as determined by the health officer.
Provide continuous extermination by licensed pest control.

1994 Uniform Housing Code 1001.6 Hazardous Plumbing.
16.28.010 Uniform Plumbing Code and supplement adopted.
(A) Uniform Plumbing Code, 2006 Edition, including its Standards and Appendices, except as otherwise indicated, designated as Part 1 of this Chapter; and
(B) A document entitled "Southern Nevada Amendments to the 2006 Uniform Plumbing Code," adding to, deleting from and amending the Uniform Plumbing Code, 2006 Edition, designated as Part 2 of this Chapter.
Chapter 5 Water Heaters
Install correct plumbing fittings and material for water heater by license contractor.
Chapter 6 Water Supply and Distribution
Section 601.3 Existing piping used for grounding
Restore and return the copper water piping as the grounding electrode.

1994 Uniform Housing Chapter 10 Section 1001.8 Faulty Weather Protection.
Any and all windows broken or in disrepair are to be made in good repair or replaced.

1994 Uniform Housing Code Section Chapter 7 Mechanical Requirements
1994 UHC 701.1 Heating
Dwelling units, guest rooms and congregate residences shall be provided with heating facilities capable of maintaining a room temperature of 70°F. (21.1°C.) at a point 3 feet (914 mm) above the floor in all habitable rooms. Such facilities shall be installed and maintained in a safe condition and in accordance with Section 3102 of the Building Code , the Mechanical Code, and all other applicable laws. Unvented fuel-burning heaters are not permitted. All heating devices or appliances shall be of an approved type.

1. Cooling Facilities and Cooking Equipment. If a dwelling unit or guest room has been provided with cooling facilities or cooking equipment, or both, such facilities and equipment shall be maintained in a safe working condition or replaced.

Provide safe working cooling facilities or replace.
Provide safe working cooking equipment or replace.

LVMC 16.32.270 Applicability.
The requirements set out in this Article shall apply to all residential-type buildings including those existing, those new and those to be constructed in order to provide the maximum possible security from criminal actions to the permanent and transient occupants thereof, and to their possessions.

16.32.280 Entrance doors direct to outside.
These requirements shall apply to all housing units, whether detached, attached to or within a building, having individual entrances immediately accessible from the outside without other intervening entrance doors:
(A) Entrance doors to housing units shall be capable of resisting forcible entry equal to a single-panel or hollow-core door one-and-three eighths inches thick.

proposed landscaping plan is denied, the owner or manager may appeal the denial to the Planning Commission.

(B) Upon approval of a landscaping plan, the owner and manager of the development shall be jointly and severally responsible for maintaining the approved landscaping in accordance with this Chapter.

Provide and maintain landscaping

The listed corrections must be completed in order to obtain compliance. Please note that any repairs requiring replacement of building components must include permits, inspections and must be performed by a licensed contractor.

Per 16.31 – Vacant Buildings: Submit Letter of Intent. Obtain Boarding Certificate. Provide Mitigation Plan. Provide Rehabilitation Plan.

Post: No trespassing (per NRS 207.200), contact Bolden Area Command, COP Office at 289-5593 to have building properly posted.

Upon correction of violation(s), the responsible party; being resident, tenant, owner, or manager, licensee or other person having control over a structure or parcel of land, must maintain property in compliance or face possible fees, fines, and any such enforcement as permitted by this code.

Responsible party must provide contact information to this department. Contact area code enforcement officer #16 at 229-4918 to supply your current phone number, email address, fax number, or additional mailing address.

In accordance with Chapter 16.31, you are required to:

- **Submit, within 60 days, a Mitigation and Rehabilitation Plan to address the vacant property. The Mitigation and Rehabilitation Plan must be filed with the Department of Neighborhood Services and must include:**

A statement indicating your intentions, as owner(s) of the property, for the future use of the property for the next 12 months, including, without limitation, plans to maintain, redevelop, or reestablish lawful occupancy of the property, or any combination of such activities;

A detailed plan of mitigation measures that you intend to take regarding the property, including, without limitation, measures to maintain the property; restore and maintain landscaping on the property; and provide and maintain adequate security for the property;

A detailed plan of rehabilitation measures that you intend to take regarding the property, including, without limitation, plans to restore buildings, and to maintain the property so as to remove the negative impact on surrounding properties;

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more than one thousand ($1000.00) per day, for each day that any nuisance remained unabated after the date specified for abatement in the notice of violation. The $500.00 or $1000 daily civil penalty will be determined at the discretion of the city council. Any and all unpaid fees are subject to collection and/or liens.

The City is authorized to record this Notice and Order until such time as compliance has been obtained. Should you have any questions or concerns please call me at (702) 229-6615.

Sincerely,

Devin S. Smith, Manager
Neighborhood Response Division
Neighborhood Services Department

Enclosures: City of Las Vegas Abatement Specifications
City of Las Vegas Vacant & Boarded Structures Mitigation/Rehabilitation Plan
City of Las Vegas Vacant & Boarded Structures Statement of Intent

PER ORD 3744-PROVIDE CORRECT ADDRESS AS DEFINED BY COUNTY RECORDS.

PER 2006 IBC SECTION 501.2 AND ORD 3744: PROVIDE ADDRESS ON BUILDING AND INCLUDE IN DESIGN OF ADDRESS SIGN.

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1994 UNIFORM HOUSING CODE, SUPPLEMENT SECTION 10: PROVIDE SAFE WORKING COOLING FACILITIES.

1994 UNIFORM HOUSING CODE CHAPTER 10: FLOORING TO BE MADE SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001: BATHROOMS TO HAVE FIXTURES PROPERLY INSTALLED, GOOD DRAINAGE, LEAK FREE AND SANITARY.

LVMC TITLE 16.32: REPLACE AND PROPERLY INSTALL ENTRY DOOR WITH ALL REQUIRED HARDWARE

- **Obtain a building permit for one or more buildings on the property that have been boarded without obtaining a permit, the building(s) being identified as a single family dwelling located at 4186 Silver Dollar Ave., #3.**

In order to demolish one or more buildings, you are required to first obtain a demolition permit, and then to secure and maintain the remaining vacant property so as to remove the negative impact on surrounding properties.

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Moreover, you are hereby given notice:

1. That within fifteen (15) days after service of this Notice and Order, you as the owner or responsible party may appeal to the City Council. Such appeal shall be in writing and shall be filed with the City Clerk. Within fifteen (15) days after the appeal has been filed, you will be given written notice of the procedure and time frame for the hearing of the appeal. The appeal will be heard by the City Council or by the Council's designee, with a right to final appeal to the Council. An owner or responsible party who fails to appeal shall be deemed to have waived any and all objections to the actions taken by the Director of Neighborhood Services to satisfy the requirements of this Notice and Order.
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31

20080918-0002763

Fee: $19.00
N/C Fee: $0.00
09/18/2008 12:14:22
T20080215079
Requestor:
LAS VEGAS CITY
Debbie Conway SCA
Clark County Recorder Pgs: 6

NEIGHBORHOOD SERVICES DEPARTMENT
DIRECTOR
STEPHEN HARSIN, AICP

NOTICE AND ORDER

(6)

APN: 162-07-622-004

September 11, 2008

Case #68016

Certified/Regular Mail
Return Receipt Requested

R F H La Paz, LLC
3910 Pecos-McLeod Rd. #B-100
Las Vegas, NV 89121-0000

NUISANCE HOUSING CODE NOTICE AND ORDER TO COMPLY

As recorded owner(s) of the **residential condominium located at 4186 Silver Dollar Ave. - #4, Las Vegas, NV, legally described as Parcel # 162-07-622-004**, you are hereby given notice that the Building Official or his designee has determined that the aforementioned building(s) is substandard. Said building(s) is substandard, dangerous and declared a public nuisance under Las Vegas Municipal Code (LVMC) 9.04.020 and Section 202 of the Uniform Housing Code because of the following conditions:

Per 9.04 – Graffiti: Remove or paint over graffiti on any building, wall, fence, or other structure allowed to remain for more than 24 hours.

Per 9.04 – Refuse & Waste: Remove any visible non-usable materials, goods, etc. from all yards and other areas, to comply with code. i.e., paper, plastic, bottles, windblown trash and debris, etc.

Per 9.04 – Weeds/Turf: Trim, cut, remove all weeds/turf grass exceeding eight (8) inches in height in all yards. Cut back all trees and bushes to allow unobstructed view from street, sidewalk, and/or alleyway.

LAS VEGAS CITY COUNCIL
MAYOR OSCAR B. GOODMAN
MAYOR PRO TEM GARY REESE • LARRY BROWN • STEVE WOLFSON • LOIS TARKANIAN
STEVEN D. ROSS • RICKI Y. BARLOW
CITY MANAGER DOUGLAS A. SELBY

Return to: CITY OF LAS VEGAS • 400 STEWART AVENUE • LAS VEGAS, NEVADA 89101
VOICE 702.229.6615 • FAX 702.382.4341 • TTY 702.386.9108 • www.lasvegasnevada.gov

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16.28.010 Uniform Plumbing Code and supplement adopted.

(A) Uniform Plumbing Code, 2006 Edition, including its Standards and Appendices, except as otherwise indicated, designated as Part 1 of this Chapter; and

(B) A document entitled "Southern Nevada Amendments to the 2006 Uniform Plumbing Code," adding to, deleting from and amending the Uniform Plumbing Code, 2006 Edition, designated as Part 2 of this Chapter.

Chapter 5 Water Heaters

Install correct plumbing fittings and material for water heater by licensed contractor.

Chapter 6 Water Supply and Distribution

Section 601.3 Existing piping used for grounding

Restore and return the copper water piping as the grounding electrode.

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(A) Entrance doors to housing units shall be capable of resisting forcible entry equal to a single-panel or hollow-core door one-and-three eighths inches thick.

(B) Dead bolts openable without key from the inside shall be provided on all housing unit entrance doors.

proposed landscaping plan is denied, the owner or manager may appeal the denial to the Planning Commission.

(B) Upon approval of a landscaping plan, the owner and manager of the development shall be jointly and severally responsible for maintaining the approved landscaping in accordance with this Chapter.

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Upon correction of violation(s), the responsible party; being resident, tenant, owner, or manager, licensee or other person having control over a structure or parcel of land, must maintain property in compliance or face possible fees, fines, and any such enforcement as permitted by this code.

Responsible party must provide contact information to this department. Contact area code enforcement officer #31 at 229-2016 to supply your current phone number, email address, fax number, or additional mailing address.

Moreover, you are hereby given notice:

1. That within ten (10) days after service of this Notice and Order, you as the owner or responsible party may appeal to the City Council. Such appeal shall be in writing and shall be filed with the City Clerk. Within fifteen (15) days after the appeal has been filed, you will be given written notice of the procedure and time frame for the hearing of the appeal. The appeal will be heard by the City Council or by the Council's designee, with a right to final appeal to the Council. An owner or responsible party who fails to appeal shall be deemed to have waived any and all objections to the actions taken by the Director of Neighborhood Services to satisfy the requirements of this Notice and Order.
2. That this Notice and Order or a copy thereof must be presented to the Department of Building and Safety when requesting any permit(s).
3. That failure to appeal will constitute a waiver of all rights to an administrative hearing to determine this matter.

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or

16

20080918-0002769

Fee: $20.00
N/C Fee: $0.00
09/18/2008 12:14:22
T20080215079
Requestor:
LAS VEGAS CITY
Debbie Conway SCA
Clark County Recorder Pgs: 7

NEIGHBORHOOD SERVICES DEPARTMENT
DIRECTOR
STEPHEN HARSIN, AICP

NOTICE AND ORDER

(7)

APN: 162-07-622-005

September 11, 2008

Case #68168

Certified/Regular Mail
Return Receipt Requested

R F H La Paz, LLC
3910 Pecos-McLeod Rd. #B-100
Las Vegas, NV 89121-0000

REVISED
NOTICE AND ORDER REGARDING VACANT OR ABANDONED DANGEROUS BUILDING

You are hereby notified as recorded owner(s) of the property located at **4186 Silver Dollar Ave.- #5, Las Vegas, NV, Parcel # 162-07-622-005,** as follows:

One or more vacant or abandoned buildings on the property, by reason of their condition or impact on surrounding property, have been identified as buildings that need to be boarded, demolished, rehabilitated, or any combination thereof, in accordance with Chapter 16.31 of the Las Vegas Municipal Code. The building or buildings are identified as a **residential condominium located at 4186 Silver Dollar Ave. - #5.**

Per 9.04 – Refuse & Waste: Remove any visible non-usable materials, goods, etc. from all yards and other areas, to comply with code. i.e., paper, plastic, wood, bottles, etc.

Per 9.04 – Weeds/Turf: Trim, cut, remove all weeds/turf grass exceeding eight (8) inches in height in all yards. Cut back all trees and bushes to allow unobstructed view from street, sidewalk, and/or alleyway.

Per 16.04 – Building Permits Required - Department of Building and Safety, 731 S. 4th Street, (702) 229-6251.

LAS VEGAS CITY COUNCIL
MAYOR OSCAR B. GOODMAN
MAYOR PRO TEM GARY REESE • LARRY BROWN • STEVE WOLFSON • LOIS TARKANIAN
STEVEN D. ROSS • RICKI Y. BARLOW
CITY MANAGER DOUGLAS A. SELBY

Return to: CITY OF LAS VEGAS • 400 STEWART AVENUE • LAS VEGAS, NEVADA 89101
VOICE 702.229.6615 • FAX 702.382.4341 • TTY 702.386.9108 • www.lasvegasnevada.gov

12. Infestation of insects, vermin or rodents as determined by the health officer.
Provide continuous extermination by licensed pest control.

1994 Uniform Housing Code 1001.6 Hazardous Plumbing.
16.28.010 Uniform Plumbing Code and supplement adopted.
(A) Uniform Plumbing Code, 2006 Edition, including its Standards and Appendices, except as otherwise indicated, designated as Part 1 of this Chapter; and
(B) A document entitled "Southern Nevada Amendments to the 2006 Uniform Plumbing Code," adding to, deleting from and amending the Uniform Plumbing Code, 2006 Edition, designated as Part 2 of this Chapter.
Chapter 5 Water Heaters
Install correct plumbing fittings and material for water heater by license contractor.
Chapter 6 Water Supply and Distribution
Section 601.3 Existing piping used for grounding
Restore and return the copper water piping as the grounding electrode.

1994 Uniform Housing Chapter 10 Section 1001.8 Faulty Weather Protection.
Any and all windows broken or in disrepair are to be made in good repair or replaced.

1994 Uniform Housing Code Section Chapter 7 Mechanical Requirements
1994 UHC 701.1 Heating
Dwelling units, guest rooms and congregate residences shall be provided with heating facilities capable of maintaining a room temperature of 70°F. (21.1°C.) at a point 3 feet (914 mm) above the floor in all habitable rooms. Such facilities shall be installed and maintained in a safe condition and in accordance with Section 3102 of the Building Code , the Mechanical Code, and all other applicable laws. Unvented fuel-burning heaters are not permitted. All heating devices or appliances shall be of an approved type.

1. Cooling Facilities and Cooking Equipment. If a dwelling unit or guest room has been provided with cooling facilities or cooking equipment, or both, such facilities and equipment shall be maintained in a safe working condition or replaced.

Provide safe working cooling facilities or replace.
Provide safe working cooking equipment or replace.

LVMC 16.32.270 Applicability.
The requirements set out in this Article shall apply to all residential-type buildings including those existing, those new and those to be constructed in order to provide the maximum possible security from criminal actions to the permanent and transient occupants thereof, and to their possessions.

16.32.280 Entrance doors direct to outside.
These requirements shall apply to all housing units, whether detached, attached to or within a building, having individual entrances immediately accessible from the outside without other intervening entrance doors:
(A) Entrance doors to housing units shall be capable of resisting forcible entry equal to a single-panel or hollow-core door one-and-three eighths inches thick.

proposed landscaping plan is denied, the owner or manager may appeal the denial to the Planning Commission.

(B) Upon approval of a landscaping plan, the owner and manager of the development shall be jointly and severally responsible for maintaining the approved landscaping in accordance with this Chapter.

Provide and maintain landscaping

The listed corrections must be completed in order to obtain compliance. Please note that any repairs requiring replacement of building components must include permits, inspections and must be performed by a licensed contractor.

<u>Per 16.31 – Vacant Buildings</u>: Submit Letter of Intent. Obtain Boarding Certificate. Provide Mitigation Plan. Provide Rehabilitation Plan.

<u>Post</u>: No trespassing (per NRS 207.200), contact Bolden Area Command, COP Office at 289-5593 to have building properly posted.

Upon correction of violation(s), the responsible party; being resident, tenant, owner, or manager, licensee or other person having control over a structure or parcel of land, must maintain property in compliance or face possible fees, fines, and any such enforcement as permitted by this code.

Responsible party must provide contact information to this department. Contact area code enforcement officer #16 at 229-4918 to supply your current phone number, email address, fax number, or additional mailing address.

In accordance with Chapter 16.31, you are required to:

- **Submit, within 60 days, a Mitigation and Rehabilitation Plan to address the vacant property. The Mitigation and Rehabilitation Plan must be filed with the Department of Neighborhood Services and must include:**

A statement indicating your intentions, as owner(s) of the property, for the future use of the property for the next 12 months, including, without limitation, plans to maintain, redevelop, or reestablish lawful occupancy of the property, or any combination of such activities;

A detailed plan of mitigation measures that you intend to take regarding the property, including, without limitation, measures to maintain the property; restore and maintain landscaping on the property; and provide and maintain adequate security for the property;

A detailed plan of rehabilitation measures that you intend to take regarding the property, including, without limitation, plans to restore buildings, and to maintain the property so as to remove the negative impact on surrounding properties;

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more than one thousand ($1000.00) per day, for each day that any nuisance remained unabated after the date specified for abatement in the notice of violation. The $500.00 or $1000 daily civil penalty will be determined at the discretion of the city council. Any and all unpaid fees are subject to collection and/or liens.

The City is authorized to record this Notice and Order until such time as compliance has been obtained. Should you have any questions or concerns please call me at (702) 229-6615.

Sincerely,

Devin S. Smith, Manager
Neighborhood Response Division
Neighborhood Services Department

Enclosures: City of Las Vegas Abatement Specifications
City of Las Vegas Vacant & Boarded Structures Mitigation/Rehabilitation Plan
City of Las Vegas Vacant & Boarded Structures Statement of Intent

PER ORD 3744-PROVIDE CORRECT ADDRESS AS DEFINED BY COUNTY RECORDS.

PER 2006 IBC SECTION 501.2 AND ORD 3744: PROVIDE ADDRESS ON BUILDING AND INCLUDE IN DESIGN OF ADDRESS SIGN.

PER LVMC 19.10: PROVIDE LITTER FREE PARKING STALL MARKED AND PROVIDE WHEEL STOPS.

PER LVMC 19.12: SUBMIT LANDSCAPE PLAN TO CITY OF LAS VEGAS PLANNING AND DEVELOPMENT LOCATED AT 731 S 4TH ST AND INSTALL TO APPROVED SPECIFICATIONS. KEEP MAINTAINED AT ALL TIMES.

1994 UNIFORM HOUSING CODE SUPPLEMENT, SECTION 12 -OBTAIN PROPER PERMITS FOR THE REHABILITATION OF UNIT AND ACHIEVE A CERTIFICATE OF OCCUPANCY FOR CONDOMINIUM. REPAIRS MUST INCLUDE (BUT NOT LIMITED TO) THE FOLLOWING:

1994 UNIFORM HOUSING CODE, CHAPTER 10: PROVIDE DRAINAGE FREE FROM OBSTRUCTION INCLUDING THE JETTING OF COMMON DRAIN SYSTEM.

2006 INTERNATIONAL PLUMBING CODE, SECTION 601.3: RESTORE AND RETURN THE COPPER WATER PIPING AS THE GROUNDING ELECTRODE.

1994 UNIFORM HOUSING CODE, SECTION 1001.1: INTERIOR WALLS AND CEILINGS ARE TO HAVE ALL HOLES, PENETRATIONS, ANNULAR OPENINGS SEALED OR CAULKED.

1994 UNIFORM HOUSING CODE, CHAPTER 10: INTERIOR LAUNDRY ROOM TO BE IN GOOD REPAIR AND SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001.8: ANY/ALL WINDOWS BROKEN OR IN DISREPAIR ARE TO BE MADE IN GOOD REPAIR OR REPLACED.

2006 INTERNATIONAL PLUMBING CODE, CHAPTER 5: OBTAIN LICENSED PLUMBING CONTRACTOR TO INSTALL CORRECT PLUMING FITTINGS AND MATERIAL FOR WATER HEATER.

1994 UNIFORM HOUSING CODE, SUPPLEMENT, SECTIONS 9 AND 10: PROVIDE SAFE WORKING COOKING FACILITIES

1994 UNIFORM HOUSING CODE, SUPPLEMENT SECTION 10: PROVIDE SAFE WORKING COOLING FACILITIES.

1994 UNIFORM HOUSING CODE CHAPTER 10: FLOORING TO BE MADE SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001: BATHROOMS TO HAVE FIXTURES PROPERLY INSTALLED, GOOD DRAINAGE, LEAK FREE AND SANITARY.

LVMC TITLE 16.32: REPLACE AND PROPERLY INSTALL ENTRY DOOR WITH ALL REQUIRED HARDWARE

- **Obtain a building permit for one or more buildings on the property that have been boarded without obtaining a permit, the building(s) being identified as a single family dwelling located at 4186 Silver Dollar Ave., #5.**

In order to demolish one or more buildings, you are required to first obtain a demolition permit, and then to secure and maintain the remaining vacant property so as to remove the negative impact on surrounding properties.

If you fail to submit a Mitigation and Rehabilitation Plan or board a building within the timeframe(s) set forth above, the Director of Neighborhood Services is authorized to cause to be performed appropriate mitigation or rehabilitation work, or any combination thereof. As the property owner(s), you will be responsible for all costs incurred, including a fifteen percent (15%) administrative fee. You will be notified of a public hearing to be conducted by the City Council to review the costs, and the Council's decision shall be final and conclusive. Upon approval of the costs by the City Council, the City will be authorized to file a Lien of Assessment with the County Recorder's Office. Thereafter, certified copies of the lien will be given to the County Treasurer, and the amount of the Lien of Assessment shall then be collected at the same time and in the same manner as ordinary taxes. All laws applicable to the levy, collection, and enforcement of property taxes shall be applicable to such assessment.

Moreover, you are hereby given notice:

1. That within fifteen (15) days after service of this Notice and Order, you as the owner or responsible party may appeal to the City Council. Such appeal shall be in writing and shall be filed with the City Clerk. Within fifteen (15) days after the appeal has been filed, you will be given written notice of the procedure and time frame for the hearing of the appeal. The appeal will be heard by the City Council or by the Council's designee, with a right to final appeal to the Council. An owner or responsible party who fails to appeal shall be deemed to have waived any and all objections to the actions taken by the Director of Neighborhood Services to satisfy the requirements of this Notice and Order.
2. That this Notice and Order or a copy thereof must be presented to the Department of Building and Safety when requesting any permit(s).
3. That failure to appeal will constitute a waiver of all rights to an administrative hearing to determine this matter.

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more

16

20080918-0002778

Fee: $20.00
N/C Fee: $0.00
09/18/2008 12:14:22
T20080215079
Requestor:
LAS VEGAS CITY
Debbie Conway SCA
Clark County Recorder Pgs: 7

NEIGHBORHOOD SERVICES DEPARTMENT
DIRECTOR
STEPHEN HARSIN, AICP

NOTICE AND ORDER

(7)

APN: 162-07-622-006

September 11, 2008

Case #68013

Certified/Regular Mail
Return Receipt Requested

R F H La Paz, LLC
3910 Pecos-McLeod Rd. #B-100
Las Vegas, NV 89121-0000

REVISED
NOTICE AND ORDER REGARDING VACANT OR ABANDONED BUILDING

You are hereby notified as recorded owner(s) of the property located at **4186 Silver Dollar Ave.-#6, Las Vegas, NV, Parcel # 162-07-622-006,** as follows:

One or more vacant or abandoned buildings on the property, by reason of their condition or impact on surrounding property, have been identified as buildings that need to be boarded, demolished, rehabilitated, or any combination thereof, in accordance with Chapter 16.31 of the Las Vegas Municipal Code. The building or buildings are identified as a **residential condominium located at 4186 Silver Dollar Ave. - #6.**

Per 9.04 – Refuse & Waste: Remove any visible non-usable materials, goods, etc. from all yards and other areas, to comply with code. i.e., paper, plastic, wood, bottles, etc.

Per 9.04 – Weeds/Turf: Trim, cut, remove all weeds/turf grass exceeding eight (8) inches in height in all yards. Cut back all trees and bushes to allow unobstructed view from street, sidewalk, and/or alleyway.

Per 16.04 – Building Permits Required - Department of Building and Safety, 731 S. 4th Street, (702) 229-6251.

LAS VEGAS CITY COUNCIL
MAYOR OSCAR B. GOODMAN
MAYOR PRO TEM GARY REESE • LARRY BROWN • STEVE WOLFSON • LOIS TARKANIAN
STEVEN D. ROSS • RICKI Y. BARLOW
CITY MANAGER DOUGLAS A. SELBY

Return to: CITY OF LAS VEGAS • 400 STEWART AVENUE • LAS VEGAS, NEVADA 89101
VOICE 702.229.6615 • FAX 702.382.4341 • TTY 702.386.9108 • www.lasvegasnevada.gov

12. Infestation of insects, vermin or rodents as determined by the health officer.
Provide continuous extermination by licensed pest control.

1994 Uniform Housing Code 1001.6 Hazardous Plumbing.

16.28.010 Uniform Plumbing Code and supplement adopted.

(A) Uniform Plumbing Code, 2006 Edition, including its Standards and Appendices, except as otherwise indicated, designated as Part 1 of this Chapter; and

(B) A document entitled "Southern Nevada Amendments to the 2006 Uniform Plumbing Code," adding to, deleting from and amending the Uniform Plumbing Code, 2006 Edition, designated as Part 2 of this Chapter.

Chapter 5 Water Heaters

Install correct plumbing fittings and material for water heater by license contractor.

Chapter 6 Water Supply and Distribution

Section 601.3 Existing piping used for grounding

Restore and return the copper water piping as the grounding electrode.

1994 Uniform Housing Chapter 10 Section 1001.8 Faulty Weather Protection.

Any and all windows broken or in disrepair are to be made in good repair or replaced.

1994 Uniform Housing Code Section Chapter 7 Mechanical Requirements

1994 UHC 701.1 Heating

Dwelling units, guest rooms and congregate residences shall be provided with heating facilities capable of maintaining a room temperature of 70°F. (21.1°C.) at a point 3 feet (914 mm) above the floor in all habitable rooms. Such facilities shall be installed and maintained in a safe condition and in accordance with Section 3102 of the Building Code , the Mechanical Code, and all other applicable laws. Unvented fuel-burning heaters are not permitted. All heating devices or appliances shall be of an approved type.

1. Cooling Facilities and Cooking Equipment. If a dwelling unit or guest room has been provided with cooling facilities or cooking equipment, or both, such facilities and equipment shall be maintained in a safe working condition or replaced.

Provide safe working cooling facilities or replace.
Provide safe working cooking equipment or replace.

LVMC 16.32.270 Applicability.

The requirements set out in this Article shall apply to all residential-type buildings including those existing, those new and those to be constructed in order to provide the maximum possible security from criminal actions to the permanent and transient occupants thereof, and to their possessions.

16.32.280 Entrance doors direct to outside.

These requirements shall apply to all housing units, whether detached, attached to or within a building, having individual entrances immediately accessible from the outside without other intervening entrance doors:

(A) Entrance doors to housing units shall be capable of resisting forcible entry equal to a single-panel or hollow-core door one-and-three eighths inches thick.

proposed landscaping plan is denied, the owner or manager may appeal the denial to the Planning Commission.

(B) Upon approval of a landscaping plan, the owner and manager of the development shall be jointly and severally responsible for maintaining the approved landscaping in accordance with this Chapter.

Provide and maintain landscaping

The listed corrections must be completed in order to obtain compliance. Please note that any repairs requiring replacement of building components must include permits, inspections and must be performed by a licensed contractor.

Per 16.31 – Vacant Buildings: Submit Letter of Intent. Obtain Boarding Certificate. Provide Mitigation Plan. Provide Rehabilitation Plan.

Post: No trespassing (per NRS 207.200), contact Bolden Area Command, COP Office at 289-5593 to have building properly posted.

Upon correction of violation(s), the responsible party; being resident, tenant, owner, or manager, licensee or other person having control over a structure or parcel of land, must maintain property in compliance or face possible fees, fines, and any such enforcement as permitted by this code.

Responsible party must provide contact information to this department. Contact area code enforcement officer #16 at 229-4918 to supply your current phone number, email address, fax number, or additional mailing address.

In accordance with Chapter 16.31, you are required to:

- **Submit, within 60 days, a Mitigation and Rehabilitation Plan to address the vacant property. The Mitigation and Rehabilitation Plan must be filed with the Department of Neighborhood Services and must include:**

A statement indicating your intentions, as owner(s) of the property, for the future use of the property for the next 12 months, including, without limitation, plans to maintain, redevelop, or reestablish lawful occupancy of the property, or any combination of such activities;

A detailed plan of mitigation measures that you intend to take regarding the property, including, without limitation, measures to maintain the property; restore and maintain landscaping on the property; and provide and maintain adequate security for the property;

A detailed plan of rehabilitation measures that you intend to take regarding the property, including, without limitation, plans to restore buildings, and to maintain the property so as to remove the negative impact on surrounding properties;

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more than one thousand ($1000.00) per day, for each day that any nuisance remained unabated after the date specified for abatement in the notice of violation. The $500.00 or $1000 daily civil penalty will be determined at the discretion of the city council. Any and all unpaid fees are subject to collection and/or liens.

The City is authorized to record this Notice and Order until such time as compliance has been obtained. Should you have any questions or concerns please call me at (702) 229-6615.

Sincerely,

Devin S. Smith, Manager
Neighborhood Response Division
Neighborhood Services Department

Enclosures: City of Las Vegas Abatement Specifications
City of Las Vegas Vacant & Boarded Structures Mitigation/Rehabilitation Plan
City of Las Vegas Vacant & Boarded Structures Statement of Intent
City of Las Vegas Boarded Building Certificate Application

PER ORD 3744-PROVIDE CORRECT ADDRESS AS DEFINED BY COUNTY RECORDS.

PER 2006 IBC SECTION 501.2 AND ORD 3744: PROVIDE ADDRESS ON BUILDING AND INCLUDE IN DESIGN OF ADDRESS SIGN.

PER LVMC 19.10: PROVIDE LITTER FREE PARKING STALL MARKED AND PROVIDE WHEEL STOPS.

PER LVMC 19.12: SUBMIT LANDSCAPE PLAN TO CITY OF LAS VEGAS PLANNING AND DEVELOPMENT LOCATED AT 731 S 4TH ST AND INSTALL TO APPROVED SPECIFICATIONS. KEEP MAINTAINED AT ALL TIMES.

1994 UNIFORM HOUSING CODE SUPPLEMENT, SECTION 12 -OBTAIN PROPER PERMITS FOR THE REHABILITATION OF UNIT AND ACHIEVE A CERTIFICATE OF OCCUPANCY FOR CONDOMINIUM. REPAIRS MUST INCLUDE (BUT NOT LIMITED TO) THE FOLLOWING:

1994 UNIFORM HOUSING CODE, CHAPTER 10: PROVIDE DRAINAGE FREE FROM OBSTRUCTION INCLUDING THE JETTING OF COMMON DRAIN SYSTEM.

2006 INTERNATIONAL PLUMBING CODE, SECTION 601.3: RESTORE AND RETURN THE COPPER WATER PIPING AS THE GROUNDING ELECTRODE.

1994 UNIFORM HOUSING CODE, SECTION 1001.1: INTERIOR WALLS AND CEILINGS ARE TO HAVE ALL HOLES, PENETRATIONS, ANNULAR OPENINGS SEALED OR CAULKED.

1994 UNIFORM HOUSING CODE, CHAPTER 10: INTERIOR LAUNDRY ROOM TO BE IN GOOD REPAIR AND SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001.8: ANY/ALL WINDOWS BROKEN OR IN DISREPAIR ARE TO BE MADE IN GOOD REPAIR OR REPLACED.

2006 INTERNATIONAL PLUMBING CODE, CHAPTER 5: OBTAIN LICENSED PLUMBING CONTRACTOR TO INSTALL CORRECT PLUMING FITTINGS AND MATERIAL FOR WATER HEATER.

1994 UNIFORM HOUSING CODE, SUPPLEMENT, SECTIONS 9 AND 10: PROVIDE SAFE WORKING COOKING FACILITIES

1994 UNIFORM HOUSING CODE, SUPPLEMENT SECTION 10: PROVIDE SAFE WORKING COOLING FACILITIES.

1994 UNIFORM HOUSING CODE CHAPTER 10: FLOORING TO BE MADE SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001: BATHROOMS TO HAVE FIXTURES PROPERLY INSTALLED, GOOD DRAINAGE, LEAK FREE AND SANITARY.

LVMC TITLE 16.32: REPLACE AND PROPERLY INSTALL ENTRY DOOR WITH ALL REQUIRED HARDWARE

- **Obtain a building permit for one or more buildings on the property that have been boarded without obtaining a permit, the building(s) being identified as a single family dwelling located at 4186 Silver Dollar Ave., #6.**

In order to demolish one or more buildings, you are required to first obtain a demolition permit, and then to secure and maintain the remaining vacant property so as to remove the negative impact on surrounding properties.

If you fail to submit a Mitigation and Rehabilitation Plan or board a building within the timeframe(s) set forth above, the Director of Neighborhood Services is authorized to cause to be performed appropriate mitigation or rehabilitation work, or any combination thereof. As the property owner(s), you will be responsible for all costs incurred, including a fifteen percent (15%) administrative fee. You will be notified of a public hearing to be conducted by the City Council to review the costs, and the Council's decision shall be final and conclusive. Upon approval of the costs by the City Council, the City will be authorized to file a Lien of Assessment with the County Recorder's Office. Thereafter, certified copies of the lien will be given to the County Treasurer, and the amount of the Lien of Assessment shall then be collected at the same time and in the same manner as ordinary taxes. All laws applicable to the levy, collection, and enforcement of property taxes shall be applicable to such assessment.

Moreover, you are hereby given notice:

1. That within fifteen (15) days after service of this Notice and Order, you as the owner or responsible party may appeal to the City Council. Such appeal shall be in writing and shall be filed with the City Clerk. Within fifteen (15) days after the appeal has been filed, you will be given written notice of the procedure and time frame for the hearing of the appeal. The appeal will be heard by the City Council or by the Council's designee, with a right to final appeal to the Council. An owner or responsible party who fails to appeal shall be deemed to have waived any and all objections to the actions taken by the Director of Neighborhood Services to satisfy the requirements of this Notice and Order.
2. That this Notice and Order or a copy thereof must be presented to the Department of Building and Safety when requesting any permit(s).
3. That failure to appeal will constitute a waiver of all rights to an administrative hearing to determine this matter.

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more

16

20080918-0002779

Fee: $20.00
N/C Fee: $0.00
09/18/2008 12:14:22
T20080215079
Requestor:
LAS VEGAS CITY
Debbie Conway SCA
Clark County Recorder Pgs: 7

NEIGHBORHOOD SERVICES DEPARTMENT
DIRECTOR
STEPHEN HARSIN, AICP

NOTICE AND ORDER

(7)

APN: 162-07-622-007

September 11, 2008

Case #68014

Certified/Regular Mail
Return Receipt Requested

R F H La Paz, LLC
3910 Pecos-McLeod Rd. #B-100
Las Vegas, NV 89121-0000

REVISED
NOTICE AND ORDER REGARDING VACANT OR ABANDONED BUILDING

You are hereby notified as recorded owner(s) of the property located at **4186 Silver Dollar Ave.- #7, Las Vegas, NV, Parcel # 162-07-622-007,** as follows:

One or more vacant or abandoned buildings on the property, by reason of their condition or impact on surrounding property, have been identified as buildings that need to be boarded, demolished, rehabilitated, or any combination thereof, in accordance with Chapter 16.31 of the Las Vegas Municipal Code. The building or buildings are identified as **residential condominium located at 4186 Silver Dollar Ave. - #7.**

Per 9.04 – Refuse & Waste: Remove any visible non-usable materials, goods, etc. from all yards and other areas, to comply with code. i.e., paper, plastic, wood, bottles, etc.

Per 9.04 – Weeds/Turf: Trim, cut, remove all weeds/turf grass exceeding eight (8) inches in height in all yards. Cut back all trees and bushes to allow unobstructed view from street, sidewalk, and/or alleyway.

Per 16.04 – Building Permits Required - Department of Building and Safety, 731 S. 4th Street, (702) 229-6251.

LAS VEGAS CITY COUNCIL
MAYOR OSCAR B. GOODMAN
MAYOR PRO TEM GARY REESE • LARRY BROWN • STEVE WOLFSON • LOIS TARKANIAN
STEVEN D. ROSS • RICKI Y. BARLOW
CITY MANAGER DOUGLAS A. SELBY

Return to: CITY OF LAS VEGAS • 400 STEWART AVENUE • LAS VEGAS, NEVADA 89101
VOICE 702.229.6615 • FAX 702.382.4341 • TTY 702.386.9108 • www.lasvegasnevada.gov

12. Infestation of insects, vermin or rodents as determined by the health officer.
Provide continuous extermination by licensed pest control.

1994 Uniform Housing Code 1001.6 Hazardous Plumbing.
16.28.010 Uniform Plumbing Code and supplement adopted.
(A) Uniform Plumbing Code, 2006 Edition, including its Standards and Appendices, except as otherwise indicated, designated as Part 1 of this Chapter; and
(B) A document entitled "Southern Nevada Amendments to the 2006 Uniform Plumbing Code," adding to, deleting from and amending the Uniform Plumbing Code, 2006 Edition, designated as Part 2 of this Chapter.
Chapter 5 Water Heaters
Install correct plumbing fittings and material for water heater by license contractor.
Chapter 6 Water Supply and Distribution
Section 601.3 Existing piping used for grounding
Restore and return the copper water piping as the grounding electrode.

1994 Uniform Housing Chapter 10 Section 1001.8 Faulty Weather Protection.
Any and all windows broken or in disrepair are to be made in good repair or replaced.

1994 Uniform Housing Code Section Chapter 7 Mechanical Requirements
1994 UHC 701.1 Heating
Dwelling units, guest rooms and congregate residences shall be provided with heating facilities capable of maintaining a room temperature of 70°F. (21.1°C.) at a point 3 feet (914 mm) above the floor in all habitable rooms. Such facilities shall be installed and maintained in a safe condition and in accordance with Section 3102 of the Building Code , the Mechanical Code, and all other applicable laws. Unvented fuel-burning heaters are not permitted. All heating devices or appliances shall be of an approved type.

1. Cooling Facilities and Cooking Equipment. If a dwelling unit or guest room has been provided with cooling facilities or cooking equipment, or both, such facilities and equipment shall be maintained in a safe working condition or replaced.

Provide safe working cooling facilities or replace.
Provide safe working cooking equipment or replace.

LVMC 16.32.270 Applicability.
The requirements set out in this Article shall apply to all residential-type buildings including those existing, those new and those to be constructed in order to provide the maximum possible security from criminal actions to the permanent and transient occupants thereof, and to their possessions.

16.32.280 Entrance doors direct to outside.
These requirements shall apply to all housing units, whether detached, attached to or within a building, having individual entrances immediately accessible from the outside without other intervening entrance doors:
(A) Entrance doors to housing units shall be capable of resisting forcible entry equal to a single-panel or hollow-core door one-and-three eighths inches thick.

proposed landscaping plan is denied, the owner or manager may appeal the denial to the Planning Commission.

(B) Upon approval of a landscaping plan, the owner and manager of the development shall be jointly and severally responsible for maintaining the approved landscaping in accordance with this Chapter.

Provide and maintain landscaping

The listed corrections must be completed in order to obtain compliance. Please note that any repairs requiring replacement of building components must include permits, inspections and must be performed by a licensed contractor.

Per 16.31 – Vacant Buildings: Submit Letter of Intent. Obtain Boarding Certificate. Provide Mitigation Plan. Provide Rehabilitation Plan.

Post: No trespassing (per NRS 207.200), contact Bolden Area Command, COP Office at 289-5593 to have building properly posted.

Upon correction of violation(s), the responsible party; being resident, tenant, owner, or manager, licensee or other person having control over a structure or parcel of land, must maintain property in compliance or face possible fees, fines, and any such enforcement as permitted by this code.

Responsible party must provide contact information to this department. Contact area code enforcement officer #16 at 229-4918 to supply your current phone number, email address, fax number, or additional mailing address.

In accordance with Chapter 16.31, you are required to:

- **Submit, within 60 days, a Mitigation and Rehabilitation Plan to address the vacant property. The Mitigation and Rehabilitation Plan must be filed with the Department of Neighborhood Services and must include:**

A statement indicating your intentions, as owner(s) of the property, for the future use of the property for the next 12 months, including, without limitation, plans to maintain, redevelop, or reestablish lawful occupancy of the property, or any combination of such activities;

A detailed plan of mitigation measures that you intend to take regarding the property, including, without limitation, measures to maintain the property; restore and maintain landscaping on the property; and provide and maintain adequate security for the property;

A detailed plan of rehabilitation measures that you intend to take regarding the property, including, without limitation, plans to restore buildings, and to maintain the property so as to remove the negative impact on surrounding properties;

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more than one thousand ($1000.00) per day, for each day that any nuisance remained unabated after the date specified for abatement in the notice of violation. The $500.00 or $1000 daily civil penalty will be determined at the discretion of the city council. Any and all unpaid fees are subject to collection and/or liens.

The City is authorized to record this Notice and Order until such time as compliance has been obtained. Should you have any questions or concerns please call me at (702) 229-6615.

Sincerely,

Devin S. Smith, Manager
Neighborhood Response Division
Neighborhood Services Department

Enclosures: City of Las Vegas Abatement Specifications
City of Las Vegas Vacant & Boarded Structures Mitigation/Rehabilitation Plan
City of Las Vegas Vacant & Boarded Structures Statement of Intent
City of Las Vegas Boarded Building Certificate Application

PER ORD 3744-PROVIDE CORRECT ADDRESS AS DEFINED BY COUNTY RECORDS.

PER 2006 IBC SECTION 501.2 AND ORD 3744: PROVIDE ADDRESS ON BUILDING AND INCLUDE IN DESIGN OF ADDRESS SIGN.

PER LVMC 19.10: PROVIDE LITTER FREE PARKING STALL MARKED AND PROVIDE WHEEL STOPS.

PER LVMC 19.12: SUBMIT LANDSCAPE PLAN TO CITY OF LAS VEGAS PLANNING AND DEVELOPMENT LOCATED AT 731 S 4TH ST AND INSTALL TO APPROVED SPECIFICATIONS. KEEP MAINTAINED AT ALL TIMES.

1994 UNIFORM HOUSING CODE SUPPLEMENT, SECTION 12 -OBTAIN PROPER PERMITS FOR THE REHABILITATION OF UNIT AND ACHIEVE A CERTIFICATE OF OCCUPANCY FOR CONDOMINIUM. REPAIRS MUST INCLUDE (BUT NOT LIMITED TO) THE FOLLOWING:

1994 UNIFORM HOUSING CODE, CHAPTER 10: PROVIDE DRAINAGE FREE FROM OBSTRUCTION INCLUDING THE JETTING OF COMMON DRAIN SYSTEM.

2006 INTERNATIONAL PLUMBING CODE, SECTION 601.3: RESTORE AND RETURN THE COPPER WATER PIPING AS THE GROUNDING ELECTRODE.

1994 UNIFORM HOUSING CODE, SECTION 1001.1: INTERIOR WALLS AND CEILINGS ARE TO HAVE ALL HOLES, PENETRATIONS, ANNULAR OPENINGS SEALED OR CAULKED.

1994 UNIFORM HOUSING CODE, CHAPTER 10: INTERIOR LAUNDRY ROOM TO BE IN GOOD REPAIR AND SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001.8: ANY/ALL WINDOWS BROKEN OR IN DISREPAIR ARE TO BE MADE IN GOOD REPAIR OR REPLACED.

2006 INTERNATIONAL PLUMBING CODE, CHAPTER 5: OBTAIN LICENSED PLUMBING CONTRACTOR TO INSTALL CORRECT PLUMING FITTINGS AND MATERIAL FOR WATER HEATER.

1994 UNIFORM HOUSING CODE, SUPPLEMENT, SECTIONS 9 AND 10: PROVIDE SAFE WORKING COOKING FACILITIES

1994 UNIFORM HOUSING CODE, SUPPLEMENT SECTION 10: PROVIDE SAFE WORKING COOLING FACILITIES.

1994 UNIFORM HOUSING CODE CHAPTER 10: FLOORING TO BE MADE SANITARY

1994 UNIFORM HOUSING CODE, SECTION 1001: BATHROOMS TO HAVE FIXTURES PROPERLY INSTALLED, GOOD DRAINAGE, LEAK FREE AND SANITARY.

LVMC TITLE 16.32: REPLACE AND PROPERLY INSTALL ENTRY DOOR WITH ALL REQUIRED HARDWARE

- **Obtain a building permit for one or more buildings on the property that have been boarded without obtaining a permit, the building(s) being identified as a single family dwelling located at 4186 Silver Dollar Ave., #7.**

In order to demolish one or more buildings, you are required to first obtain a demolition permit, and then to secure and maintain the remaining vacant property so as to remove the negative impact on surrounding properties.

If you fail to submit a Mitigation and Rehabilitation Plan or board a building within the timeframe(s) set forth above, the Director of Neighborhood Services is authorized to cause to be performed appropriate mitigation or rehabilitation work, or any combination thereof. As the property owner(s), you will be responsible for all costs incurred, including a fifteen percent (15%) administrative fee. You will be notified of a public hearing to be conducted by the City Council to review the costs, and the Council's decision shall be final and conclusive. Upon approval of the costs by the City Council, the City will be authorized to file a Lien of Assessment with the County Recorder's Office. Thereafter, certified copies of the lien will be given to the County Treasurer, and the amount of the Lien of Assessment shall then be collected at the same time and in the same manner as ordinary taxes. All laws applicable to the levy, collection, and enforcement of property taxes shall be applicable to such assessment.

Moreover, you are hereby given notice:

1. That within fifteen (15) days after service of this Notice and Order, you as the owner or responsible party may appeal to the City Council. Such appeal shall be in writing and shall be filed with the City Clerk. Within fifteen (15) days after the appeal has been filed, you will be given written notice of the procedure and time frame for the hearing of the appeal. The appeal will be heard by the City Council or by the Council's designee, with a right to final appeal to the Council. An owner or responsible party who fails to appeal shall be deemed to have waived any and all objections to the actions taken by the Director of Neighborhood Services to satisfy the requirements of this Notice and Order.
2. That this Notice and Order or a copy thereof must be presented to the Department of Building and Safety when requesting any permit(s).
3. That failure to appeal will constitute a waiver of all rights to an administrative hearing to determine this matter.

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re-inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more

Silver Dollar Re-Inspection Report 10/15/2009

4186 Silver Dollar

Case Number	Unit	Violations Remaining	Inspection Results	Occupied/Vacant
67914	1	Interior Insp- Previously passed. Leave Case Open for Common Area Inspected 8/31/09 1)Cleanout not to Grade Level	Failed	Occupied
68011	2	No Insp/ Previously passed.	Passed	Occupied
68012	3	No Insp/ Previously passed.	Passed	Occupied
68016	4	No Insp/ Previously passed.	Passed	Occupied
68168	5	Violations repaired.	Passed	Occupied
68013	6	No Insp/ Previously passed.	Passed	Occupied
68014	7	No Insp/ Previously passed.	Passed	Occupied
68171	8	None	Passed	Owner Occupied

4168 Silver Dollar

Case Number	Unit	Violations Remaining	Inspection Results	Occupied/Vacant
68005	1	Violations repaired.	Passed	Occupied
68125	2	No inspection completed- Will be ready on 3/2/09 Inspected 4/30/09 1) Broken door knob assembly 2) Lvngrm window broken 3) GFCI broken-ktchn 4) Kichn snk not secured 5) Hood outlet incomplete 6) Exhaust duct not installed 7) No stove 8) Missing interior door casing 9) Bedroom window broken 10) Circuit Breakers unlabeled 11) Cabinets in disrepair 12) Toilet needs base caulked 13) Incorrect tail piece-lavatory 14) Tub drain backed up 15) Tub shower valve disrepair 16) Bathroom wall unfinished 17) Need electricity Inspected 7/10/09 Violations repaired	 First Fail from boarded status Passed	Vacant Vacant Occupied
68172	3	No inspection completed, will be moved to unit 3 when completed. Then unit to be rehabbed. Not ready for inspection of 4/30/09 Inspected 7/10/09 Violations repaired	 Vacant Passed	Occupied Now Vacant Occupied
68007	4	1)Window broken Inspected 8/31/09 Compliance Made	 Passed	Occupied
68173	5	None	Passed	Owner Occupied
68009	6	Violations repaired.	Passed	Occupied

68010	7	1) diverter valve not functional, needs replaced.* Inspection 7/10/09 Compliance Made	Passed	Occupied
68176	8	No inspection completed- Will be ready on 3/2/09 Inspected 7/10/09 Compliance Made	Passed	Occupied

4152 Silver Dollar Av.

Case Number	Unit	Violations	Inspection Results	Occupied/Vacant
67733	1	None	Passed	Owner Occupied no inspection performed on unit.
68190	2	No inspection completed, will be completed in March.	Passed	Vacant
67735	3	None	Passed	Owner Occupied no inspection performed on unit.
68189	4	No inspection completed, will be completed in March. Inspected 4/30/09: 1)Wall unfinished at entry door 2)Broken outlet face plate 3)No cooking stove 4)Drainage fittings incorrect 5)Incorrect wiring of disposal 6)Broken thermostat 7)Broken bedroom door hardware 8)Broken bedroom window 9)Circuit breakers not labeled 10)Bath exhaust fan not installed 11)Incorrect tailpiece drainage fittings 12)missing sink drain screen 13)Need electricity Inspected 7/10/09 Violations repaired	 First fail from boarded status Passed	Vacant Vacant Occupied
68177	5	All items repaired.	Passed	Occupied
68178	6	No Inspection performed on this unit.	Passed	Owner occupied
68191	7	No inspection completed, will be completed in March. Inspected 4/30/09: 1)Kitchen sink drain backed up 2)Incorrect drain fittings and installatn 3)Cabinets broken and disrepair 4)Kitchen walls in disrepair 5)shower valve/spout unsupported 6)Deadfront cover missing at panel 7)Smoke detectors missing 8)Missing sink drain screen 9)Broken shower diverter valve 10)Inoperable heat pump	 First fail from boarded status	Vacant Vacant

		11)Need electricity Inspected 7/10/09 Violations repaired	Passed	Occupied
	8	No inspection completed, will be completed in March. Inspected 4/30/09: 1)Missing range hood w/exhaust 2)Kitchen cabinets in disrepair 3)Bathroom sink/cabinet not replaced 4)Exhaust fan to have roof flashing 5)Carpet not installed throughout 6)Unusable stove 7)Need electricity Inspected on 7/10/09	First fail from boarded status	Vacant Vacant
68472		1)Common Area Clean Out Buried	Failed	Occupied

Items with * are new violations.

Common Area Violations :

1) Needs to restore and return the copper water piping as the grounding electrode or repair by other approved means. – Inspector verified repaired.

2) Interior area landscaping has been completed.

3) Repair all damaged stucco to exterior areas of building. This item was completed.

4) Common Area at 4152 is to have cleanout raised to grade level. Compliance met on 10/15/09.

5) Common Area at 4186 is to have back flow protection at front landscape connection. As of 8/31/09 this has not been completed. Compliance met on 9/14/09.

LAS VEGAS CITY COUNCIL

MAYOR
OSCAR B. GOODMAN

GARY REESE, WARD 3
(MAYOR PRO-TEM)
STEVE WOLFSON, WARD 2
LOIS TARKANIAN, WARD 1
STEVEN D. ROSS, WARD 6
RICKI Y. BARLOW, WARD 5
STAVROS S. ANTHONY, WARD 4

CITY MANAGER
ELIZABETH N. FRETWELL

NEIGHBORHOOD
SERVICES DEPARTMENT

DIRECTOR
STEPHEN K. HARSIN, AICP

September 1, 2010

Certified/Regular Mail
Return Receipt Requested

RFH LA PAZ LLC
3910 Pecos-McLeod Rd #B-100
Las Vegas, NV 89121-4304

4152 Silver Dollar Ave – Units 2, 4, 5, and 7-8
4168 Silver Dollar Ave – Units 1-4, 6-8
4186 Silver Dollar Ave – Units 1-7

Dear Property Owner:

At the City Council meeting held on March 17, 2010, Agenda Item #71 was approved for a six-month review hearing. The hearing review is scheduled to be heard on September 15, 2010 at 1:00 p.m. This will be a review of the violations listed in the Notice and Orders to Comply dated August 11, 2008 and September 11, 2009 for status of compliance and a review of civil penalties assessed.

If you have any questions concerning this procedure, please contact the Neighborhood Response Division located in the Department of Neighborhood Services, by telephoning (702)229-6615.

Sincerely,

Devin Smith, Manager
Neighborhood Response Division
Department of Neighborhood Services

DSS:ld

CITY OF LAS VEGAS
400 STEWART AVENUE
LAS VEGAS, NEVADA 89101

VOICE 702.229.2330
FAX 702.598-3938
TTY 792 386.3045
www.lasvegasnevada.gov

LAS VEGAS CITY COUNCIL

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ELIZABETH N. FRETWELL

NEIGHBORHOOD
SERVICES DEPARTMENT

DIRECTOR
STEPHEN K. HARSIN, AICP

March 1, 2010

Certified/Regular Mail
Return Receipt Requested

RFH LA PAZ LLC
3910 Pecos-McLeod Rd #B-100
Las Vegas, NV 89121-4304

4152 Silver Dollar Ave – Units 2, 4, 5, and 7-8
4168 Silver Dollar Ave – Units 1-4, 6-8
4186 Silver Dollar Ave – Units 1-7

Dear Property Owner:

At the City Council meeting held on September 16, 2009, Agenda Item #36 was approved for a forty-five day review hearing. The hearing review is scheduled to be heard on March 17, 2010. This will be a review of the violations listed in the Notice and Orders to Comply dated August 11, 2008 and September 11, 2009 for status of compliance and a review of civil penalties assessed.

If you have any questions concerning this procedure, please contact the Neighborhood Response Division located in the Department of Neighborhood Services, by telephoning (702)229-6615.

Sincerely,

Devin Smith, Manager
Neighborhood Response Division
Department of Neighborhood Services

DSS:ld

CITY OF LAS VEGAS
400 STEWART AVENUE
LAS VEGAS, NEVADA 89101

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LAS VEGAS CITY COUNCIL

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400 STEWART AVENUE
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September 1, 2009

Certified/Regular Mail
Return Receipt Requested

RFH LA PAZ LLC
3910 Pecos-McLeod Rd #B-100
Las Vegas, NV 89121-4304

4152 Silver Dollar Ave – Units 2, 4, 5, and 7-8
4168 Silver Dollar Ave – Units 1-4, 6-8
4186 Silver Dollar Ave – Units 1-7

Dear Property Owner:

At the City Council meeting held on July 15, 2009, Agenda Item #49 was approved for a forty-five day review hearing. The hearing review is scheduled to be heard on September 16, 2009. This will be a review of the violations listed in the Notice and Orders to Comply dated August 11, 2008 and September 11, 2009 for status of compliance and a review of civil penalties assessed.

If you have any questions concerning this procedure, please contact the Neighborhood Response Division located in the Department of Neighborhood Services, by telephoning (702)229-6615.

Sincerely,

Devin Smith, Manager
Neighborhood Response Division
Department of Neighborhood Services

DSS:jl

LAS VEGAS CITY COUNCIL

MAYOR
OSCAR B. GOODMAN

GARY REESE, WARD 3
(MAYOR PRO-TEM)
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RICKI Y. BARLOW, WARD 5
STAVROS S. ANTHONY, WARD 4

CITY MANAGER
ELIZABETH N. FRETWELL

NEIGHBORHOOD
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DIRECTOR
STEPHEN K. HARSIN, AICP

CITY OF LAS VEGAS
400 STEWART AVENUE
LAS VEGAS, NEVADA 89101

VOICE 702.229.2330
FAX 702.598-3938
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www.lasvegasnevada.gov

June 18, 2009

Certified/Regular Mail
Return Receipt Requested

RFH LA PAZ LLC
3910 Pecos-McLeod Rd #B-100
Las Vegas, NV 89121-4304

4152 Silver Dollar Ave – Units 2, 4, 5, and 7-8
4168 Silver Dollar Ave – Units 1-4, 6-8
4186 Silver Dollar Ave – Units 1-7

Dear Property Owner:

At the City Council meeting held on April 15, 2009, Agenda Items #53-57 were approved for a three (3) month review hearing. The hearing review is scheduled to be heard on July 15, 2009. This will be a review of the violations listed in the Notice and Orders to Comply dated August 11, 2008 and September 11, 2009 for status of compliance and a review of civil penalties assessed.

If you have any questions concerning this procedure, please contact the Neighborhood Response Division located in the Department of Neighborhood Services, by telephoning (702)229-6615.

Sincerely,

Devin Smith, Manager
Neighborhood Response Division
Department of Neighborhood Services

DSS:jl

City of Las Vegas Agenda Item No.: **75.**

AGENDA SUMMARY PAGE
CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

SUBJECT:
SET DATE ON ANY APPEALS FILED OR REQUIRED PUBLIC HEARINGS FROM THE CITY PLANNING COMMISSION MEETINGS AND DANGEROUS BUILDING OR NUISANCE/LITTER ABATEMENTS

City of Las Vegas Agenda Item No.: **76.**

AGENDA SUMMARY PAGE
CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

SUBJECT:
CITIZENS PARTICIPATION: PUBLIC COMMENT DURING THIS PORTION OF THE AGENDA MUST BE LIMITED TO MATTERS WITHIN THE JURISDICTION OF THE CITY COUNCIL. NO SUBJECT MAY BE ACTED UPON BY THE CITY COUNCIL UNLESS THAT SUBJECT IS ON THE AGENDA AND IS SCHEDULED FOR ACTION. IF YOU WISH TO BE HEARD, COME TO THE PODIUM AND GIVE YOUR NAME FOR THE RECORD. THE AMOUNT OF DISCUSSION ON ANY SINGLE SUBJECT, AS WELL AS THE AMOUNT OF TIME ANY SINGLE SPEAKER IS ALLOWED, MAY BE LIMITED

City of Las Vegas Agenda Item No.: **77.**

AGENDA SUMMARY PAGE
CITY COUNCIL MEETING OF: SEPTEMBER 15, 2010

SUBJECT:
COUNCIL MEMBER RECOGNITION: COMMENTS MADE BY INDIVIDUAL CITY COUNCIL MEMBERS DURING THIS PORTION OF THE AGENDA WILL NOT BE ACTED UPON BY THE CITY COUNCIL UNLESS THAT SUBJECT IS ON THE AGENDA AND SCHEDULED FOR ACTION