

**CONTRACT FOR CONSULTANT SERVICES
FOR THE DETENTION CENTER PRIVATIZATION STUDY**

THIS CONTRACT is being entered into this _____ day of _____, 2010, by and between the CITY OF LAS VEGAS (hereinafter the "City"), a municipal corporation within the State of Nevada having its principal office at 400 Stewart Avenue, Las Vegas, Nevada 89101, and MGT OF AMERICA, INC. (hereinafter the "Company") a corporation having its principal office located at 502 East 11th Street, Suite 300, Austin, Texas 78701.

SECTION A – Contract Form

The subject matter of this Contract is the study of the advisability and feasibility of the privatization of some or all functions associated with the City of Las Vegas Detention Center.

SECTION B – Basic Terms

B-1 Definitions

The following definitions apply to this Contract:

- (a) "*Award Date*" means the date that a Contract becomes effective. It is the date that is entered into the first paragraph of a Contract upon execution by an authorized representative of the City.
- (b) "*City*" means the City of Las Vegas.
- (c) "*City Council*" means the governing body of the City of Las Vegas.
- (d) "*Company*" means the individual, partnership, or corporation responsible for the performance of services under this Contract.
- (e) "*Company Representative*" means the individual authorized to act on behalf of the Company regarding routine matters arising under or relating to this Contract.
- (f) "*Contract*" means this document, consisting of Sections A through F, which is binding and effective only upon execution by the City and the Company.
- (g) "*Deliverable*" means any report, software, hardware, data, documentation, or other tangible item that the Company is required to provide to the City under the terms of this Contract.
- (h) "*Non-exclusive Contract*" means a Contract under which the City agrees to obtain some, but not necessarily all, of the City's requirements for a particular service.
- (i) "*Project Manager*" means the City representative who is responsible for the coordination of Contract performance between the City and the Company.

B-2 Contract Type

The Contract type is firm fixed price. This is a Non-Exclusive Contract.

B-3 Prices/Costs

- (a) The total Contract amount shall not exceed \$106,289.
- (b) Professional Services. The Company will invoice the City monthly for services completed the previous month. Total professional services charged shall not exceed \$92,800.00. Labor hours shall be charged at the following rates:

Karl Becker	\$245 per hour
Ken McGinnis	\$245 per hour
Suzanne Bradford	\$185 per hour
Tom Roth	\$185 per hour
Loy Hays	\$125 per hour
Glenn Like	\$135 per hour

- (c) Reimbursable Travel Expenses. If travel is required in the performance of services under this Contract, reasonable travel expenses will be paid when services are performed in Las Vegas. Reimbursement is subject to certain limitations. The City will reimburse airfare up to the cost of a coach fare, with 7-day advance purchase. Reimbursement for all other expenses including, but not limited to, lodging, meals, transportation, rental cars, parking, and incidental expenses, will be paid at a per diem rate of \$180.00 per day. This per diem rate will start concurrently with the first day of work performed on site at the City and end with the last day of scheduled on site work at the City. The Company must complete a minimum of six (6) hours of work for every day a per diem is paid. Company shall coordinate all travel in advance with the City's Project Manager. The City will not reimburse personal entertainment expenses, alcoholic beverages, travel expenses for family members, use of health facilities (unless included in the basic price of hotel accommodations), movies in a hotel, or other non-business related costs. The City's Project Manager must approve any deviations to these procedures. Travel expenses shall not exceed \$12,560.
- (d) Miscellaneous Reimbursable Expenses. The City may reimburse up to a total of \$929 in miscellaneous expenses. These expenses may include shipping costs, reproduction and graphics costs. Invoices for Miscellaneous Reimbursable Expenses shall be accompanied by a copy of the receipts for those expenses.

B-4 Invoices

- (a) The Company shall submit an invoice to the City in accordance with the payment schedule set forth in Paragraph B-3 (Prices/Costs) above. All invoices should identify the following items:
- (i) the date of the invoice;
 - (ii) the Contract Item against which charges are made;
 - (iii) performance dates covered;
 - (iv) the associated purchase order number;
 - (v) receipts for Reimbursable Expenses/Travel Expenses; and

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

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

- (b) A representative of the Company shall sign and certify the invoice in the following manner: "I hereby certify, under penalty of perjury, that the above invoice is just and correct and that reimbursement for such expenses listed on this invoice has not been previously received from the City of Las Vegas nor any other source."
- (c) The Company shall forward a copy of the invoice to the City's Project Manager identified in Paragraph D-2 (Project Manager/Company Representative).

B-5 Performance Period/Delivery Schedule

- (a) The performance period commences from Award Date and continues through the completion of services provided, on January 5, 2011.

SECTION C – Statement of Work

C-1 Scope of Services

Task 1.0: Initiate Operational Assessment with City of Las Vegas Staff

Objectives:

- Obtain a detailed understanding of the administration and operation of the Las Vegas Detention Center.
- Develop an understanding of issues, policies, or plans that may affect operational cost and efficiency.
- Establish a mutually agreed upon detailed project work plan, timelines, deliverables, and monitoring procedures that will result in a successful study.

Work Activities:

- 1.1 Meet with the Project Manager to establish working relationships, determine communication lines, finalize contractual arrangements, and make logistical arrangements for the study.
- 1.2 Review the work plan and timelines with the Project Manager, including
 - On-site visits and interviews;
 - Milestones and deliverables; and
 - Monitoring procedures.
- 1.3 Revise the work plan as needed to meet project objectives.
- 1.4 Schedule project updates.

Task 2.0: Collect and Assess Required Data

Objectives:

- Collect and review any existing studies, audits, reports and databases relevant to the operation of the Detention Center.
- Develop data collection template for assessment and review.
- Review and organize data in support of assessment activities.

Work Activities:

- 2.1 Collect any information, reports, and background materials relevant to the project. Determine the availability of the following data:
 - recent audits, auditor's management letters and internal audit management reports;
 - previous and current management and staffing studies;
 - current and prior year budget and detailed expenditure data;
 - operational performance reports;
 - service contracts and contract monitoring documentation;
 - current staffing levels and authorized positions;
 - policies and procedures;
 - facility activity schedules;
 - average daily population and capacity numbers for the last twelve months;
 - current master roster;
 - daily rosters for all shifts for a one-month period;
 - daily staffing recapitulations for the last month;
 - staffing cost data, including regular salaries by program and function, overtime, and other associated expenses;
 - current deployment methodology and staff allocation including work schedules rotation plans, relief factors calculations and leave data;
 - detailed descriptions of the facility's physical plant, including layouts and any schematics including all correctional facilities;
 - policies, procedures, SOP manuals, general orders rules and regulations and union agreements that are applicable to all facility operations and might be relevant to the study; and
 - transportation logs, including location, length of trip, and number of escorting officers.
- 2.2 Develop data collection forms and reporting format for operational assessment.
- 2.3 Review and organize collected data to support assessment activities.

Task 3.0: Review Operational Policies and Procedures

Objectives:

- Assess impact of management policies and practices upon operational and staffing requirements.
- Identify factors external to the facility that impact operational and staffing requirements.
- Review operational management reporting capabilities.

Work Activities:

- 3.1 Interview system command staff to identify current operational issues and staff management practices.
- 3.2 Review roster management, security, and other operational policies, forms, or procedures used in managing facility operations.
- 3.3 Assess policy development, review, and management control systems.
- 3.4 Assess content and form of facility management policies and practices relative to generally accepted correctional management standards and "best practice".

- 3.5 Assess operational practice issues related to compliance with state guidelines, applicable constitutional standards, accreditation requirements, as well as facility policies and procedures.
- 3.6 Review administrative structure, span of control, and lines of management direction and communication.
- 3.7 Identify strengths and weaknesses of current Detention Center policies and management systems.

Task 4.0: Conduct Staffing Analysis

Objectives:

- Develop an understanding of facility staff deployment.
- Capture critical workload and policy issues driving staff deployment patterns.
- Perform preliminary analyses of workload and staffing information.

Work Activities:

- 4.1 Review current staffing information and human resource allocation methods for each unit and shift included in the staffing study.
- 4.2 Identify all operational and support units for which a staffing analysis will be conducted and gain an understanding of their primary purpose and main functions.
- 4.3 Capture standard and typical information that would serve as the basis for the staffing analysis and matrix, including:
 - number of authorized positions;
 - number of filled positions;
 - number of officers and sworn staff and positions held;
 - number of civilian staff and positions held;
 - number of supervisory staff and positions held; and
 - deployment and key personnel allocation strategies.
- 4.4 Review each staffing post or job assignment on each shift in relation to the function served, workload, coverage requirements, and operational/program need.
- 4.5 Assess current and alternative shift structures, specifically examining the resource requirements and operational impacts associated with each alternative.
- 4.6 Assess staffing needs by shift, function, program, and organizational unit, taking into account daily activity schedules, break times and relief requirements, potential efficiencies achieved through the use of technology, and requirements for use of sworn vs. civilian staffing.
- 4.7 Identify strengths/weaknesses of current Detention Center staff deployment and management systems.

Task 5.0: Review Staff Training Program

Objectives:

- Analyze and evaluate the effectiveness and cost of staff training programs.
- Assess the methods and content of staff training.

Work Activities:

- 5.1 Review current staff training requirements, curriculum and scheduling.
- 5.2 Assess impact on facility staffing requirements.
- 5.3 Review training costs.
- 5.4 Identify issues with staff training, and to the extent indicated, review alternative systems for delivery of staff training.

Task 6.0: Conduct Operational Review

Objectives:

- Assess Detention Center operational performance.
- Determine cost-effectiveness of current operations.
- Identify opportunities for performance improvement.

Work Activities:

- 6.1 Conduct assessment of operational practices, including facility security, programs, and support services.
- 6.2 Review facility performance data, identifying strengths and weaknesses, as well as opportunities for improvement.
- 6.3 Assess factors driving operational costs and spending patterns.
- 6.4 Identify policies and practices needed to effectively maintain the facility physical plant.
- 6.5 Identify opportunities for potential cost-savings, and/or identify areas that may be underfunded.

- 6.6 Develop recommendations for changes in administrative policies, operational practices, and staff deployment to improve operational performance and achieve more cost-effective use of available resources.

Task 7.0: Review Contract Management Systems

Objectives:

- Assess adequacy of current service contract management.
- Identify opportunities for cost savings and improved contract management.

Work Activities:

- 7.1 Conduct detailed analyses of purchasing policies and procedures, contracting patterns, purchasing levels and types of purchases requiring administrative approval, vendor lists, award of contracts, shared or cooperative purchasing arrangements, bidding processes, and use of technology to support the purchasing function.
- 7.2 Assess whether there are goods or services that can be obtained from the private sector at a lower cost, higher quality, or both.
- 7.3 Review contract monitoring systems to assess the adequacy of provisions to assure vendor accountability.
- 7.4 Review the cost-effectiveness of current contracts.
- 7.5 Develop recommendations to contract support of Center operations.
- 7.6 Review inventory management and controls, identifying practices that fail to adequately control inventory or fail to maintain appropriate inventory levels in a cost-effective manner.

Task 8.0: Conduct Benchmark Review

Objectives:

- Identify peer agencies for comparative research and analysis (i.e., benchmarking).
- Determine preliminary areas to be covered by benchmarking research and analysis.
- Gather information from peer agencies.
- Conduct analysis of peer data.

Work Activities:

- 8.1 Develop a preliminary list of peer facilities. Among the factors to be considered will be:
 - Comparable community size and demographics;
 - Comparable agency size and complexity of operations; and
 - Comparable budget of department.
- 8.2 Identify key operational, administrative and cost areas where peer comparisons are appropriate, including but not limited to staffing levels, per capita operational costs, health services, dietary services, use of badge staff vs. civilians, management span of control, overtime control, personnel management ratio and other appropriate comparative data.
- 8.3 Determine whether data exists to ensure that peer comparisons for identified functions are possible.
- 8.4 Where data do not exist, request that data be collected for the purpose of developing a database for staffing analysis and peer comparisons.
- 8.5 Obtain high level assistance regarding signatures for written requests for information from peer agencies.
- 8.6 Develop a list of questions that will generate meaningful comparative information.
- 8.7 Submit comparative peer agency questions to the Project Manager for review.
- 8.8 Make appropriate modifications to the set of questions designed to capture comparative peer agency information.
- 8.9 Conduct survey with peer agencies.
- 8.10 Compile data received from peer agency surveys.
- 8.11 Verify completeness, validity and reliability of data.
- 8.12 Analyze data, comparing survey results with comparable Las Vegas data.
- 8.13 Develop findings based on peer review analysis, focusing upon the areas of significant variance between Las Vegas and peer jurisdictions.

Task 9.0: Assess Current Detention Center Physical Plant

Objectives:

- Assess current condition of Detention Center physical plant.
- Identify deficiencies or needs associated with current facilities.

Work Activities:

9.1 Develop protocol for physical plant inspection of facilities. The protocol will address the following:

- age, condition, and adequacy of major facility or building systems,
- significant public health, life, and safety issues,
- physical security systems,
- ongoing repair and maintenance needs,
- long-term renovation/rehabilitation work required to assure continued use,
- suitability for efficient operation,
- access to communications and information technology, and
- adequacy of utility infrastructure systems.

9.2 Conduct on-site physical plant evaluation.

9.3 Review data and finalize a needs assessment and inventory for current facilities.

Task 10.0: Develop a Cost Benefit Analysis of Potential Privatization of the Detention Center

Objectives:

- Compare the costs and benefits of government management of the detention system with potential privatization of the facility.
- Examine the short and long-term cost and operational impacts.

Work Activities:

10.1 Establish projected baseline costs for current Detention Center operations.

10.2 Identify additional costs that may be incurred by the City attributable to privatization.

10.3 Identify operating costs that may be avoided by privatization of the Detention Center.

10.4 Identify support and administrative cost impacts to the City of privatization.

10.5 Identify operational impacts that may be associated with privatization.

10.6 Develop a matrix that presents annual costs and benefits for each alternative for a ten-year period.

10.7 Establish a discount rate for use in the analysis to obtain the present value of projected out-year costs and benefits.

10.8 Conduct a comparative analysis of each alternative that assesses overall costs/benefits as well as the specific factors that have the greatest impact upon each alternative's costs/benefits.

Task 11.0: Prepare Draft and Final Reports

Objective:

- Using the analysis produced from all of the previous tasks, identify measures to improve the effectiveness and cost-efficiency of the Detention Center.

Work Activities:

11.1 Combine the analysis and findings of the study team into a single report on Detention Center operations. The report will highlight current Detention Center operational needs, as well as strengths.

11.2 Based on the consolidated findings, develop recommendations that address operational needs. Develop estimates of costs and/or savings from the implementation of the recommendations.

11.3 Prepare a comprehensive draft report. The report will include, but not be limited to:

- methodology used;
- explanation of documented findings;
- results of analysis, including narrative and quantitative information; and
- operational savings/costs resulting from recommendations.

11.4 Submit a draft report for review. Meet with the Project Manager to review draft report and verify the accuracy of the findings.

11.5 Based on the written comments on the draft reports, make appropriate revisions and prepare a final report.

11.6 Present final reports, as arranged by the Project Manager.

Deliverables:

- Draft report
- Final report
- Oral presentation

SECTION D – Special Clauses

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

- (a) All legal notices required pursuant to the terms and conditions of this Contract shall be in writing, unless an emergency situation dictates otherwise. Any notice required to be given under the terms of this Contract shall be deemed to have been given when:

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

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

FOR THE COMPANY: MGT of America, Inc.
Mr. Bob Lauder, Senior Partner
502 East 11th Street, Suite 300
Austin, Texas 78701
Fax: (512) 476-4699

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

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

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

D-3 Warranty – Services [CAO-7/24/08]

The Company warrants that services shall be performed in full conformity with this Contract, with the professional skill and care that would be exercised by those who perform similar services in the commercial marketplace, and in accordance with accepted industry practice. In the event of a breach of this warranty or in the event of non-performance or failure of the Company to perform the services in accordance with this Contract, the Company shall, at no cost to the City, re-perform or perform the services so that the services conform to the warranty.

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

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

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

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

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

In the event of a conflict between specific language set forth in Sections B through E of this Contract and any Attachment set forth in Section F, the specific language in Sections B through E shall prevail. Any exception to this order of precedence will be addressed through specific language elsewhere in Sections B through E.

SECTION E – General Clauses

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

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

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

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

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

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

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

- (a) The City may, by written notice of default to the Company, terminate this Contract in whole or in part if the Company fails to:

- (i) Perform the services under Section C, including, if applicable, delivering any required software, goods, or documentation within the time specified in this Contract or any extension;
 - (ii) Make progress, so as to endanger performance of this Contract; or
 - (iii) Perform any of the other provisions of this Contract.
- (b) The City's right to terminate this Contract under (a)(ii) and (a)(iii) above, may be exercised if the Company does not cure such failure within ten calendar days (or more if authorized by the City) after notice, specifying the failure, is provided pursuant to the Paragraph D-1 (Legal Notice) of this Contract.
- (c) If the City terminates this Contract for default in whole or in part, it may acquire, under reasonable terms and in a manner the City considers appropriate, services or goods similar to those terminated, and the Company shall be liable to the City for any excess costs for those services or goods. However, the Company shall continue any work not terminated.
- (d) The Company shall not be liable for any excess costs if the failure to perform arises from circumstances beyond the control and without the fault or negligence of the Company. These circumstances are limited to such causes as (1) acts of God or of the public enemy, (2) acts of governmental bodies, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) labor strikes, (8) freight embargoes, or (9) unusually severe weather. The time of performance of the Company's obligations under this Contract shall be extended by such period of enforced delay; provided, however, that such reasonably extended time period shall not exceed 60 days. If the foregoing circumstances result in a delay greater than 60 days, the City may terminate the affected portion of the Contract pursuant to the terms of Paragraph E-3 (Termination for Convenience).
- (e) Either party may terminate this Contract, in whole or in part, if the other party becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or if a receiver or trustee in bankruptcy is appointed for the other party, or if any proceeding in bankruptcy, receivership, or liquidation is instituted against the other party and is not dismissed within 30 days following commencement thereof.
- (f) The City retains the right to terminate for default immediately should the Company fail to maintain the required levels of insurance, fail to comply with applicable local, state, and Federal statutes governing performance of these services, or fail to comply with statutes involving health or safety.
- (g) In the event that the City fails to perform any of its obligations required under this Contract, and the City does not remedy the failure after notice thereof is provided to the City by the Company pursuant to Paragraph D-1 (Legal Notice) above, the Company shall have the right to treat the failure as a claim or dispute subject to the resolution provisions of E-1 (Disputes) of this Contract. During the period of such resolution, the Company shall continue with its performance under the Contract.

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

- (a) The Company shall procure and maintain, at its own expense, during the entire term of the Contract, the following coverage(s):
 - (i) Industrial/Workers' Compensation Insurance protecting the Company and the City from potential Company employee claims based upon job-related sickness, injury, or accident, during performance of this Contract, and must submit proof of such insurance on a certificate of insurance issued by an insurer qualified to underwrite workers' compensation insurance in the State of Nevada, in accordance with NRS 616A-616D, inclusive.
 - (ii) Commercial General Liability Insurance (bodily injury, property damage) with respect to the Company's agents assigned to the activities performed under this Contract in a policy limit of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate, for bodily injury (including death), personal injury and property damages. Such coverage shall be on an "occurrence" basis and not on a "claims made" basis, and be provided on either a Commercial General Liability or a Broad Form Comprehensive General Liability (including a Broad form CGL endorsement) insurance form. The form must be written on an ISO Form CG 00 01 10 01, or an equivalent form.
 - (iii) Professional Liability Insurance of limits not less than \$1,000,000, combined single limit and in the aggregate. If coverage is on a "claims made" basis, then it must continue for a period of two years beyond the completion or termination of this Contract. Any retroactive coverage must coincide with or predate the beginning of this Contract and may not be changed without the consent of the City.

- (b) Company must provide required insurance documentation to Insurance Tracking Services (ITS) immediately upon notification of selection. Award is conditional on verification by ITS that all insurance requirements have been met. All policy certificates and endorsements are required to be issued by an agent authorized by that insurer and licensed by the State of Nevada. All required aggregate limits must be disclosed and amounts entered on the certificate(s) of insurance. The certificates must identify the Contract number and the Contract description. The Company shall maintain coverage for the duration of this Contract, and any renewal periods if applicable. The Company shall annually provide ITS with a certificate of insurance as evidence that all insurance requirements have been met. The Company or insurance carrier shall provide the City with a 30 day advance notice of policy modification, cancellation or erosion of insurance limits, sent by certified mail "return receipt requested".

Submit certificates of insurance to:

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

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

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

- (c) The City, its officers and employees shall be named as additional insureds and such notation shall appear on the certificate of insurance furnished by the Company's insurance carrier. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer and licensed by the State of Nevada. Each insurance carrier's rating as shown in the latest Best's Key Rating Guide shall be fully disclosed and entered on the required certificate of insurance. The City requires insurance carriers to maintain a Best's Key rating of A VII, or higher. The adequacy of the insurance supplied by the Company, including the rating and financial health of each insurance carrier providing coverage, is subject to the approval of the City.
- (d) All deductibles and self-insurance retentions shall be fully disclosed in the certificate of insurance. No deductible or self-insured retention may exceed \$25,000.00 without the prior written approval of the City.
- (e) If the Company fails to carry the required insurance, the City may (i) order the Company to stop further performance hereunder, declare the Company in breach pursuant to Paragraph E-4 and terminate the Contract if the breach is not remedied, or (ii) purchase replacement insurance and withhold the costs or premium payments made from the payments due to the Company, or charge the replacement insurance costs back to the Company.
- (f) Any subcontractor approved by the City shall be required to procure, maintain and submit proof of insurance to the City of the same insurance requirements specified above, and as required in this paragraph.
- (g) The Company is encouraged to purchase any additional insurance it deems necessary.
- (h) The Company is required to remedy all injuries to persons and damage or loss to any property of the City, caused in whole or in part by the Company, its subcontractors or anyone employed, directed or supervised by the Company.
- (i) The policies required in E-5 (a) i-ii shall have a Waiver of Subrogation provision endorsement in favor of the City of Las Vegas.

E-6 Indemnification [CAO-7/24/08]

- (a) In addition to the insurance requirements set forth in Paragraph E-5 (Insurance), the Company shall protect, indemnify and hold harmless the City, its officers, employees, agents, and consultants (collectively herein the "City") from any and all claims, liabilities, damages, losses, suits, actions, decrees, and judgments including attorney's fees, court costs or other expenses of any and every kind or character (collectively herein the "Liabilities") which may be recovered from or sought against the City as a result of, by reason of, or as a consequence of, any act or omission, negligent or otherwise, on the part of the Company, its officers,

employees, or agents in the performance of the terms, conditions and covenants of this Contract, regardless of whether the Liabilities were caused in part by the City.

- (b) If a third party claim against the City for negligent performance by the Company is within the limits of its liability insurance, and the insurance company has accepted the City's tender of defense, then the City will pay the Company what is due and owing to them within the payment method specified in this Contract. However, if the claim is greater than the coverage amount the City, for its protection, may retain any money due and owing the Company under this Contract until the claim has been resolved.
- (c) It is expressly agreed that the Company shall defend the City against the Liabilities and, in the event that the Company fails to do so, the City shall have the right, but not the obligation, to defend the same and to charge all direct and incidental costs, including attorney's fees and court costs, to the Company.

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

Neither party may assign their rights nor delegate their duties under this Contract without the written consent of the other party. Such consent shall not be withheld unreasonably. Any assignment or delegation shall not relieve any party of its obligations under this Contract.

E-8 Waiver [CAO-7/24/08]

Waiver of any terms of this Contract shall not be valid unless it is in writing signed by each party. The failure of the City to enforce any of the provisions of this Contract, or to require performance of any of the provisions herein, shall not in any way be construed as a waiver of such provisions or to affect the validity of any part of this Contract, or to affect the right of the City to thereafter enforce each and every provision of this Contract. Waiver of any breach of this Contract shall not be held to be a waiver of any other or subsequent breach of this Contract.

E-9 Taxes/Compliance with Laws [CAO-7/24/08]

- (a) The City is exempt from paying Sales and Use Taxes under the provisions of Nevada Revised Statutes 372.325(4), and Federal Excise Tax, under Registry Number 88-87-0003k. The Company shall pay all taxes, levies, duties and assessments of every nature and kind which may be applicable to any work under this Contract. The Company shall make any and all payroll deductions required by law. The Company agrees to indemnify and hold the City harmless from any liability on account of any and all such taxes, levies, duties, assessments and deductions.
- (b) The Company, in the performance of the obligations of this Contract, shall comply with all applicable laws, rules and regulations of all governmental authorities having jurisdiction over the performance of this Contract including, but not limited to, the Federal Occupational Health and Safety Act, and all state and federal laws prohibiting or relating to discrimination by reason of race, sex, age, religion or national origin.

E-10 Audit of Records [CAO-8/5/08]

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

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

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

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

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

The invalidity, illegality, or unenforceability of any provision of this Contract, or the occurrence of any event rendering any portion or provision of this Contract void, shall in no way affect the validity or enforceability of any other portion or provision of this Contract. Any void provision shall be deemed severed from this Contract, and the balance of this Contract shall be construed and enforced as if this Contract did not contain the particular portion or provision held to be void. The parties further agree to amend this Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this clause shall not prevent this entire Contract from being void should a provision which is of the essence of this Contract be determined void.

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

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

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

This Contract shall not be modified or amended except by the express written agreement of the parties, signed by a duly authorized representative for each party. Any other attempt to modify or amend this Contract shall be null and void, and may not be relied upon by either party.

E-15 Entire Agreement, Section and Paragraph Headings [CAO-7/24/08]

- (a) This Contract represents the entire and integrated agreement between the City and the Company. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Contract.
- (b) The section and paragraph headings appearing in this Contract are inserted for the purpose of convenience and ready reference. They do not purport to define, limit or extend the scope or intent of the language of the sections and paragraphs to which they pertain.

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

- (a) An official of the City who is authorized on behalf of the City to negotiate, make, accept or approve, or take part in negotiating, making, accepting, or approving this Contract, payments under this Contract, or work under this Contract, shall not be directly or indirectly interested personally in this Contract or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of, or for the City, who is authorized on behalf of the City to exercise any legislative, executive, supervisory or other similar functions in connection with this Contract, shall become directly or indirectly interested personally in this Contract or in any part hereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to this Contract.
- (b) Each party represents that it is unaware of any financial or economic interest of any public officer or employee of the City relating to this Contract. Notwithstanding any other provision of this Contract, if such interest becomes known the City may immediately terminate this Contract for default or convenience, based on the culpability of the parties.

- (c) The Company represents and warrants that it has, in accordance with the current policy of the City, disclosed the ownership and principals of the Company on Attachment 1 (Certificate – Disclosure of Ownership/Principals), and that it has a continuing obligation to update this disclosure whenever there is a material change in the information contained therein.

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

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

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

- (a) All information including, but not limited to, oral statements, computer files, databases, and other material or data supplied to the Company is confidential and privileged. The Company shall not disclose this information, nor allow it to be disclosed, to any person or entity without the express prior written consent of the City. The Company shall have the right to use any such confidential information only for the purpose of providing services under this Contract, unless the express prior, written consent of the City is obtained. Upon request by the City the Company shall promptly return to the City all confidential information supplied by the City, together with all copies and extracts.
- (b) The confidentiality requirements shall not apply where (i) the information is, at the time of disclosure by the City, then in the public domain; (ii) the information is known to the Company prior to obtaining the same from the City; (iii) the information is obtained by the Company from a third party who did not receive the same directly or indirectly from the City; or (iv) the information is subpoenaed by court order or other legal process. But in such event the Company shall notify the City and the City, in its sole discretion, may seek to quash the demand.
- (c) The obligations of confidentiality shall survive the termination of this Contract.

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

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

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

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

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

- (a) The City may at any time, by written order make changes within the general scope of this Contract in any one or more of the following:
 - (i) Description of services to be performed.
 - (ii) Time of performance (i.e., hours of the day, days of the week, etc.).
 - (iii) Place of performance of the services.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, the City shall make an equitable adjustment in the Contract price, the delivery schedule, or both, and shall modify the Contract.
- (c) The Company must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order; however, if the City decides that the facts justify, the City may receive and act upon a proposal submitted before final payment of the Contract.
- (d) If the Company's proposal includes the cost of property made obsolete or excess by the change, the City shall have the right to prescribe the manner of disposition of the property.

- (e) Failure to agree to any adjustment shall be a dispute under Paragraph E-1 (Disputes); however, nothing in this clause shall excuse the Company from proceeding with the Contract as changed.

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

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

This Contract may be executed in counterparts. All such counterparts will constitute the same contract and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by facsimile or e-mail and, upon receipt, will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter.

SECTION F – List of Attachments/Exhibits

The following attachments are hereby incorporated into this contract:

<u>Identifier</u>	<u>Title/Text Reference</u>	<u>Pages</u>
Attachment 1	Certificate – Disclosure of Ownership/Principals [Paragraph E-16(c)]	2

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

CITY OF LAS VEGAS

KATHLEEN C. RAINEY, Manager
Purchasing and Contracts

"City"

ATTEST:

BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM:

Robert S. Sylvain 8-7-10
Deputy City Attorney Date

MGT OF AMERICA, INC.

Bob Lauder
BOB LAUDER, Senior Partner
"Company"

ATTACHMENT 1 - 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 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 <u>Contracting Entity</u>	Block 2 <u>Description</u>
MGT of America, Inc.	Subject Matter of Contract/Agreement Detention Center Privatization Study RFP# 100234-TF
Name(Contact) Karl Becker	
Address 502 East 11 th Street, Suite 300 Austin, Texas 78701	
Telephone 512-476-4697	
EIN or DUNS 59-1576733	

Block 3 <u>Type of Business</u>
☐ Individual ☐ Partnership ☐ Limited Liability Company ☒ 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.	See Attached List		
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

The Contracting Entity shall continue the above list on a sheet of paper entitled "Disclosure of Ownership/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 for in Block 4 above. A description of such disclosure documents must be included below.

Name of Attached Document: **Not Applicable**

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.

Bob Lauder

Name

September 13, 2010

Date

Subscribed and sworn to before me this 13 day of
September, 2010

Flominde A. Gabriel
Notary Public



FULL NAME/TITLE		BUSINESS ADDRESS	BUSINESS PHONE
1.	WK & Jean Boutwell	2123 Centre Pointe Blvd Tallahassee, FL 32308	850-386-3191
2.	Brad Burgees	2001 P Street, Ste 200 Sacramento, CA 95811	916-443-3411
3.	JK & Flora Caruthers	2123 Centre Pointe Blvd Tallahassee, FL 32308	850-386-3191
4.	Jerome L. or Carol Ciesla	2123 Centre Pointe Blvd Tallahassee, FL 32308	850-386-3191
5.	Dodds Cromwell	711 Capitol Way S., Ste 608 Olympia, WA 98501	360-866-7303
6.	Edward Humble	711 Capitol Way S., Ste 608 Olympia, WA 98501	360-866-7303
7.	Stephen F. & Joyce L. Humphrey	2123 Centre Pointe Blvd Tallahassee, FL 32308	850-386-3191
8.	Tom P. and Linda L Jons	2123 Centre Pointe Blvd Tallahassee, FL 32308	850-386-3191
9.	Michelle Juarez	2123 Centre Pointe Blvd Tallahassee, FL 32308	850-386-3191
10.	Robert Lauder	502 E 11 th Street, Ste 300 Austin, TX 78701	512-476-4697
11.	Mary McKeown-Moak	502 E 11 th Street, Ste 300 Austin, TX 78701	512-476-4697
12.	Eric Parish	2001 P Street, Ste 200 Sacramento, CA 95811	916-443-3411
13.	Alan Pollock	502 E 11 th Street, Ste 300 Austin, TX 78701	512-476-4697
14.	Raymond & Linda Thompson	2123 Centre Pointe Blvd Tallahassee, FL 32308	850-386-3191
15.	Brad Wilkes	2001 P Street, Ste 200 Sacramento, CA 95811	916-443-3411