

MASTER PLANNING, COMMUNITY OUTREACH AND ARCHITECTURAL PROGRAMMING SERVICES AGREEMENT FOR WESTSIDE SCHOOL & VARIETY EARLY LEARNING CENTER

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) 229-2091, and KME ARCHITECTS, (the "Consultant"), a Limited Liability Company, whose address is 231 West Charleston Boulevard, Suite 140, Las Vegas Nevada, 89102, and fax number is (702) 888-2088.

WITNESSETH:

WHEREAS, the City intends to construct the Westside School & Variety Early Learning Center (herein the "Project"); and

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

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

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

SECTION ONE CONSULTANT RESPONSIBILITIES

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

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

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

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

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

If any person or sub consultant 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 sub consultant with someone acceptable to the City.

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

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

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

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

1.08 Responsibility for Construction Document Revisions.

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

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

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

SECTION TWO CITY RESPONSIBILITIES

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

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

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

2.04 Cooperation with Consultant. The City agrees that its officers and employees will cooperate with the Consultant in the

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

SECTION THREE CHANGES TO CONSULTANT'S SERVICES

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

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

SECTION FOUR ADDITIONAL SERVICES OF CONSULTANT

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

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

SECTION FIVE SUBCONSULTANT AGREEMENT

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

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

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

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

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

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

- (i) it is financially solvent, able to pay its debts as they mature, and is possessed of sufficient working capital to complete this Agreement; that it is experienced, competent, qualified and able to furnish the plant, tools, materials, supplies, equipment and labor which is used to perform the services contemplated by this Agreement, and that it is authorized to do business in the City of Las Vegas and the State of Nevada,
- (ii) it holds a license, permit or other special license to perform the services included in this Agreement, as required by law, or employs or works under the general supervision of the holder of such license, permit or special license,
- (iii) its computer hardware, software, and firmware will continue functioning without interruption, and will continue to accurately process date, time, and data necessary to the performance of this Agreement, and
- (iv) it has, pursuant to the requirements of Resolution 79-99 adopted by the City Council on August 4, 1999, (effective October 1, 1999), as amended by resolution 105-99 (adopted by the City Council on November 17, 1999), disclosed on the form attached hereto as **Exhibit "G"** (Disclosure of Ownership/Principals) all of the principals, including partners, of the Consultant, as well as all persons and entities holding more than a one percent (1%) interest in the Consultant or any principals of the Consultant. If the Consultant, or its principals or partners, are required to provide disclosure under federal law (such as Securities and Exchange Commission or the Employee Retirement Income Act) and current copies of such federal disclosures are attached to **Exhibit "G,"** the requirements of this Section shall be deemed satisfied. During the term of this Agreement, the Consultant shall notify the City in writing of any material change in the above disclosure on **Exhibit "G"** within fifteen (15) days of such change.

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

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

employee of the City.

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

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

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

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

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

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

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

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

10.20 **Claim or Dispute Resolution.**

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

B. Resolution by Management. The City Representative and the Consultant Representative shall meet within a reasonable time after receipt of the written notice received pursuant to Section 10.20A in an attempt to resolve the claim or dispute to the mutual satisfaction of the parties. If the matter is not disposed of by mutual agreement between the City Representative and the Consultant Representative, the claim or dispute shall be decided by the Director of Public Works, whose decision shall be reduced to writing and mailed or otherwise furnished to the Consultant. The decision of the Director of Public Works shall be final and conclusive unless, within thirty (30) days after the date on which the Consultant receives its copy of such decision, the Consultant mails or otherwise furnishes to the Director of Public Works a written request to arbitrate the claim or dispute, in which event the parties shall proceed with the arbitration pursuant to provisions of Section 10.20B. The failure to make such request shall preclude the Consultant from proceeding any further on the claim or dispute, and the Consultant shall

have no further recourse against the City.

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

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

E. **Right of Joinder.** In the event the City is named as a party to any arbitration, or the City commences an arbitration against a party other than the Consultant, which arbitration is related to, or connected with, the construction of the Project or the performance of the Consultant's services hereunder (such as, without limitation, any arbitration between the City and the contractor awarded the contract to construct the Project), the Consultant agrees and irrevocably consents to be joined as a party in the arbitration proceeding and to be bound by any decision resulting therefrom. The decision of the arbitrator or arbitrators, as the case may be, in the arbitration to which the Consultant has been joined as a party, shall be binding and enforceable against the parties thereto under the laws of the State of Nevada.

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

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

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

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

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

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

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

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

10.25 Agreement Version. This document reflects the current 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.

ATTEST

CITY OF LAS VEGAS

Beverly K. Bridges, MMC, City Clerk

Date

By _____

Kathleen C. Rainey, Manager, Purchasing & Contracts

APPROVED AS TO FORM

CONSULTANT

Robert S. Sylvain

Deputy City Attorney

1-11-11

Date

By _____

Kelvin Haywood, President, KME Architects

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 Upon authorization to proceed as described in **Exhibit "C"**, the Consultant shall provide the following in accordance with the Schedule (**Exhibit "C"**) included herein.

100.2 PROJECT DESCRIPTION

100.2.1 It is understood by the parties to this Agreement that the Project definition is going to be developed during the course of the work of this Agreement and that little information may be currently available upon the signing of this Agreement. The projected description and scale of the Project upon signing of this Agreement is:

100.2.1.1 Project Type and Description: Both the Westside School and the Variety Early Learning center addressed as an entire campus.

100.2.1.2 Site Address, Parcel Number, Location: Areas bounded by Jefferson Ave, C Street, D Street and Washington Ave. 990 D Street, 1050 D Street, and 330 W Washington Ave. Parcel #139-27-211-053, 058, 059, and 060

100.2.1.3 Gross Site Acreage: 4.74 Acres

100.2.1.4 Gross Building Size: TBD (To be determined)

100.2.1.5 Anticipated Use: TBD

100.2.1.6 Construction Cost Budget: TBD

100.2.2 Should the preceding projected site or building sizes change during the course of the work by less than fifty percent (50%), the Consultant shall continue to provide the scope of services without additional compensation or reduction in fee.

100.2.3 Should any of the preceding projected site or building sizes change during the course of the work by fifty percent (50%) or more, or the project type or location be revised, the Consultant may make an Additional Service request to the degree that the Consultant can demonstrate additional work is required due to the change, and the City may make seek a reduction in fee to the degree that the City can demonstrate a reduction in the work required.

100.3 SCOPE OF SERVICES

100.3.1 The following scope of services is in addition to the scope required elsewhere in this Agreement. This scope is to be considered preliminary and may be altered as this Project develops. If increased scope or workload is encountered, the Consultant is to notify the City in writing, and an adjusted fee will be negotiated prior to any work.

100.4 GENERAL REQUIREMENTS

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

100.4.2 Should any portions of the Project contain works provided protection under the Visual Artists Rights Act of 1990 ("VARA"), the Consultant and his subconsultants at all tiers agree to waive and do hereby waive voluntarily all rights to attribution and integrity with respect to any and all claims as may arise under VARA, Nevada Revised Statutes "Works of Art" NRS 597, or any other local, state, foreign, or international law, as currently drafted or as may be hereafter amended, that conveys the same or similar moral rights with respect to any or all portions of the Project, including but not limited to display, removal from display, exhibition, installation, restoration, conservation, storage, study, alteration, destruction, relocation, and any other activities conducted by the City, its officers, employees, agents, contractors, licensees, successors or assigns. The Consultant acknowledges that all such decisions concerning the Project shall be made in the sole discretion of the City, its officers, employees, agents, contractors, licensees, successors or assigns. In addition to the extent such rights may not be waived, Consultant and his subconsultants at all tiers covenant not to assert such rights against the City, its officers, employees, agents, contractors, licensees, successors or assigns.

- 100.4.3** Each submittal shall be in accordance with the appropriate submittal requirements listed herein. Incomplete submittals shall be rejected. All costs associated with the re-submittal shall be borne by the Consultant. Prior to each submittal, check all documents for technical accuracy, compliance with applicable codes and ordinances, complete incorporation of all City review comments, and coordination within and between design disciplines.
- 100.4.4** The Consultant shall be responsible for all coordination with its subconsultants. Each submittal to the City shall be organized by discipline and shall be thoroughly crosschecked to avoid conflicts between Consultant and subconsultant documents. Vague references to Project requirements on other discipline's plans shall not be permitted. Where references to others' plans are necessary for direction, reference notes shall specifically state the document, drawing number, or specification section, as appropriate. It shall be the Consultant's responsibility to advise each subconsultant of this requirement. Historically significant structures to conform with Federal Secretary of the Interior's Standards for Rehabilitation & Illustrated Guidelines for Rehabilitating Historic Buildings
- 100.4.5** **STANDARDS.** All work shall be in compliance with the applicable City of Las Vegas "Design Standards for Buildings, Parks, and Parking Facilities" ("Design Standards"), incorporated herein by reference, and that any failure in this regard shall be at the sole expense of the Consultant.
- 100.4.6** **RESPONSIBILITY.** No disclaimers are allowed on any documents, except as specifically authorized by the Owner in writing. The Consultant agrees that no approval of pre-design programming and site analysis, schematic design, pre-project planning, or study deliverables by any person, body, or agency shall relieve it of the responsibility for the adequacy, fitness, suitability, and correctness of the study prepared in accordance with sound and accepted principles applicable to the study.
- 100.4.7** **MEETINGS.** Throughout the phases of the Project, participate in regularly scheduled weekly meetings with the City. Coordinate attendance of subconsultants and other parties as appropriate to the progress of the work and to avoid delay. Unless the City elects to do so and provides written instrument stating such, record, prepare and distribute to all attendees and other affected parties, a meeting summary documenting decisions made and actions required by attendees and other affected parties, in a format acceptable to the City, within five days following each meeting. The consultant requires attendance and participation during community outreach meetings on a regular basis.
- 100.5** **DEFINITIONS**
- 100.5.1** "Pre-Project Planning" as used herein is the process of developing sufficient strategic information with which the City can address risk and feasibility of options, determine costs and commitment of resources, make applications for funding or other agency participation, and utilize as the basis for subsequent Project Phases.
- 100.5.2** "Construction Cost Budget" as used herein is the cost to construct the Project. The Construction Cost Budget includes the cost of construction labor, materials, and equipment furnished, contractor insurance and bonding, construction general conditions expenses, and the contractor's overhead and profit, but excludes the cost of construction change orders and other construction cost impacts encountered after award of the construction contract. An estimate of the Construction Cost Budget during the course of the design may include designer, scope, estimating, market factor, price escalation, and other contingencies as appropriate to the level of Project definition to account for anticipated costs including unknown and undefined Project elements, and the potential cost of identified but unmitigated Project risks. An estimate of the Construction Cost Budget is a prediction of the lowest bona fide construction bid received at the scheduled bid opening.
- 100.5.3** "Construction Cost Estimate" as used herein is a forecast of the probable construction cost prepared on the basis of detailed analysis of materials and labor for all items of work.
- 100.5.4** "Total Project Cost Budget" is the entire expense required to achieve the completion of the Project and includes the Construction Cost Budget plus the cost of construction change orders, compensation of the Consultant and other consultants, the cost of land, financing costs, interest payments, permits, utility fees, inspections, printing bid and construction documents for construction, the City's construction management oversight, surveys and reports, testing, commissioning, constructability and value engineering reviews, the City's internal labor, site signage, furnishings, furniture, and equipment.

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** **INFORMATION PROVIDED BY THE CITY**

101.2.1 The following information is being furnished by the City for inclusion in the report(s). The Consultant can rely on the accuracy of this information and has no responsibility other than including it in the proper location in the report(s):

101.2.1.1 Total Project Cost Budget.

101.2.1.2 Proposed Project Schedule and Funding Plan.

101.2.2 The following information is being provided by the City to assist the Consultant in the performance of the Agreement. The Consultant can rely on the accuracy of this information for the purpose of this Agreement:

101.2.2.1 City Design Standards.

101.2.3 The following information is being provided by the City for review and verification by the Consultant. The Consultant is responsible for determining the current accuracy, correctness, or soundness of this information:

101.2.3.1 As-built and construction drawings, if any exist.

101.2.3.2 Any other information required to complete the work, if readily available to the City, which is not in the Consultant's Scope of Services.

101.3 ADDITIONAL OBLIGATIONS BY THE CITY.

101.3.1 The City shall:

101.3.1.1 Arrange and provide for access for the Consultant to enter upon public and private property as required to perform their services.

101.3.1.2 Provide review comments to be incorporated into the documents.

101.3.1.3 Acquire any required rights to the Project site or air rights to adjacent sites as deemed necessary by the City.

101.3.1.4 Designate a management team to conduct meetings, oversee the Pre-Project Planning work, review concepts and designs, issue responses on behalf of the City, administer contractual provisions, and to work with the Consultant to achieve an acceptable strategic plan, refined Program and Schematic Design.

ARTICLE 102: THE CONSULTANT'S RESPONSIBILITIES

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

102.1.1 Programming and Site Analysis Phase

102.1.2 Schematic Design and Master Planning Phase

102.1.3 Pre-Project Planning Study, to be prepared upon successfully completing and incorporating the preceding phases of work.

102.1.3.1 Utilities. Provide all research, coordination, and meeting representation for utility survey, capacity, and preliminary project design analysis of all utilities required for the Project. Applications for service are not anticipated as part of the work of this Agreement.

102.1.4 FEES. Notify the City of any required utility, application, permit and review fees, which shall then be the responsibility of the City to pay.

102.1.4.1 CPM NOT A REGULATORY AUTHORITY. The Consultant does hereby acknowledge, understand and agree that the Capital Project Management Section of the Department of Public Works (CPM), acting as the City's representative for purposes of the Project, does not have any control, authority or influence over the decisions or requirements of other departments of the City acting in a regulatory capacity including, but not limited to, the Building Department, Fire Department, Planning Department and Department of Public Works of the City of Las Vegas. The City's representative acts in a capacity similar to that of a representative working for a private property owner which is to ensure that the City receives a quality product, delivered on schedule, for a fair price. Furthermore, the Capital Project Management Section of the Department of Public Works does not speak or act for any regulatory authority, nor does any regulatory authority speak or act for the Capital Project Management Section of the Department of Public Works. 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.

102.1.4.2 APPROVAL. The City shall give approval of documents prior to being submitted to any regulatory agency for permit review and approval

102.1.4.3 HABS Report HABS consists of four varying levels of documentation. The consultant shall provide Level 1 documentation which is the highest degree of required documentation including full measured drawings, large format photographs of both the interior and exterior of the building, and history narrative. Work will be completed in accordance with *The Secretary of the Interior's Standards and Guidelines for Architectural and Engineering Documentation*.

As part of the HABS submittal, the consultant will include one (1) original photo data set, one archival photocopy set, three (3) bound copies, and one (1) electronic copy (pdf) on CD. This will be delivered to the City for the City's internal recordation or for submission to the Library of Congress.

The Consultant will field verify existing plan and elevation dimensions of the 1923 Las Vegas Grammar School No. 1 building and the 1948 Classroom Addition building. Destructive testing or investigation will not be required. Field investigation will need to be conducted to complete the documentation. Field work will also include field photography, an assessment of the existing conditions, character-defining features, and architectural integrity. These items will be included in the HABS report.

The Consultant will research the history of the Las Vegas Grammar School and gather documentation according with *The Secretary of the Interior's Standards for Architectural and Engineering Documentation: HABS/HAER Standards*. The Consultant will utilize all existing background information provided by the City including, but not limited to the National Register of Historic Places nomination form, existing site records, school files and records, personal interviews, oral histories, existing videotapes, historic photographs, and news articles as part of the research to produce the HABS written documentation.

The Consultant will provide HABS Level 1 large format photographs of the site in accordance with *HABS/HAER Photographs Specifications and Guidelines*. A total of 20 photographs of the exterior views as well as interior photographs will be included. At least one exterior view of each building will include a scale stick per HABS standards. Two sets of archival processed 8 X 10 prints will be provided with the Final HABS submittal along with sleeved large format negatives. Photographs and negatives will be labeled in accordance with HABS standards and provide a corresponding photo key.

Supplemental photographs will be taken using a high-resolution digital camera. Supplemental photographs may include site photos, photographs of other on-site buildings or equipment, and additional views of the documented buildings. An estimated total of 25-30 supplemental photos will be submitted with the HABS documents. These photos will be printed on bond with photo captions describing the views. A photo key for the supplemental photos will not be included.

The Consultant will provide:

Level 1 historical and descriptive narrative of the Westside School. Written documentation will include:

- History and description of the 1923 Las Vegas Grammar School No. 1 building and the 1948 Classroom Addition building.
- Research methodology.
- Name and date of research.
- A list of sources.

The HABS written documentations will be prepared in accordance with the National Park Service, *Historic American Buildings Survey Guidelines for Historical Reports*. Written histories will place the site and related structures within the appropriate context, addressing both the historical and the architectural aspects of its significance.

102.2 PROGRAMMING AND SITE ANALYSIS PHASE

102.2.1 Upon authorization by the City to Proceed with the Programming and Site Analysis Phase, the Consultant shall:

102.2.1.1 SITE SURVEY. Prepare a boundary and topographic survey for the Project.

102.2.1.2 GENERAL REQUIREMENTS. Receive from the City the preliminary space requirements list for current and future needs, budget and other requirements for the Project.

102.2.1.3 PROGRAM. Work with the City in detailing the program for the Project, including size, relationship and needs of the spaces and activities. Prepare a program analysis for the City's approval detailing all goals, needs, spatial requirements, relationship matrices, adjacencies, special performance requirements, fixed fixtures, and bubble diagrams. This work is to be independent of the site conditions.

102.2.1.4 LEED CREDITS REPORT. In meetings with the City Representative and stakeholders the Consultant shall analyze, recommend, and report the potential LEED Credits to pursue for certification.

102.2.1.5 SITE ANALYSIS. Analyze the site conditions affecting the Project including but not limited to ownership verification, utilities, drainage, surrounding uses, applicable Federal acts, site history, access, traffic, condition of existing improvements and vegetation, historic restoration, and site issues affecting Project schedule.

102.2.1.6 REVIEW. Participate in design review meetings in which the City will discuss comments generated during the review of the program analysis, and site analysis. Incorporate the City's review comments.

102.2.1.7 SUBMITTAL. Provide a formal Programming and Site Analysis Submittal, which includes the program analysis, site analysis, and probable Cost Estimate. Furnish six (6) copies of the submittal to the City. The City shall review, make comments, advise of any adjustment required, and request additional documents as required of the program and budget. The City shall approve in writing the Programming and Site Analysis Submittal prior to the Consultant proceeding with the basic services under the Schematic Design Phase.

102.3 SCHEMATIC DESIGN PHASE

102.3.1 Upon authorization by the City to proceed with the Schematic Design Phase, the Consultant shall:

102.3.1.1 REVIEW. Review the program, schedule and probable Construction Cost Budget confirmed by the City to ascertain the requirements of the Project and arrive at a mutual understanding of such requirements with the City and advise the City of any problem issues.

102.3.1.2 DESIGN ALTERNATIVES. Based on the mutually agreed upon program, schedule and probable Construction Cost Budget, the Consultant shall prepare preliminary design studies consisting of drawings and other documents illustrating the scale and relationship of each component of the Project. Review with the City Representative, alternative approaches to the design and construction of the Project. **A maximum of TWO functional and varied design alternates will be required.**

102.3.1.3 LEED CREDITS REPORT. Update the list of LEED credits being pursued.

102.3.1.4 INTERIM ESTIMATE. If and when requested by the City during the Schematic Design Phase, prepare an interim Construction Cost Estimate of the design alternatives to confirm the feasibility of the Project program and design.

102.3.1.5 SPECIFICATIONS. Prepare schematic level outline specifications.

102.3.1.6 REVIEWS. Participate in design review meetings in which the City will discuss comments generated during the review of the alternative designs, specifications, and probable Construction Cost Estimate. Incorporate the City's review comments. All incorporated changes shall be fully coordinated within and between disciplines.

102.3.1.7 SITE DEVELOPMENT PLAN REVIEW. Based on the City's selected design alternative as further development into an approved schematic design, provide all applications, documentation, submittals and meeting representation for the Planning Department's Site Development Plan Reviews, including those required by review boards such as Summerlin, Centennial Hills, redevelopment agencies, historical review boards and similar organizations where applicable to the site and Project. Incorporate comments and requirements into the design.

102.3.1.8 SUBMITTAL. Prepare a formal Schematic Design Submittal. Schematic documents shall include site master plan, floor plans, elevations, sections, finishes and other drawings as necessary to describe the Project, the outline specification, and a revised Construction Cost Estimate. Provide six (6) copies of the documents from this phase.

102.3.1.9 REVIEW. Participate in a Design Review Meeting in which the City will present and discuss comments generated during review of the Schematic Design Submittal. Incorporate the City's review comments in the Pre-Project Planning Study.

102.4 PRE-PROJECT PLANNING STUDY

102.4.1 DRAFT. Provide a draft copy of the study for the City's approval and comment. Incorporate comments and add materials as directed by the City until the draft is approved by the City for final printing.

102.4.2 FINAL. Provide:

102.4.2.1 Ten bound copies,

102.4.2.2 One clean unbound reproducible copy, and

102.4.2.3 One compact disk (CD or DVD) in PDF (Adobe Acrobat) format

of the final approved Pre-Project Planning Study using the following format, in a manner and at a level of detail appropriate for the Project's type, complexity, size, and site characteristics.

102.4.3 CONTENTS.

1. Table of Contents
2. Executive Summary
3. Project Analysis
 - a. Project Description
 - b. Project Scope
 - c. Background
 - d. Expected Use and Users
 - e. Analysis
 - f. Project Implementation Plan
4. Program Analysis
 - a. Programmed Activities, Occupants, and Uses
 - b. Relation Matrices
 - c. Common Area Space Program for Building Projects
 - d. Exterior Space Program and Requirements
 - e. Special Performance Requirements
 - f. Future Growth
5. Site Analysis
 - a. Existing Conditions and Suitability
 - b. Evaluation of Site to Meet Requirements
 - c. LEED Credits being pursued
6. Project Cost Estimate
 - a. Total Project Cost Budget (provided by City)
 - b. Proposed Project Schedule and Funding Plan (provided by City)
 - c. Proposed Construction Cost Estimate
 - d. Design Assumptions
 - e. Estimating Assumptions
7. Operations and Maintenance Impacts
8. Design Documents
 - a. Program Bubble Diagram(s)
 - b. Site Analysis Diagram(s)
 - c. Schematic Design Site Plan and Elevation Drawings
 - d. Outline Specifications
9. Appendix
 - a. Reference codes, standards, guidelines, prior studies, completed similar project documentation.

102.4.4 DESCRIPTION OF STUDY SECTIONS

102.4.4.1 EXECUTIVE SUMMARY. The executive summary section presents essential and high-level information about the Project. It summarizes material that is presented in the subsequent sections related to the purpose and function of the Project, description of project type, size (e.g., gross square footage, number of floors, etc.), location, recommended project delivery method, and probable Construction Cost Estimate and Total Project Cost Budget (provided by City). **The information contained in the executive summary should not require a technical background to understand.** Significant unresolved or incomplete issues to be addressed in subsequent project activities (such as plans to prepare an environmental impacts report) should also be identified.

102.4.4.2 PROJECT ANALYSIS. The project analysis section describes the scope of the Project, provides background information, documents the Project need, identifies alternatives considered to meet the need, and presents how the proposed solution meets those needs. The project analysis section should discuss the following topics as appropriate to the Project:

Project Description

- Project Sponsor Name - Name of City department requesting the Project.
- Project Title – Provided by the City Representative.

- Contacts - Name, title, telephone, and email address of Project Sponsor and City Representative.
- Consultant Contacts – Firm, address, telephone, and email address of key consultants conducting the Pre-Project Planning Study.

Project Scope

- Mission - Brief mission statement of the sponsor department as it relates to the requested facility.
- Goals and objectives - Describe the specific goals and objectives that will be met by the Project.
- Design Philosophy - Brief statement of the reasoning for the type of design recommended in the document. For example, if the building is an addition to an existing building, the design should complement the existing structure. If the building is a new building on an existing site, is the intent to conform to previous buildings or to create a "flagship" building?
- Organizational Culture - What type of culture is supported and fostered by the facility (e.g., open vs. secured, formal vs. informal)?
- Operational Intent - Brief statement on the operational intent of the Project. For example, will it be open twenty-four hours a day, seven days a week, or eight hours a day for weekdays only? Will it be open to the general public, clients, or restricted to state employees? What type of organizational culture should the facility support?

Background

- Existing Facilities - Description of any other existing facilities that will be directly or indirectly affected by this Project (amount of freed up space made available by relocation to proposed facility, addition to an existing facility, renovation to or demolition of an existing facility, changes in egress to adjacent facilities, etc.).
- Proposed Project's relationship to sponsor department, strategic goals, and master plans.
- Previous Action Taken – Provide history of Project planning. Describe if the Project is in the City's current five-year capital plan. If not, provide a short explanation.

Expected Use and Users (staff, visitors, clients, public, etc.)

- Describe the proposed uses of the facility (i.e., classroom, office, etc.) and the type, daily and peak number of intended users and occupants by category (i.e., by City employees, general public, department clients, students, etc.).

Analysis

- Purpose of the Project - Problem Statement - A description that defines the specific problem or objective that creates the need for the Project. The Project should be consistent with the function, objectives, and policies of the department and the City.
- Project Proposal - Solution - Describe in brief and accurate detail the proposed solution to the problem and quantify how the proposed Project meets those short term and long range objectives. Identify the total Project cost and anticipated Project milestones, including anticipated date of completion. Include a discussion of the major Project/funding milestones planned for the proposed Project.
- Alternatives Considered - A brief description of major alternatives considered and the reasons for rejecting alternatives not recommended, such as renovation vs. new construction, building layouts, or program reconfigurations.
- Participating Organizations - List any other state, federal, or local agencies or public or private sector organizations directly affected by, or potentially involved in this Project related to implementation, reviews, approvals, use, or funding.

Project Implementation Plan

In addition to the pre project planning phase being used to develop key Project information, such as the Project scope and program requirements, site analysis, and cost estimates, another critical aspect is to pull all this information together in a Project implementation plan. The Project implementation plan presents how the Project is expected to be managed and funded, and its overall schedule. Much of this information will be provided to the Consultant by the City.

- Management Plan
 - Management Organization - This section describes the City's proposed intent in regards to the management of the design and construction of the Project. Roles and responsibilities between the City sponsor and stakeholder agencies should be noted such as CDBG, RTC, and RFC funding requirements, as well as if the Project is going to be managed by CMP or others. Any costs for special consultant services should be included in the Total Project Cost Budget.
 - Methods of Accomplishment - Identify the proposed project delivery method to be used. If an alternative to the traditional design-bid-build delivery method is proposed, identify the alternative project delivery method recommended and the rationale and basis for its selection. The selection of an alternative delivery method may influence the Project cost, schedule, and timing of required funding actions. Discuss how building commissioning will be performed.

Schedule

A reasonable milestone and duration master schedule for the Project, including, design, and construction. The schedule should be compatible with the recommended Project delivery method. Overly optimistic compaction of design or construction phases due to unrealistic schedule durations or unlikely funding actions should be avoided.

The Project Analysis section will require the direct participation of the City Representative and Project sponsoring staff to present a clear and comprehensive overview of the Project consistent with the implementation plans.

102.4.4.3 PROGRAM ANALYSIS. The programming activity defines the complete and specific needs of the user translated into facilities terms. The program will identify the requirements of all architectural spaces, equipment, and any special needs which define the Project and will be included in the eventual design of the facility. This includes defining the Project's functional needs, interior and exterior functional requirements (including space sizes, contents, activities), and relationships. A project program serves not only as a basis for design and a source of information about the Project, but is also the basis to develop the Construction Cost Budget.

The program analysis may be the most extensive and most important section of the study. The requirements should not be unnecessarily restrictive in nature, but should clearly and directly express the existing and future potential needs of the agency. Consultants likely will be needed to conduct or assist in the program analysis. However, it is important that the sponsor be heavily involved in the process by providing initial guidance and information and then actively involved in the review of the analysis. All final decisions should be made by the sponsor.

The City has established guidelines for the allocation of space for various workstation types. The Design Standards prepared by the City contain instructions for their application. Consultants preparing design documents should follow these standards. If Project specific space, parking, telecommunications, or other standards are used, they should be referenced in this section and explicitly included in the report Appendix. The program describes the scope (what, and how much) and quality (the level of performance and amenity) to be accommodated. Scope, quality, and site conditions are key factors in establishing the Project cost. Programming and costing should be seen as both simultaneous and reciprocal and may involve several iterations as trade-offs and alternatives are developed and considered.

Programmed Activities, Occupants, and Uses

For building projects, prepare a space requirement information outline and room/space data sheet for each room. For parks and other projects without significant enclosed building spaces, prepare similar information data for each activity and use area on the site. Consultants are free to use any consistent format for this information. It should generally cover the following level of detail:

1. Use/Functional Component (Div., Dept., Etc.)
2. Name of space
3. Total number of rooms/spaces like this
4. Occupants per room/space
5. Purpose
6. Desired NSF floor area
7. Architectural features
 - a. Ceiling height
 - b. Suggested materials for Floor, Walls, Ceiling
 - c. Acoustical requirements (special)
 - d. Lighting requirements (special)
 - e. Other special requirements
8. Relationship to other areas
9. Fixed equipment
10. Loose equipment and furniture
11. Codes and regulations; constraints/requirements
12. Comments

Relation Matrices

For both building projects and non-building projects, to assist the future Project designer in maintaining functional layouts during the development of the design, record preliminary information about the ideal arrangement among the programmed activities. Based upon information gathered from future facility users and their current representatives, convert desired proximity relationships into an affinity matrix capable of indicating at a glance whether activities should be adjacent, close, neutrally-placed or remote from one another.

Loose Equipment and Furniture

From the programmed space data sheets, total the loose equipment and furniture needs, cost estimate and included in the Total Project Cost Budget. Costs need to be estimated within the Project schedule at the time of purchase, not current costs.

Common Area Space Program for Building Projects (Building Efficiency)

List common spaces and areas in the approved schematic design that are not part of the net assignable space program, such as walls, columns, mechanical chases, electrical and communications risers, air handler rooms, vestibules, corridors, main restrooms, stairs, elevator shafts and equipment rooms, custodial closets, electrical and communications closets, and main mechanical and electrical rooms. Include in this listing the NSF floor area and requirements for each common area space. Total the common area for the Project and

compare to industry standard efficiency factors for similar building type and size; reference the industry standard source used in this section or the appendix.

Exterior Space Program and Requirements

Often-overlooked aspects of a new building project are requirements outside of the exterior of the building. These may include parking spaces, access and circulation roads, sidewalks, entrance plazas, lighting, fencing, landscaping, and signage. Specific exterior items should be identified and quantified in this section of the report, and also included as part of the Construction Cost Estimate.

Special Performance Requirements

Architectural style, use of materials and detailing may be important considerations during design, and they should be addressed during pre-project planning to a reasonable extent and incorporated in the Construction Cost Estimate. Any issues which relate to historical districts or landmark building status (in the case of a renovation) should be documented, along with the restrictions that will be placed on the Project and the processes and/or agencies involved in securing approvals for the Project.

Future Growth & Phasing

Identify design measures and features that allow for future growth and change. Identify elements subject to probable change, both in the short and long term. Assess probabilities of change and indicate where expansion, contraction, or alteration should be provided in design. Provide a phasing plan analysis for large projects and projects that anticipate funding to be apportioned over time.

102.4.4.4 SITE ANALYSIS. The study should clearly present how the site analysis findings impact and are incorporated into the Project's scope and cost estimate.

Existing Conditions and Suitability

The determination of the site suitability for the program requires an analysis of the following site-specific needs and may include:

- Land use, ownership, control (provided by City)

Verification of the property ownership, control, and deed restrictions (provided by City)

- Economic Value (professional appraisals, if required, will be provided by the City)

- Site history and cultural factors to the extent of previous uses of the site.

Archeological sites in the immediate area (provided by City)

- Physical Issues

Topography, categorize existing conditions, use existing information to determine risk of construction on site.

Geo-technical/Soils, categorize soils in area, (provided by City)

Perform limited soil borings and soils investigation necessary to analyze conditions present in area where the proposed Project is physically located. (provided by City)

Make preliminary determination of bearing capacity of soil.

Identify unstable, expansive, caliches soils, and fill materials.

Review surface drainage, storm water, and groundwater characteristics

- Utility Systems Survey of Availability, Compatibility, and Existing Capacities

Water

Sewer

Gas

Electricity

Telephone

Cable

Other

- Environmentally Sensitive Conditions

Steep Slopes

Riparian washes, springs, wells, wetlands

Protected species and critical habitats, tortoise, bear poppy, etc.

Other

- Hazardous Materials - Review title and site records for history of underground or surface storage of hazardous materials such as:

Asbestos-containing materials

Lead paint

Toxic waste

Underground storage tanks

Due diligence survey to determine previous environmental contaminants

- Site Boundary and Topographic Survey

- Regulatory Factors

Zoning codes, verify proper General Plan and Zoning classifications

Use Permits

- Building Codes and Requirements

Local codes or special code needs, ADA

Conduct a preliminary review with the Building Department of the schematic design to determine feasibility of the plan and issues to be addressed in the final design.

Adverse cost impacts

Historical restoration requirements

Any delays that may be imposed in the design or construction phase

Evaluation of Site to Meet Requirements

The evaluation of the site to ensure compatibility with all elements of the Project and program to include the following issues as appropriate and applicable to the Project:

- Information to support determination if the Project may significantly adversely affect the quality of the environment and if an environmental effects reports is required.

- Building footprint(s)

- Configuration of the building

- The site coverage of the building, parking and other impervious areas

- Suitability of soil to support proposed building

- Degree of earthwork and grading required for the Project

- Vehicle access, parking, circulation, and delivery

Set by zoning ordinances, Design Standards, and other regulations

- Circulation and Open Space Requirements

- Special Constraints and Requirements

Utility easements

Set backs

Rights-of-way

Need for retention/detention ponds

Flood areas

Environmental

Historical/Archeological

Ecological preserves

Other

- Access Issues

Site Accessibility, ADA, CAT Bus stops

Impact of Project on traffic flows

Identify required improvements

Identify rights-of-way or additional land that may be needed to provide access to the site

- Utilities

Identify type, capacity, and tie-in requirements for all utilities

Water

Gas

Telephone

Electricity

Cable

Sewer

Other

102.4.4.5 PROJECT COST ESTIMATE

The probable Construction Cost Estimate must pull together the program requirements, site conditions, and Project/facility design assumptions to develop the estimate. Although the potential cost magnitude of the Project must be kept in mind throughout the process, the detailed schematic design Construction Cost Estimate should not be prepared until other portions of the study have been completed, and should take into consideration all of the scope elements and site conditions of the proposed Project.

Total Project Cost Budget

Provided by City.

Proposed Project Schedule and Funding Plan (Provided by City)

The Project schedule for the remaining phases of the work through completion and use of the facility will be provided by the City Representative for inclusion in the study, together with the fiscal year funding plan required to accomplish the work schedule. It must be clear to a reader of the study that this schedule is a proposed schedule, dependent on timely funding of the work, and that should the proposed schedule for completion be delayed for funding or any other cause, the **Project costs will increase from those shown in the study**. Accordingly the schedule should provide for a reasonable number of unknown delays and not be overly optimistic. Provide a funding plan and cost estimate for each phase of phased projects.

Construction Cost Estimate

Provided by Consultant.

Design Assumptions

Building assumptions, such as architectural treatments, building systems/components, and any special accommodations (i.e., security, parking, environmental constraints, etc.) not previously identified should be defined and documented in this section. The objective is to understand and document the assumptions and associated cost impacts that are used for the basis of the Construction Cost Estimate. This section should describe the assumptions used in preparing the cost for each item in the category, defend more expensive choices and discuss any trade-offs that were considered (i.e., sloped vs. flat floor, or standing seam vs. built-up roof, etc.).

Estimating Assumptions

State the relative accuracy of the estimate, such as +50% to -30%, or +10% to -10%, and the logic and industry standard reference for stating the particular percentage of accuracy.

The assumptions made by the Consultant, professional estimator, and the City related to the Construction Cost Estimate and the Total Project Cost Budget need to be detailed for the reader, such as the following:

- Construction cost escalation rate, reasons for using this percentage, local historical references, and reasons for any variation between the City and Consultant's estimator and the rationale for the numbers used in the budget. (The construction cost escalation is used to escalate the construction estimate from current year dollars to the mid-point of the construction period per the Project's schedule. The mid-point of the construction phase is used rather than the bid opening date since this should provide a more accurate estimate of the contractor's actual escalated costs due to him buying half of his labor and materials prior to the mid-point and the remaining half after the mid-point. For projects in construction less than a year, the difference is minimal, but on large projects spanning several years, using the mid-point rather than the bid date is significant.)
- Design contingency, logic for using the percentage used. (Because space and specification assumptions may be revised during the design phases, the use of a "design contingency" may be appropriate, generally at a rate not to exceed 10% total cost. This design contingency is also used to cover items that are in the designer's mind but not yet put down on paper for the estimator to see and include in the cost, therefore it is generally shifted and "used up" over the course of the design as the contingency is reduced and the known construction costs are increased to cover these items.)
- Estimating contingency, logic for the percentage used for this stage of the Project's development. (Estimating contingencies account for the relative development of the project program definition, unknown site conditions, unknown regulatory requirements, partial designs not yet approved by the project owner, users, or building department, and other similar risks. As the project progresses from conceptual design to final construction documents during Phase III, the estimating percentage is reduced from over approximately 50% to 10% at bid opening as the risks are investigated and included in the construction documents.)
- Change Order contingency, reasons for using the percentage shown, project type and City historical past experience references.

102.4.4.6 OPERATIONS AND MAINTENANCE IMPACTS

The Operations and Maintenance Impacts section defines the potential Project impact on the annual operating budget for the City.

102.4.4.7 DESIGN DOCUMENTS

Program Bubble Diagram(s)

- Functional / bubble diagrams consisting of activities and generalized spaces representing program elements organized in realistic relationships and scaled to show relative size, for building projects and non-building projects.
- Typical room layouts.

Site Analysis Diagram(s)

- Site diagrams illustrating site layouts such as site survey, site location, utility location, topography, etc.
- Site vicinity location map showing the location within the City.
- Aerial photo of the site showing adjacent land uses.
- Photographs of the site and neighboring properties with special attention paid to adjacent structures and any unique existing conditions.

Schematic Design Site Plan, Floor Plans and Elevation Drawings

- Schematic level site plan showing all proposed uses and amenities, access, pedestrian circulation, buildings, parking, landscaping, walls, fences, major signage, trash enclosures, shade structures, equipment, theming, and hardscapes.
- Schematic Building floor plans showing the layout and arrangement of all programmed and non-programmed spaces
- Building elevations and recommended colors and spatial proportions.
- Phasing plans for phased projects.

Outline Specifications

- Brief narrative specifications presented in CSI format appropriate to the appropriate level of project development including all major materials and systems.

102.4.4.8 APPENDIX

The study should have an Appendix to include a reference list of the codes, standards, guidelines, prior studies, etc., which were used in performing the work through schematic design. It should also include copies of any supplemental information such as City space, functional, and performance planning or programming standards and guidelines that were used in the study that will also be relevant for use during design, as well as copies of reference surveys, geotechnical reports, and other documents.

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 deliver the following minimum submittals and deliverables for the Project, which shall be accomplished as a prerequisite to payment for each related task and service. All reports shall be on white, acid-free paper, 8-1/2 x 11 inches, suitable for photocopying and bound in booklet form. All Drawings shall be prepared using Autodesk's AutoCAD Release 2004 or newer release in accordance with industry accepted standards, including the American Institute of Architects (AIA) Computer Aided Design (CAD) Layer Guidelines. Specifications shall be prepared in Construction Specification Institute (CSI) format using the software program Microsoft Word 2000 or newer release.
- 200.2** The Consultant understands, acknowledges and agrees that the deliverables from this Agreement may be utilized and incorporated into a Professional Services Agreement for the design and construction of the Project, and that the selection of a firm for that contract or work will be made separately from this Agreement. Accordingly, the Consultant will receive no preference for selection, and may or may not be the selected Consultant for additional design or construction work for the Project.
- 200.3** The City may make and distribute copies of the reports as necessary in connection with the Project without incurring obligation for additional compensation.
- 200.4** **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: PROJECT DELIVERABLES

- 201.1** **Programming and Site Analysis Phase**
201.1.1 Program Analysis
201.1.2 Site Analysis
201.1.3 LEED Credits Report
201.1.4 Probable Construction Cost Estimate
- 201.2** **Schematic Design Phase**
201.2.1 Drawings

- 201.2.2 Specifications
- 201.2.3 LEED Credits Report
- 201.2.4 Probable Construction Cost Estimate

201.3 Pre-Project Planning Study

END OF EXHIBIT "B"

EXHIBIT "C"

PERFORMANCE SCHEDULE

ARTICLE 300: NOTICE TO PROCEED

- 300.1 The start date for the Consultant's scope of services shall be, without any further notice requirement, the date of this Agreement. The Scope of Service set forth in this Agreement and the compensation to the Consultant for said Scope of Services is based upon the Consultant and the City each performing its responsibilities in a timely manner.
- 300.2 Site access is hereby provided to the Consultant by the City for the scope of services contained in this Agreement. The City either has title to the property and the right of entry, or the City has secured permission from the present owner and tenant for entry to the property.

ARTICLE 301: PHASE SCHEDULE

- 301.1 For the services set forth in Exhibit "A" (Scope of Services), the Consultant shall accomplish the services in accordance with the following schedule. The maximum allowed time to complete and deliver each phase of the work is shown in the following table, barring circumstances beyond the Consultant's control that force a delay:

PHASE	CALENDAR DAYS TO COMPLETE	REMARKS
Programming and Conceptual Design	2/16/11 to 6/16/11	Includes 2 week City review period.
Schematic Design	6/11 to 10/5/11	Includes 2 week City review period.
Pre-Project Planning Study	10/6/11 to 11/17/11	Includes 2 week City review period.
TOTAL	2/16/11 to 11/17/11	

- 301.2 The City review periods shown in the table may occur over several periods during each phase or may occur at the conclusion of each phase. Unused review days may be carried forward for use in successive phases of the Project.

END OF EXHIBIT "C"

EXHIBIT "D"

FEE BREAKDOWN

ARTICLE 400: TOTAL COMPENSATION

- 400.1** The total compensation to be paid to the Consultant for performance of this Agreement including Basic Services, Additional Services, and Reimbursable Expenses shall not exceed \$301,600.00. Increases to total compensation may only be authorized by written amendment to this Agreement. This total compensation amount is comprised of the parts described in this Exhibit "D" (Fee Breakdown).

ARTICLE 1: BASIC SERVICES PAYMENT BASED ON THE COMPLETION OF PHASES

- 1.1** For the services set forth in Exhibit "A" (Scope of Services), the City agrees to pay to the Consultant the fixed fee assigned for each phase of the Project identified in this Exhibit "D" (Fee Breakdown). The Consultant agrees to perform the services required under this Agreement Exhibit "A" (Scope of Service) for the amount of the fixed fee set forth in this Exhibit "D" (Fee Breakdown). Payment shall be made for each phase pursuant to monthly invoices submitted in accordance with the Agreement based upon the percentage of completion for each phase. The fixed fee shall constitute the entire compensation to be paid to the Consultant regardless of the number of man-hours actually expended to complete the performance of the services set forth in Exhibit "A" (Scope of Services).

PHASE	PERCENT TOTAL	of FIXED FEE	REMARKS
Programming and Conceptual Design	40%	\$102,640.00	
Schematic Design and Master Planning	40%	\$102,640.00	
Design Development	20%	\$51,320	
Construction Documents	%	\$TBD	Will be provided in Phase III and Phase IV
Bidding	%	\$TBD	Will be provided in Phase III and Phase IV
Construction	%	\$TBD	[The combined Fee for Construction and Post Construction phases shall not be less than 25% of the total Fee.]
Post Construction	%	\$TBD	Drafting As-Built Drawings, Punch List
	TOTAL	\$256,600.00	

2.4 Increases to this Total Not-To-Exceed Cost for Additional Services may only be authorized by written amendment to this Agreement.

ADDITIONAL SERVICES ALLOWANCE		ALLOWED SERVICES
NOT-TO-EXCEED COST	\$35,000.00	Additional historical building HABS 1 report(s) on Variety Early Learning center building(s)
NOT-TO-EXCEED COST	\$10,000.00	Additional services to designate Variety Early Learning center building(s) on historical register(s)
TOTAL NOT-TO-EXCEED COST	\$45,000.00	

END OF EXHIBIT "D"

EXHIBIT "E"

ADDITIONAL COMPENSATION

ARTICLE 500: CONSULTANT HOURLY RATES

- 500.1 The following hourly rates are to be used as the basis for negotiation of added and reduced services. These hourly rates are valid for the duration of the Project and include salary costs, overhead, administration and profit. The overhead included in these rates covers all support personnel who normally work on non-specific project tasks including but not limited to receptionists, senior executives together with their assistants, financial accounting personnel, and facility, equipment, and IT maintenance personnel.

CLASSIFICATION		
Project Manager	\$145.00	Per Hour
Engineer / Architect	\$165.00	Per Hour
Technician/CADD Operator	\$65.00	Per Hour
Designer (Principal)	\$180.00	Per Hour
Specification Writer	\$90.00	Per Hour
Drafter/CAD Operator	\$60.00	Per Hour
LEED Accredited Professional	\$100.00	Per Hour
Clerical	\$55.00	Per Hour

ARTICLE 501: ADDITIONAL SERVICES RATES

- 501.1 The cost of the following potential future Additional Services have been negotiated as of the date of this Agreement.

ADDITIONAL SERVICE	SUBMITTALS	SCHEDULE IMPACT	FIXED FEE
None authorized or anticipated as of the date of this Agreement.	TBD		\$0
	TBD		\$0
	TBD		\$0

- 501.2 These fees 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: Samuel Tolman AIA NCARB

ARTICLE 601: CONSULTANT'S PROJECT STAFF

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

601.1.1 CONSULTANT REPRESENTATIVE: Melvin D. Green RA

601.1.2 LEED PROJECT ADMINISTRATOR (Accredited by USBGC): David Schmidt, AIA, NCARB, LEED AP

601.1.3 TECHNICIAN: Emanuele Arguelles, NCARB, LEED AP

601.1.4 CLERICAL: Lindsey Rodriguez

601.1.5 RESPONSIBLE IN CHARGE PERSON : Melvin D. Green RA

601.1.6 IN CHARGE PERSON'S STATE OF NEVADA LICENSE NUMBER

List Architect license number: 2249

ARTICLE 602: CONSULTANT'S SUBCONSULTANTS

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

602.1.1 Hamilton Anderson, 1435 Randolph Street, No. 200, Detroit Michigan, 48226

602.1.2 Wright Engineers, 7425 Peak Drive, Las Vegas Nevada, 89128

602.1.3 Heritage Architecture & Planning, 625 Broadway, Suite 800, San Diego California, 92101

602.1.4 O'Connor Construction Management, Inc., 2821 West Horizon Ridge Parkway, Suite 211, Henderson Nevada, 89052

602.1.5 The Sayles Group, Las Vegas Nevada, 6847 West Charleston Boulevard, Las Vegas Nevada 89117

602.1.6 Ninyo & Moore, 6700 Paradise Road, Suite E, Las Vegas Nevada, 89119

602.1.7 JBA Consulting Engineers, 5155 W. Patrick Lane, Las Vegas Nevada 89118

602.1.8 Susanne Thomas, 212 Woodley Street, Las Vegas Nevada 89106

END OF EXHIBIT "F"