

CONSTRUCTION MANAGER AS AGENT AGREEMENT FOR VEGAS VALLEY DRIVE SEWER REHABILITATION

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 VTN NEVADA, (the "Consultant"), a Corporation, whose address is 2727 South Rainbow Boulevard, Las Vegas, Nevada 89146, and fax number is (702) 247-4262.

WITNESSETH:

WHEREAS, the City intends to construct the Vegas Valley Drive Sewer Rehabilitation (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 its own expense, defend the Indemnities 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 Indemnities pursuant to this Section, unless the Indemnities, 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 Indemnities 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

John S. Ridilla 7/1/10
Deputy City Attorney Date

John S. Ridilla
Deputy City Attorney

CONSULTANT

By 
Ken D. Gilbreth, P.E., VTN Nevada

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 project consists of the rehabilitation of approximately 1500 linear feet each of 57 – and 66-inch sanitary sewer using trenchless technology and Cured-in-Place Pipe (CIPP) via an upstream or downstream inversion. The project also includes the inspection and point repair of approximately 1500 linear feet of reinforced concrete pipe and a downstream junction structure. The project also requires the design of a bypass pumping and piping system, and will also include traffic control, pavement cuts and replacement at major road crossings and reconstruction of a concrete block wall.

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 Bridge 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 The City will provide the Consultant a work space within the City's Water Pollution Control Facility during normal city hours.
- 101.2.3 Access arrangements for the Consultant to enter upon public and private property as required to perform their services.
- 101.2.4 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 Document 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 fill 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 (AASHTO T23), preparation of concrete cores (AASHTO T22), capping (ASTM C617), tests for compressive strength (AASHTO T22), 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 toilet 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, luminaire 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 Document 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 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.

106.3.3.2 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-Built. 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 September 2010 with an anticipated construction term of 180 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 "C-1"

Manpower Breakdown

Basic Services	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	TOTAL HOURS
Project Manager	12	12	8	8	8	8	8	8	8	80
Construction Coordinator	155	173	173	173	173	173	173	173	120	1486
Document Control	40	70	40	40	40	40	40	60	40	410
										0
										0
Total Basic Services										1976.0

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 \$290,100. 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	\$240,100.00	

- 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		ALLOWED SERVICES
TOTAL NOT-TO-EXCEED COST	\$50,000.00	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 "D-1"

Hourly Rate

Basic Services	Hourly Rate	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	TOTAL COST
Project Manager	\$156.00	\$1,872.00	\$1,872.00	\$1,248.00	\$1,248.00	\$1,248.00	\$1,248.00	\$1,248.00	\$1,248.00	\$1,248.00	\$12,480.00
Construction Coordinator	\$130.00	\$20,150.00	\$22,490.00	\$22,490.00	\$22,490.00	\$22,490.00	\$22,490.00	\$22,490.00	\$22,490.00	\$15,600.00	\$193,180.00
Document Control	\$84.00	\$3,360.00	\$5,880.00	\$3,360.00	\$3,360.00	\$3,360.00	\$3,360.00	\$3,360.00	\$5,040.00	\$3,360.00	\$34,440.00
		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total Basic Services		\$25,382.00	\$30,242.00	\$27,098.00	\$27,098.00	\$27,098.00	\$27,098.00	\$27,098.00	\$28,778.00	\$20,208.00	\$240,100.00
Additional Services											\$50,000.00
Total Basic and Additional Services		\$25,382.00	\$30,242.00	\$27,098.00	\$27,098.00	\$27,098.00	\$27,098.00	\$27,098.00	\$28,778.00	\$20,208.00	\$290,100.00

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	\$180.00	Per Hour
Project Manager	\$156.00	Per Hour
Construction Coordinator	\$130.00	Per Hour
Construction Inspector 1	\$130.00	Per Hour
Construction Inspector 2	\$115.00	Per Hour
Construction Inspector 3	\$85.00	Per Hour
Document Control	\$84.00	Per Hour
Survey Crew (2 person)	\$215.00	Per Hour
Tortoise/Owl Monitoring	\$80.00	Per Hour
Paleontological Monitoring	\$100.00	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	\$246.00
Sieve Analysis	\$142.00
Plastic Limits	\$123.00
Percentage Wear	\$225.00
R-Value	\$338.00
Fractured Faces	\$110.00
Sand Equivalent	\$155.00
Extraction Gradation	\$336.00
Moisture Content	\$30.00
Theoretical Max SpG	\$114.00
Bulk SpG-Compacted Mix (2)	\$228.00
Marshall-Stability and Flow (2)	\$630.00
Retained Tensile Strength (3)	N/A
Bulk SpG-Cores (2)	\$136.00
Concrete Compressive Strength (4)	\$92.00
Concrete Compressive Strength (6)	\$138.00
Rip-Rap SpG	\$114.00
Rip-Rap Percentage Wear	\$218.00

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: Corey Schmidt, 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): Jeff Radke, P.E. Ken D. Gilbreth, P.E.

601.1.2 CONSTRUCTION COORDINATOR: Kevie Remynse

601.1.3 CONSTRUCTION INSPECTOR: TBA

601.1.4 DOCUMENT ADMINISTRATOR: Victoria Nicolai/Rachel Fredriksen

601.1.5 OTHER PERSONNEL:

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: Jeff Radke, P.E.

List Architect, Engineer, or Contractor license number: 016036

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: Geo Tek

602.1.2 ENVIRONMENTAL MONITORING: New Fields

602.1.3 CIVIL ENGINEER: N/A

602.1.4 STRUCTURAL ENGINEER: N/A

602.1.5 MECHANICAL ENGINEER: N/A

602.1.6 ELECTRICAL ENGINEER: N/A

602.1.7 LANDSCAPE DESIGN: N/A

602.1.8 COST ESTIMATOR: N/A

602.1.9 GEOTECHNICAL ENGINEER: N/A

602.1.10 LAND SURVEYOR: N/A

END OF EXHIBIT "F"